



Appeal Decision

Inquiry held on 13-16 March and 27 April 2018

Site visit made on 26 April 2018

by **Paul Dignan MSc PhD**

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

Decision date: 02 July 2018

Appeal Ref: APP/X0360/C/16/3153193

Land to the south west of Ostlers and Lea Cottage, Kybes Lane, Grazeley, now known The Paddocks, Kybes Lane, Reading, Berkshire, RG7 1NG.

- 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 Mrs Georgina Ray against an enforcement notice issued by Wokingham Borough Council.
 - The enforcement notice, numbered 161915, was issued on 6 June 2016.
 - The breach of planning control as alleged in the notice is without planning permission the material change of use of the land for the stationing of caravans for human habitation.
 - The requirements of the notice are: 1. Cease the use of the land for the stationing of caravans for residential purposes; 2. Remove all mobile homes, touring caravans and all associated residential paraphernalia from the Land; 2. Remove all vehicles and trailers associated with the caravan site from the Land; Demolish all sheds, outbuildings and bin stores (but not the stables edged in blue on plan 2) and remove all resultant materials from the land; 5. Excavate all hard surfaces and completely remove all resultant materials from the Land; 6. Flatten the bunds around the boundaries of the Land; 7. Remove all septic tanks, underground services, stand pipes, electricity meters and cupboards and completely remove the resultant materials from the Land; 8. Demolish all walls, brick skirts and caravan steps and completely remove all resultant materials from the Land; 9. Remove all fences and gates from the Land; 10. Remove all building materials from the Land; and 11. Dig up and remove all conifers from the Land.
 - The period for compliance with the requirements is 9 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. The application for planning permission deemed to have been made under section 177(5) of the Act as amended also falls to be considered.
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Decision

1. The appeal is allowed, the enforcement notice is quashed and planning permission is granted for a temporary period of 3 years on the application deemed to have been made under section 177(5) of the Act as amended for the development already carried out, namely the use of the Land to the south west of Ostlers and Lea Cottage, Kybes Lane, Grazeley, now known The Paddocks, Kybes Lane, Reading, Berkshire, RG7 1NG, as shown on the plan attached to the notice, for the material change of use of the land for the stationing of caravans for human habitation, subject to the conditions set out in the Schedule attached to this decision.

Preliminary matter

2. The Inquiry was first opened in May 2017 by another Inspector, but adjourned without hearing evidence because of the late submission of documents.

Ground (a)

3. The appeal site is a former horse paddock with stables on the western side of Kybes Lane, a narrow country lane. It is in the open countryside. It is also within the 1.5km radius emergency planning zone around the Burghfield Atomic Weapons Establishment (AWE). It was first occupied by the appellant and members of her family in 2012. A retrospective planning application was made in December 2012, and the Council resolved in November 2013 to grant temporary planning permission, for a period of 2 years, for the change of use of the land to use as a residential caravan site for 4 Gypsy families, including the stationing of 4 mobile homes, 4 touring caravans, and the erection of 4 dayrooms, together with the laying of hardstanding. The time-limited permission was granted in the expectation that the occupiers would look for an alternative site. However, that grant of planning permission was subject to a legal agreement which was never secured, and hence the permission never came into effect. Subsequently a February 2016 application for the change of use of the land to 10 gypsy pitches was refused and the enforcement notice the subject of the appeal was issued. There are now 11 pitches on the site, set out on the original 4 family plots, the occupiers of the additional plots being family members.
4. An appeal on ground (a) is essentially that planning permission should be granted for the matters stated in the notice. The appeal is accompanied by a deemed planning application. In essence, the deemed planning application is for the change of use of the land to use as an 11 pitch gypsy/traveller site, with the existing ancillary operational development, and not for the 10 pitch site the subject of the 2016 planning application. Having regard to the reasons given for issuing the notice, which in fact mirror those given for refusing planning permission for the 10 pitch site, I consider that the main issues are:
 - the effect of the development on the character and appearance of the area;
 - whether the site can be considered as acceptable in policy terms, having regard to access to services and facilities, and the location of the site in the countryside;
 - whether adequate provision can be made for protection from radiation in the event of a nuclear emergency;
 - whether the development is at risk from flooding;
 - whether the development is likely to harm biodiversity; and
 - whether there are any material considerations to outweigh any harm identified.

Planning Policy

5. The development plan includes the Wokingham Borough Core Strategy (CS), adopted in 2010, and the Wokingham Borough Managing Development Delivery Local Plan Document (MDD), adopted in 2014. The CS pre-dates the National

Planning Policy Framework (NPPF), but its policies can be given weight depending on the degree of consistency with the NPPF. Relevant CS policies include: Policy CP1, a general policy seeking sustainable development; Policy CP2 which seeks to ensure the provision of sustainable and inclusive communities and refers to the specific identified needs of the gypsy and traveller community; Policies CP3 and CP11 which aim to protect the quality of the environment and protect the separate identity of settlements and the character of the countryside; Policy CP6 which aims to manage travel demand; and Policy CP7 which seeks to protect biodiversity. Relevant MDD policies include Policy TB10, a criteria based policy for assessing applications for new gypsy and traveller sites, along with Policy CC01, which sets out the presumption in favour of sustainable development, Policy CC02 which seeks to direct development to settlements or edge of settlements, CC03 which seeks to protect green infrastructure, CC09 which aims to avoid inappropriate development in areas at risk of flooding, Policy TB04, which expects new development in proximity to the AWE to demonstrate that they can be safely accommodated, and Policy TB21, which seeks to preserve landscape character.

6. The Borough Design Guide (BDG), a supplementary planning document, also contains relevant guidance, at R24, which expects gypsy sites to provide a safe living environment and respect local character, and RD1 which expects new development within rural and settlement edge areas to preserve landscape character and biodiversity.
7. Planning Policy for Traveller Sites (PPTS) is a material consideration. It aims to ensure fair and equal treatment for travellers in a way that facilitates the traditional and nomadic way of life of travellers while respecting the interests of the settled community. Amongst other things, it expects local planning authorities to increase the number of traveller sites in appropriate locations to address under provision and maintain an appropriate level of supply. In locational terms, it advises, in paragraph 25, that 'authorities should very strictly limit new traveller site development in open countryside that is away from existing settlements or areas allocated for development'. This policy guidance does not present an absolute restriction on the location of new gypsy and traveller sites in the countryside, but the general thrust of the policy goes against such development in remote or spatially isolated locations.

Character and appearance

8. The appeal site is within relatively flat countryside that is identified in the Wokingham District Landscape Character Assessment (2004) as a Farmed Clay Lowland, specifically Grazeley Farmed Clay Lowland. The landscape quality is described as strong and in moderate overall condition. It has a distinctive flat landform, with mixed working farmland and a rural settlement pattern of scattered farmsteads and hamlets. Amongst the most sensitive characteristics are the pattern of ancient hedgerows, mature oaks and rural lanes. Prior to the appeal development the site would have been quite typical of this landscape, a relatively small field surrounded by mature hedgerows with a number of oak standards.
9. The replacement of the grassland by hardstanding, caravans, sheds, a number of utility buildings and general domestic paraphernalia has had an adverse impact on the generally undeveloped character of the landscape locally. The visual impact, although somewhat discordant on this rural lane with only

sporadic development, is localised, due mainly to landform and hedgerow retention. The hedgerows remain in place, though thin in places and at risk from some unsympathetic treatment, but the standard oaks appear unaffected and there are few viewpoints from which the development has a significant visual impact.

10. On the approach along Kybes Lane from the south there is a clear view into the roadside pitches for a short distance, but otherwise the site is generally screened by the deciduous hedgerows. Parts of the roadside hedgerow by the site are degraded and a close boarded fence that can be seen just behind is visually discordant, but there has been some enrichment planting and further improvement and protection of this hedgerow and the others around the site can be secured by condition. For much of the laneway within view of the site, when trees and hedges are in leaf little can be seen apart from glimpses of the tops of caravans and dayrooms dispersed across the site. No doubt in winter the development would be more noticeable, but with appropriate care the hedgerows would still provide strong filtering. There would be clear views of the site from trains passing on the raised embankment a short distance to the west, but occasional dispersed development is a common sight on the outskirts of large built-up areas such as Reading, and traveller sites are not out of place in the countryside.
11. Appropriate landscaping would considerably reduce the harm to visual amenity, and sympathetic hedgerow management would help the development integrate into the local landscape, but I consider that there would nonetheless be an adverse effect on the generally undeveloped character of the landscape, and in particular on the tranquil rural character of the lane, a designated national cycle route which has little other development for long stretches. As such the development fails to maintain the quality of the environment or retain and enhance its character, contrary to CS Policy CP11 and MDD Policy TB21 and the design guidance in BGD RD1.

Whether the site can be considered as acceptable in policy terms, having regard to access to services and facilities, and the location of the site in the countryside

12. The site is some 1.6km from Grazeley, a small settlement which has a primary school and village hall but limited facilities otherwise. This is where the children on the site go to school, and it is accessible on foot or cycle. The wider area itself is only moderately well served in terms of services and facilities, but Reading is very close by and there is a park and ride some 2.5 km from the site which provides good access to public transport and a wide range of services and employment opportunities. Access to the site was considered potentially hazardous, but sufficient information has now been submitted to establish that the access does not pose an undue risk to highway safety.
13. In PPTS terms the site can be considered as one of those which is physically away from existing settlements, but it is also in an area that is not remote, being essentially in the Reading hinterland, that has good access to the major road network for those who need to travel widely to look for work, and from which access to many services and facilities would not necessarily be dependent on private cars, or would only involve short journeys. It is also evident from the substantial evidence of local people that there has been a good level of integration with the local settled community. Hence, although away from an existing settlement, the site is not in a location that would lead

to unsustainable patterns of travel or significant difficulties in accessing services or social integration, and it would not dominate the nearest settled community or place undue pressure on the local infrastructure.

14. On balance I consider that the site's location would not be contrary to the guidance in PPTS paragraph 25. CS Policy CP2 expects traveller sites to be either within or close to a settlement, and this is explained as being in order to maximise the possibilities for social inclusion and sustainable patterns of living, and not be disproportionate in scale. Since the site's location satisfies these objectives I consider also that it is close enough to a settlement to accord with this policy. Nonetheless, being neither within nor adjacent to an existing settlement puts the development in conflict with MDD Policy TB10, a more recent policy which has a less nuanced approach to location.

Protection from radiation

15. The site is located within the Detailed Emergency Planning Zone (DEPZ) for AWE Burghfield, a 1.5 kms radius zone within which persons are likely to be affected in the event of a nuclear emergency and within which counter-measures may need to be taken to restrict public exposure. For AWE Burghfield the initial counter-measure advice would be shelter. Mobile homes provide less protection from ionising radiation for their occupants than do conventional dwellings. Apparently on gypsy sites located within the DEPZ for AWE Aldermaston, the other such facility locally, brick-built dayrooms have been accepted as providing suitable shelter for site residents in the event of a nuclear emergency.
16. The Office for Nuclear Regulation (ONR) objected to the development, citing the inadequate protection from radiation provided by mobile homes. In response to the appellant's claim that sheltering in dayrooms would provide sufficient protection to site occupiers in a nuclear emergency the first Inspector dealing with this appeal asked the Council whether brick-built dayrooms would overcome the AWE related concern. ONR provided further information in response, including calculations which indicate that the degree of protection provided by dayrooms is substantially less than houses of traditional construction, particularly for longer duration events, some allowance also being made for exposure while moving to the shelter from a mobile home. I regard the provision of this further information as maintaining ONR's objection.
17. Although the ONR information explaining differences between traditional houses and dayrooms does not appear to have been provided to the appellant's agent prior to the Inquiry, probably because of incorrect email details at PINS, the continued reliance on dayrooms for adequate protection does not in my view meet the MDD Policy TB04 requirement that new development in proximity to the AWE must provide information to demonstrate that it can be safely accommodated. In the absence of such assurance I am unable to conclude that adequate provision can be made for protection of the site occupants from radiation in the event of a nuclear emergency, and the development therefore conflicts with MDD Policy TB04. It also conflicts with the BGD R24 expectation of a safe living environment and with criterion (d) of MDD Policy TB10 which expects new traveller site developments to demonstrate that no significant barriers to developments exists, including proximity to hazardous installations where conventional housing would not be suitable. Here it has not

been demonstrated either that new conventional housing in this location would be acceptable.

18. In coming to this view I have noted that a new settlement including housing and employment land was promoted for the area including the appeal site, the Grazeley Garden Settlement. However, this development proposal provided no information on how or whether it would or could comply with MDD Policy TB04.

Flood risk and harm to biodiversity

19. A stream runs alongside the western site boundary, and some of the north-western part of the site falls within areas identified by the Environment Agency as being at risk of flooding, mapped as Flood Zones 2 and 3. Development proposals in Flood Zones 2 and 3 must take into account the vulnerability of the proposed development. Caravans are considered to be highly vulnerable to flooding and should not be permitted in Flood Zone 3, and only in Flood Zone 2 in exceptional circumstances. Development in Flood Zones 2 and 3 should also avoid increasing flood risk elsewhere. No flood risk assessment addressing these issues has been provided, but the Council has accepted that the flood risk issues arising from the development can be satisfactorily resolved by excluding development from the parts of the site within Flood Zones 2 and 3, and this can be made the subject of a planning condition. The majority of the site lies within Flood Zone 1, which has the lowest risk of flooding, and the existing development within Flood Zones 2 and 3 can be satisfactorily accommodated within Flood Zone 1.
20. Regarding biodiversity, the unauthorised nature of the development has prevented the Council from fully considering the impact on biodiversity, and any potential for mitigation. I deal further with the implications of intentional unauthorised development below. At present the hedgerows retained around the site remain as a habitat of principal importance. These have been degraded in places, at least partly, from my observations, as a result of the appeal development. The hedgerow along the northern side, and parts of the roadside hedgerow, have had earth piled against them, to a considerable height in the case of the northern hedgerow, and part of the northern hedgerow has been badly damaged by what appears to have been a fire lit beside it. There has also been planting of inappropriate tree species within this hedgerow. All of these damage the hedgerows' ecological value. However, protection and restoration measures can be secured through the development and implementation of a landscaping scheme that includes appropriate measures, and this can also be made the subject of a planning condition.

Other considerations

The need for, and provision of, traveller sites and the availability of alternative sites

21. PPTS requires local planning authorities to make their own assessment of need for the purposes of planning, to set pitch targets for travellers which address the likely needs, and to identify a supply of specific deliverable sites sufficient to provide 5 years' worth of sites against their locally set targets. The Council's current commissioned arc⁴ Ltd to conduct a full *Gypsy, Traveller and Travelling Showpeople Accommodation Assessment* (GTAA), published in May 2017 and then updated in September 2017 in response to queries raised by planning professionals. The GTAA estimates a total Gypsy/Traveller pitch need for the

period 2017/18 to 2035/36 of 90 pitches ('cultural' need), of which 26 would be required to meet the needs of those within the PPTS definition of travellers, the remainder being for pitches for members of the travelling community who do not meet the PPTS definition. For the 5 year period 2017/18 to 2021/22 5 pitches were estimated to be required to meet the PPTS need. The updated position as of 31 March 2018 was a 5-year requirement of 5.5 pitches (to 2022/23) along with an under-supply against assessed need of 1 pitch carried forward from 2017/18. The supply position on 30 March 2018 was that there were 15 pitches with planning permission which were considered to be deliverable in the next 5 years, equating to a deliverable pitch supply of 11.54 years.

22. The appellant has made a number of criticisms of the GTAA. First it is argued that the current PPTS definition of travellers is discriminatory, but that is a matter for the Courts. There is, however, a lack of transparency around the methodology used for determining the proportion of travellers that meet the PPTS definition, and while there are understandable problems in handling possibly sensitive personal information, the lack of independent scrutiny must reduce the weight that can be attached to the findings.
23. Another argument is that the GTAA assessment does not reflect the best evidence available to the Council. There are 18 households in the Borough currently on unauthorised sites, and this represents an immediate need, even before considering in-migration over the next 5 years. Taken together this would be well in excess of the assessed need. However, the exercise is an assessment of future need for strategic planning purposes and does not purport to address individual or immediate needs. The unauthorised site occupiers at the date of the survey were factored into the assessment, so this does not undermine the GTAA.
24. I agree with the appellant however that there is little logic to the treatment of in- and out-migration data. The survey identified significant in-migration in the preceding 5 years, 11 households. The needs calculation reduces the need by 10 for households who are planning to move outside the Borough in the next 5 years, but, because arc⁴ considered that a figure for overall net migration could not be derived accurately, net in-migration was not included in the needs assessment model. Obviously in-migration would go to the opposite side of the ledger to out-migration, so it seems only fair to me to either include both or exclude both. By my calculation excluding out-migration would increase the GTAA assessed need to 2021/22 to 7.7, so presumably to 8.2 to 2022/23, still well with the 5-year deliverable pitch supply.
25. There is another criticism of the GTAA that I consider well founded. It seems that the need arising from emerging households is apportioned using the cultural/PPTS factor derived from surveys of the full range of households, but there is a strong argument that many households emerging from non-PPTS travellers will wish to assert or experience a travelling lifestyle, a key part of their cultural identity. If so the allowance for PPTS sites for emerging households in the current GTAA would be an underestimate. However, if all 3 of the emerging households in the model were considered to meet the PPTS definition and added to need there would still be a 5-year supply, though this may need further consideration for longer term planning.

26. A failure to assess the needs of non-ethnic travellers, new travellers, was argued, but there was a field for recording new travellers in the survey field sheets. It was also submitted that there was a failure to properly assess the needs of people living on a specific large site, but it was confirmed after the Inquiry closed that there had been a good number of interviews on that site and that the results were factored into the needs analysis.
27. My conclusion on this matter is that while the September 2017 GTAA probably underestimates need by excluding in-migration, and also possibly by its simplistic treatment of emerging households, there remains an adequate 5-year supply of deliverable sites. I have noted the lack of independent oversight or examination of the methodology for identifying PPTS travellers, and this is a matter that would ideally be clarified, or at least made more transparent, in the future. In the meantime I have not seen anything to suggest that the outcomes were incorrect, or biased one way or the other, and the survey itself appears to me to have been reasonably comprehensive.
28. I acknowledge that Inspectors in other appeals have described the GTAA as robust. On the basis of the evidence before me I would say that the information gathering and data presentation is satisfactory, but more rigorous examination of the assumptions and analysis methodology, particularly that for distinguishing PPTS travellers, which is partly judgement based, would enable its findings to be relied on with greater confidence in the longer term.
29. Nonetheless, some weight in favour of the appeal arises from the undersupply of traveller sites regionally and nationally, and further weight must be accorded to the current lack of suitable alternative sites in the Borough to meet the immediate needs of the site occupants. Taken together I give these matters substantial weight.

Personal considerations

30. The original occupants were 4 closely related families with long-standing regional connections. They had been usually travelling as a group for many years, but without a settled base. The site was land that they could afford to buy, though it used up most of their available savings, and it remains essentially as 4 family plots. Each plot now has additional pitches due to household formation as children on the site have grown or accommodating other close family members who were in need of a pitch. Of those on the site, the evidence I have heard leaves me in no doubt that most continue to meet the PPTS traveller definition, albeit some of the older occupants are suffering or developing health conditions that make it difficult to travel. The only exception is one of the original families on the site whose health problems are severe, such that they will never be able to resume a nomadic way of life. This family is heavily dependent on the support of the other occupants of the site, who are immediate or close family.
31. As of the Inquiry date there were 17 children living on the site, 9 under school age, 6 attending Grazeley Primary School, and 2, aged 12 and 13, are home tutored. The children at Grazeley Primary School have received glowing reports, including for making significant positive contributions to the broader educational objectives, and the families are fully involved in school and community activities.

32. The living arrangements on the overall site, whereby the extended family live together for mutual support, is characteristic of the gypsy way of life, and the proposal would therefore be consistent with the Government's aim of facilitating the traditional and nomadic way of life of travellers.
33. Having a settled base enables the occupants with health issues to manage their conditions, and enables the children to have a settled and consistent education, as well as having access to health and welfare resources, significantly enhancing their life prospects by comparison with a roadside existence. There can be no doubt that continuing to live within the extended family environment with all of the other advantages of a settled base is in the children's best interests.
34. Poor access for travellers to health and education is one of the problems that PPTS seeks to address through the provision of settled bases that reduce the need for long-distance travelling, enable access to appropriate health services and that allow children to attend school on a regular basis. In view of the lack of identifiable alternatives, it is very likely that dismissing the appeal would lead to some or all of the households on the site having to resort to a roadside existence. This would have extremely negative consequences for the children, for some of the adults it would make it difficult to manage health conditions and access regular health services, and, in all likelihood and it would engender disharmony between the traveller and settled community.
35. Further, the family based group would find it difficult to find a settled base elsewhere that would accommodate all of them, so dismissal of the appeal would fail to support a key characteristic of the gypsy way of life, and this is a matter which weighs in favour of the appeal.
36. The personal circumstances of the site occupants, their personal and group need for a settled site, the substantial evidence of integration with the settled community from this particular site, the best interests of the many children on the site, and the potentially harmful consequences of resorting to the roadside are matters which carry substantial weight in favour of the appeal.

Intentional unauthorised development

37. It is now government planning policy that intentional unauthorised development is a material consideration that should be weighed in the determination of planning applications and appeals. The written ministerial statement announcing this policy stated that it applied to all new planning applications and appeals received since 31 August 2015. It was argued that it may not apply to enforcement appeals, but that would be illogical, especially where accompanied by a deemed planning application. While the original act of development preceded the policy, this appeal post-dates the introduction of the policy, and the change of use of the land was clearly done in the knowledge that planning permission was required. It was intentional unauthorised development which must therefore weigh against the grant of planning permission.

Overall Balance

38. At the onset of considering the issues in the planning balance I have borne in mind the duty placed on me within the Public Sector Equality Duty. I have also considered the best interests of the children as a primary consideration.

39. Paragraph 22 of the PPTS notes that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise. Paragraph 24 advises that authorities should consider, amongst other things, the existing local provision and level of need, the availability of alternative sites for the applicants and other personal circumstances. Where there is no identified need, locally specific criteria should be used to assess applications.
40. I have found conflict with development plan policies due to the location away from a settlement, a locally specific criterion, along with adverse effects on the generally undeveloped character of the landscape and the tranquil rural character of the lane, and the failure to demonstrate that there would be adequate protection from radiation. Having regard to the 5-year pitch provision position, I see limited scope for flexibility in the application of MDD Policy TB10, the key policy, two of whose criteria are not met, so I find that there is conflict with the development plan, read as a whole. Further moderate weight against the development arises from its unauthorised nature.
41. On the other side of the balance there are a number of factors that weigh in favour of planning permission. There is no doubt that the occupiers have a personal need for a site and living as an extended family group is consistent with the aim of facilitating the traditional and nomadic way of life of travellers. Some weight in favour of the appeal arises from the undersupply of traveller sites regionally and nationally, and further weight must be accorded to the current lack of suitable alternative sites in the Borough to meet the immediate needs of the site occupants. There is considerable evidence of integration and positive community relations, and the site provides the occupiers with good access to education and health care. Notwithstanding its location in the countryside it is in a relatively sustainable location in many ways, and having a settled base is in the best interests of the children, having regard in particular to the unsatisfactory alternative of possibly having to resort to roadside living.
42. Overall however, I consider that the material considerations in favour of the development do not outweigh the conflict with the development plan so as to justify a permanent planning permission, particularly as the proximity of the site to a nuclear installation makes it an unsuitable location for a permanent traveller site without assurance regarding the safety of occupiers in the admittedly unlikely event of a radiation accident.
43. Turning to the case for a temporary permission, the very low likelihood of a nuclear accident in the short term can be weighed against the other environmental harms to which the occupiers may be exposed if living on the roadside, the countryside related harm would be time limited, and the position regarding the availability of alternative sites is likely to improve with the implementation of extant permissions and the progress of the current local plan update. This update has had an associated 'call for sites' exercise that has seen 25 sites promoted as gypsy/traveller sites, and these will be assessed through the local plan process.
44. On balance I consider that a temporary permission for a period of 3 years is justified in the circumstances, at the end of which the site should be restored in accordance with the requirements of the enforcement notice. In view of the policy considerations and the weight I attach to the occupiers personal circumstances I shall restrict occupation of the site to the current occupiers.

Most of the site occupiers meet the planning definition of travellers, but in view of the personal restriction and the limited timeframe I consider that a further condition restricting the use to gypsies and travellers is not necessary.

45. Even a grant of temporary permission interferes with the occupiers' human rights, but in view of the environmental harm and the risk to health due to the proximity to AWE Burghfield I consider that a temporary permission is a proportionate interference with the occupiers' human rights.
46. Despite the limited period I consider that the degraded condition of the hedgerows around the site, some of which is certainly due to the development, justifies the imposition of a condition requiring a scheme of landscaping, and the flood risk justifies a requirement for an alternative layout. The time-limited nature of the permission also justifies a requirement for restoration. In the interests of character and appearance and local amenity I shall also condition external lighting, foul and surface water disposal and restrict commercial use, vehicle size and the burning of materials on the site. Suggested conditions requiring the provision of dedicated cycle and bin storage facilities, and an ecological assessment are not justified in the context of a time-limited permission. However, the provision and maintenance of adequate highway visibility is necessary in the interests of highway safety.
47. Since the grant of temporary permission requires the quashing of the notice, there is no need to consider the appeal on ground (g).

Paul Dignan

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Marc Williers QC

He called	
Luke Ray	Site occupier
Georgina Ray	Appellant, site occupier
Noah Kempster	Site occupier
Mary Loveridge	Site occupier
Philip Brown	Planning consultant

FOR WOKINGHAM BOROUGH COUNCIL:

Edmund Robb

Of Counsel

He called	
Brigitte Crafer	Landscape architect, WBC
Duncan Fisher	Ecologist, WBC
Boniface Ngu	Flood Risk and Drainage Engineer, WBC
Gordon Adam	Highway Engineer, WBC
Laura Callan	Planning Officer, WBC
Chris Broughton	Director, arc ⁴
James McCabe	Planning Policy Officer, WBC

INTERESTED PERSONS:

Maria Ray	NHS Health Visitor
Rev Paul Willis	Parish Rector
Debbie Johnson-Wait	Café Manager, St Michaels Church
Adrian Jones	Policy Officer, National Federation of Gypsy Liaison Groups

DOCUMENTS

- 1 Bundle of supporting documents – petition, school letters, medical documents, submitted by the appellant.
- 2 Folder of court transcripts and reports - appellant
- 3 Initial working plan of site layout/occupancy -appellant
- 4 Copy of Written Ministerial Statement 31 August 2015 - appellant
- 5 Plan of flood zones - appellant
- 6 Supplementary Proof of Evidence (GTAA update) – Philip Brown
- 7 Rebuttal Proof of Evidence (Philip Brown) for Warren Lodge appeal APP/X0360/W/17/3173546 - appellant
- 8 Appeal decision letter APP/B5480/C/17/3173197 Willow Tree Lodge
- 9 Appeal decision letter APP/Q3115/W/17/3176196 Watlings Paddock
- 10 Appeal decision letter APP/P0240/W/17/3167872 Eversholt Beeches
- 11 Wokingham Borough Core Strategy DPD Policy CP6 – Managing Travel Demand
- 12 WBC planning application validation matrix
- 13 Email exchange re Office for Nuclear Regulation (ONR) comments (wrong email address used by PINS for Philip Brown)

- 14 WBC email exchanges with ONR
- 15 Plan of highway access provided at site visit - appellant
- 16 Updated site layout plan with flood zone overlay provided at site visit - appellant
- 17 Petition of support - appellant
- 18 Updated gypsy/traveller pitch supply position at 31 March 2018 – WBC
- 19 Email confirmation of planning history of Four Houses Corner caravan site - WBC
- 21 Recommended conditions - WBC
- 22 Table summarising education and health information of site occupants - appellant
- 23 WBC closing submissions
- 24 Appellant's closing submissions

Schedule of conditions

- 1) The use hereby permitted shall be carried on only by (1) Danny and Georgina Ray and their resident dependants, (2) Danny and Margaret Ray and their resident dependants, (3) Digger and Crystal Ray and their resident dependants, (4) Luke and Mary Ray and their resident dependants, (5) John and Kate Nicholson and their resident dependants, (6) Noah and Sherry Kempster, (7) Betsie Kempster and her resident dependants, (8) Darren and Amy Ayres and their resident dependants, (9) Noah Jnr and Renita Kempster and their resident dependants, (10) John, Mary and Mary Dorothy Loveridge and (11) Jimmy and Sherina Loveridge and shall be for a limited period being the period of three years from the date of this decision. When the premises cease to be occupied by those named above, or at the end of three years, whichever shall first occur, all caravans, buildings, structures, materials and equipment brought onto, or erected on the land, or works undertaken to it in connection with the use shall be removed, and the land restored to its condition before the development took place.
- 2) 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 (hereafter referred to as the site development scheme) for (a) proposed and existing external lighting on the boundary of and within the site; (b) the internal layout of the site, including the siting of caravans, plots, hardstanding, dayrooms, hardstanding and boundary treatments, ensuring that no caravans, hardstanding or dayrooms are sited with Flood Zones 2 or 3; (c) landscaping, including tree, hedge and shrub planting and measures to protect and enhance the existing hedgerows around the site; and (d) details of the method for foul and surface water disposal 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 site development scheme shall have been carried out and completed in accordance with the approved timetable.

Upon implementation of the approved site development scheme specified in this condition, that scheme shall thereafter be maintained.

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.

- 3) There shall be no more than 11 pitches provided. On each of the 11 pitches no more than two caravans, as defined in the Caravan Sites and

Control of Development Act 1960 and the Caravan Sites Act 1968, shall be stationed at any time, of which no more than one caravan on each pitch shall be a static caravan or mobile home.

- 4) Highway access visibility splays measuring 2.4m back from the centreline of the access and extending 43m to the highway centreline in each direction shall be provided within 28 days of the date of this decision and shall be maintained and kept clear of any obstruction to visibility above a height of 0.6m for the duration of the use.
- 5) No vehicle over 3.5 tonnes shall be stationed, parked or stored on this site and no commercial activities shall take place on the land, including the external storage of materials or burning of waste or any other material.

Appeal Decision

Hearing held on 10 December 2013

Site visit made on 10 December 2013

by A R Hammond MA MSc CEng MIET MRTPI

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

Decision date: 4 February 2014

Appeal Ref: APP/B3410/A/13/2202040

Land Opposite Station Cottages, Station Road, Draycott in the Clay

- 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 Mr H Sykes against the decision of East Staffordshire Borough Council.
 - The application Ref P/2010/01236, dated 30 September 2010, was refused by notice dated 1 February 2013.
 - The development proposed is change of use of land to a private gypsy site comprising of 2 pitches including the retention of a septic tank, fencing and gravel hardsurfacing.
-

Decision

1. The appeal is allowed and planning permission is granted for change of use of land to a private gypsy site comprising of 2 pitches including at Land Opposite Station Cottages, Station Road, Draycott in the Clay in accordance with the terms of the application, Ref. P/2010/01236, dated 30 September 2010, subject to the conditions attached as Annex A.

Procedural Matters

2. The description of the development includes the retention of a septic tank, fencing and gravel hardsurfacing. Permission is not given for retention of development and the wording in the decision above has been amended accordingly.
3. Much of the appeal documentation refers to the appeal being made by Messrs J & H Boswell & Sykes. It is apparent from the appeal form that only Mr H Sykes lodged the appeal. However, the stated intention is that the site would be occupied by Mr Boswell and Mr Sykes and their respective dependants.

Main Issues

4. The main issues in this appeal are the level of unmet need for gypsy and traveller sites in East Staffordshire; the location of the appeal site; the susceptibility of the appeal site to flooding; and highway safety.

Reasons

5. National policy is set out in the National Planning Policy Framework (the Framework) and Planning Policy for Traveller Sites (PPTS). The Framework confirms that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate

otherwise and that the Framework is a material consideration in planning decisions.

6. The Framework also states that at its heart is a presumption in favour of sustainable development and that development proposals that accord with the development plan should be approved without delay. Where relevant policies of the development plan are out of date permission should be granted unless any adverse impacts of so doing would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
7. It is a matter of common ground that the appellant and other proposed occupiers of the appeal site are gypsies and travellers as defined in Annex 1 of PPTS. No information has been submitted by any party to dispute this.
8. The appeal site comprises part of former railway sidings adjacent to the A515 north of Draycott in the Clay. An enforcement notice was issued in May 2008 alleging change of use of the site from agriculture to use for the stationing of residential caravans. The site had been divided into 5 pitches. An appeal against the notice was dismissed on appeal Ref. APP/B3410/C/08/2079484. The appeal decision made clear that highway safety and flood risk were determinative.

Need for Gypsy and Traveller Sites

9. The Council carried out a Gypsy and Traveller Accommodation Needs Assessment (GTAA) in 2011 and has produced a draft report which indicates that there is no need for any additional pitches in East Staffordshire.
10. Saved Policy H11 of the East Staffordshire Local Plan (LP) states that the Council will use the results of its research into the needs of gypsies and travellers to promote the development of appropriate caravan sites as required, and that planning applications for private gypsy and traveller sites will be considered on their merits within the context of prevailing development control policies and other material considerations arising from the Housing Act 2002.
11. The Council contend that, in the light of no identified local need, the proposal should be considered in the light of other relevant development plan policies relating to new housing in the countryside.
12. PPTS clearly states that *"Criteria should be set to guide land supply allocations where there is identified need. Where there is no identified need, criteria-based policies should be included to provide a basis for decisions in case applications nevertheless come forward. Criteria based policies should be fair and should facilitate the traditional and nomadic life of travellers while respecting the interests of the settled community."*
13. The Council's Report to Committee acknowledges that saved LP Policy H11 provides no specific criteria. Accordingly, the Policy is inconsistent with the advice contained within PPTS.
14. The Council's draft report on the 2011 GTAA has been subject to a number of objections and criticisms. In addition the appellant provided evidence of a number of unauthorised encampments which did not appear to have been taken into account. As such, in its current status, the draft report and the 2011 GTAA carry limited weight in the determination of this appeal.

15. However, the adopted 2007 GTAA identified a need for at least 11 pitches which Circular 1/2006 required should have been met by February 2011. No pitches have been approved or land allocated to date.
16. Given the greater weight to be attached to the 2007 GTAA as compared to the 2011 GTAA, there is a substantial identified and unmet need for gypsy and traveller sites within the Borough. This weighs significantly in favour of the appeal proposal.
17. The Council contend that the appellant has not demonstrated that he, and the other proposed occupiers of the site, are currently living locally. However, PPTS makes clear, at Para. 22(e) that local planning authorities should determine applications for sites from any travellers and not just those with local connections.

The Location of the Appeal Site

18. The appeal site lies in a small cluster of development outside any defined settlement boundary. It is some 2km distance from any centre with reasonable services and facilities and further from the nearest primary school. The Council contend that the proposed development is contrary to LP Policy NE1 which strictly controls development in the open countryside.
19. However, the Framework explains that there are three dimensions to sustainable development: economic, social and environmental. Those dimensions give rise to the need for the planning system to perform a number of roles, the environmental role being to contribute to protecting and enhancing our natural, built and historic environment; and, as part of this, helping to improve biodiversity, use natural resources prudently, minimise waste and pollution, and mitigate and adapt to climate change including moving to a low carbon economy.
20. Whilst the Framework contains no specific reference to distances to local services in relation to sustainability, clearly the accessibility of such services by means other than by private car is a key element in using natural resources prudently, minimising pollution and adapting to climate change including moving to a low carbon economy; part of the environmental role identified by the Framework as one of the dimensions to sustainable development.
21. The social role of the planning system is described in the Framework as supporting strong, vibrant and healthy communities, by providing the supply of housing required to meet the needs of present and future generations; and by creating a high quality built environment, with accessible local services that reflect the community's needs and support its health, social and cultural well-being.
22. PPTS sets out specific Government policy for traveller sites and should be read in conjunction with the Framework. PPTS paragraph 11 explains that local planning authorities should ensure that traveller sites are sustainable economically, socially and environmentally and ensure that policies:
 - a) promote peaceful and integrated co-existence between the site and the local community;
 - b) promote, in collaboration with commissioners of health services, access to appropriate health services;
 - c) ensure that children can attend school on a regular basis;

- d) provide a settled base that reduces the need for long-distance travelling and possible environmental damage caused by unauthorised encampment;
 - e) provide for proper consideration of the effect of local environmental quality (such as noise and air quality) on the health and well-being of any travellers that may locate there or on others as a result of new development;
 - f) avoid placing undue pressure on local infrastructure and services;
 - g) do not locate sites in areas at high risk of flooding, including functional floodplains, given the particular vulnerability of caravans;
 - h) reflect the extent to which traditional lifestyles (whereby some travellers live and work from the same location thereby omitting many travel to work journeys) can contribute to sustainability.
23. However PPTS also states that local planning authorities should strictly limit new traveller site development in open countryside that is away from existing settlements or outside areas allocated in the development plan.
24. The poor sustainability and location of the proposed development should therefore be balanced against the provision of a settled base and the benefits that would result, including a reduction in long-distance travelling.
25. Both the appellant and Mr Boswell, who are cousins, are currently travelling and living on unauthorised sites or "doubling up". Hughie and Theresa Sykes have 4 children aged 12, 9, 3 and 2 and Jim and Bridget Boswell have 3 children aged 10, 6 and 4 (all at the time of writing of the appellant's appeal statement). They have further family in the area and, whilst no special claims were made with respect to any specific needs for access to health and other services, they would clearly benefit from the provision of a stable base ensuring that their children could attend school on a regular basis.
26. The personal needs of the appellant and Mr Boswell and their respective families add significant weight in support of the appeal.
27. The Parish Council objected to the development, primarily on the basis of flood risk which has been dealt with above. It is of note that the only local residents, other than the Parish Council, who made submissions or appeared at the Hearing, did so in support of the appellant, indicating the likelihood of peaceful and integrated co-existence in line with the aims of PPTS. This adds weight in support of the appeal.

Flood Risk

28. At the time that the Council determined the application it was understood that the ground levels across the site had been raised, taking the site out of Flood Zone 3 and into Flood Zone 1, consequentially increasing the risk of flooding elsewhere by displacement. That was also the understanding at the time of the previous appeal against the enforcement notice. The notice required the removal of materials brought onto site but no action appeared to have been taken in this respect.
29. However, the appellant has provided further evidence and a flood risk assessment that demonstrates that the majority of the appeal site has not been raised but remains at the level of the former railway sidings. It was confirmed at the site visit that the appeal site was at a comparable level to the

adjacent site with land on the periphery of the site having been brought up to a uniform level.

30. At the hearing the Environment Agency confirmed that the appeal site, or at least the area proposed for residential occupation, was, and remains, in Flood Zone 1 and that, subject to approval of a scheme of mitigation regarding those limited areas that had been raised, so as to remove any potential consequential risk of flooding elsewhere, and approval of a detailed layout, their objections could be withdrawn.
31. Those matters could be adequately dealt with by condition and the proposed development would not conflict with the provisions of Para. 99 of the National Planning Policy Framework or PPTS in this respect. There is no necessity to consider a sequential risk based assessment.
32. However, there remains a significant risk of flooding in the immediate vicinity and it would be prudent for there to be in place an approved flood warning and evacuation plan. This could be required by condition.

Highway Safety

33. The site access is from the A515 Station Road, adjacent to a level crossing. The road is marked with double white lines to prevent overtaking when approaching the level crossing in either direction.
34. At the Hearing the Highway Authority confirmed that, given information now available, there was no issue in relation to visibility to the south for vehicles exiting the site. However to the north from X distances of 2.4m and 2m the Y distance to the nearside kerb would be approximately 20m and 26m respectively. To the centre line they would be approximately 56m and 80m.
35. The Y distances were checked, in respect of the 2m X distance, at the site visit and were agreed to be 39.5m to the nearside kerb, 108.5m to the centre line and 169m to the far side kerb.
36. Whilst the previous Inspector, in considering the appeal against the enforcement notice, saw no reason to decrease the X distance from 2.4m. Manual for Streets, published subsequently, suggests that a minimum figure of 2m may be considered in some very lightly trafficked and slow speed situations. However using this value will mean that some vehicles will protrude slightly into the running carriageway of the main arm.
37. A driver emerging from the appeal site would be likely to do so cautiously and edge forward to the 2m X distance where more than adequate visibility to the carriageway centre line would be afforded. The A515 is not a trunk route and a vehicle approaching from the south would have sufficient opportunity to move out into the carriageway which is sufficiently wide for two HGVs to pass each other safely even in front of a vehicle protruding 0.4m into the carriageway. It is reasonable, therefore to consider a relaxed X distance of 2m.
38. In support of the previous appeal the appellant provided speed survey information which was not contested by the Highway Authority. This showed that the 85th percentile dry speed of traffic from the north to be 39mph (62kph) at 215m from the access point, increasing slightly to 41mph (66kph) at 100m. This information was used by the Highway Authority to determine a safe stopping distance of 63.2m at 39 mph and 68.5m at 41 mph.

39. Given the above it is agreed by the parties that the only shortcoming of the available visibility splays, given a relaxed X distance of 2m, is with regard to the visibility to the north to the nearside kerb. A vehicle approaching from the north overtaking a slow moving vehicle could disappear from view at a distance of less than the safe stopping distance.
40. However, the likelihood of such a manoeuvre is limited given that there are safe and lawful opportunities for overtaking before and after the immediate vicinity of the appeal site. There does remain the possibility of a vehicle crossing the line to pass a stationary vehicle, for example one making a delivery to the dwelling on the other side of the level crossing. However, a driver crossing the white lines in such circumstances would normally be expected to do so with considerable caution.
41. The above factors help to explain why, despite there being a number of accesses onto the A515 with restricted visibility splays in the immediate vicinity, there have been no reported accidents in the period since 1 July 2005.
42. In conclusion, whilst the visibility to the north falls short of that which is desirable, the shortcomings are not so great as to cause significant detriment to highway safety and the proposed development is not, therefore, contrary to LP saved Policy T1 or saved Policy T13 of the Staffordshire Structure Plan in this respect.

Conclusions

43. For the reasons given above, and taking account of all material planning issues raised, I conclude that the appeal should be allowed.

Conditions

44. Conditions requiring the development to be carried out in accordance with approved plans, including a scheme for flood compensation works and a landscaping scheme, are necessary to ensure a satisfactory form of development. Similarly conditions restricting the number of caravans on the site; requiring the submission and approval of a scheme of surface and foul water drainage; and removing permitted development rights in respect of fences and walls.
45. A condition restricting occupation of the site to gypsies and travellers is necessary given the circumstances justifying the development including the current lack of allocated sites for gypsy and traveller sites.
46. Given the potential for flooding within the surrounding area a condition is necessary requiring the submission and approval of a flood warning and evacuation plan is necessary to protect occupiers of the site.
47. Conditions recommended by the Environment Agency requiring a flood risk assessment to be undertaken and requiring a scheme for securely attaching the caravans to the ground are not necessary.
48. The Council accepted at the Hearing that their suggested condition regarding noise mitigation measures is not necessary.

Andrew Hammond
INSPECTOR

ANNEX A – SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans:
 - i) Block Plan – dated as received by the Council 23 October 2012
 - ii) 1:1250 Red Line Location Plan.
 - iii) 1:200 Topographical Survey – dated as received by the Council 26 November 2012
- 3) Notwithstanding condition 2 no development shall be carried out until details of a scheme of development has been submitted to and approved in writing by the Council. The scheme shall include compensatory flood storage measures; landscaping; boundary treatment; internal site layout; type and location of caravans; access, parking and turning areas; external lighting; and foul and surface water drainage. Development shall be carried out in accordance with the approved details.
- 4) All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the site; and any trees or plants which within a period of 5 years from first occupation of the site die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the local planning authority gives written approval to any variation.
- 5) The site shall not be occupied by any persons other than gypsies and travellers as defined in Annex A of Planning Policy for Traveller Sites.
- 6) There shall be no more than 2 pitches on the site and on each of the 2 pitches hereby approved no more than 2 caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 as amended shall be stationed at any time, of which only 1 caravan shall be a static caravan.
- 7) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking, re-enacting or modifying that Order), no fences, gates or walls other than those approved by this permission shall be erected without the prior approval in writing by the local planning authority.
- 8) No development shall be carried out until a flood warning and evacuation plan, including details of flood warning notices, has been submitted to and approved in writing by the local planning authority.

END OF SCHEDULE OF CONDITIONS

APPEARANCES

FOR THE APPELLANT:

Dr A Murdoch	Murdoch Planning
Mr Jeremy Hurlestone	The Hurlestone Partnership limited
Mr Ian Walton	SLR Consulting Limited
Mr H Sykes	Appellant
Mr J Boswell	Appellant's supporter
Mrs Siobhan Spencer MBE	Derbyshire Gypsy Liaison Group

FOR THE LOCAL PLANNING AUTHORITY:

Mr Jim Malkin	ESBC
Mr Steve Payne	ESBC
Mr Jake Derry	Staffs County Council

FOR THE ENVIRONMENT AGENCY:

Mr Andrew Eden
Ms Sarah Victor

INTERESTED PERSONS:

Mrs Shirley Chilvers
Mr Raymond Chilvers

DOCUMENTS

- 1 Letter from Mrs Chilvers
- 2 Supplementary statement in respect of flooding, provided by the appellant
- 3 Article from the Burton Mail 12 June 2013, provided by the appellant
- 4 On-line article from Uttoxeter News 4 September 2013 provided by the appellant
- 5 Minutes of meetings of Marchington Parish Council, provided by the appellant
- 6 On-line article from Uttoxeter News 5 August 2013 provided by the appellant
- 7 Statements from Messrs Boswell & Sykes regarding enquiries as to availability of pitches on alternative sites, provided by the appellant