

**APPEAL BY BILLY LEE
AGAINST THE SERVICE OF AN ENFORCEMENT NOTICE BY
SOUTH STAFFORDSHIRE COUNCIL**

MATERIAL CHANGE OF USE OF LAND TO A MIXED USE FOR AGRICULTURE AND AS A RESIDENTIAL CARAVAN SITE, TOGETHER WITH OPERATIONAL DEVELOPMENT TO FACILITATE THE ALLEGED UNAUTHORISED USE.

LAND AT WHISTON ROAD, WHISTON, PENKRIDGE, STAFFORDSHIRE

PINS REF: APP/C3430/C/24/
LPA REF: 24/00116/TRAV
OUR REF: 24/BL/WHISTON

**SUPPLEMENTARY STATEMENT PREPARED ON BEHALF OF THE APPELLANT BY
PHILIP BROWN BA (HONS) URBAN AND REGIONAL PLANNING**

1.0 PLANNING POLICY

National Planning Policy Framework (GTAA)

- 1.1 Paragraph 11 of the NPPF sets out the presumption in favour of sustainable development and states in paragraph 11d): *“where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date⁸, granting permission unless:*
- i. the application of policies in this Framework that protect areas or assets of particular importance provides a strong reason for refusing the development proposed;*
 - or*
 - ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole, having particular regard to key policies for directing development to sustainable locations, making effective use of land, securing well-designed places and providing affordable homes, individually or in combination”.*
- 1.2 Footnote 8 explains that development plan policies are out-of-date for applications involving the provision of housing, in situations where: the local planning authority cannot demonstrate a five year supply of deliverable housing sites (with the appropriate buffer as set out in paragraph 78); or where the Housing Delivery Test indicates that the delivery of housing was substantially below (less than 75% of) the housing requirement over the previous three years.
- 1.3 Paragraph 63 states that: *“Within this context of establishing need, the size, type and tenure of housing needed for different groups in the community should be assessed and reflected in planning policies. These groups should include (but are not limited to) those who require affordable housing (including Social Rent); families with children; looked after children; older people (including those who require retirement housing, housing-with-care and care homes); students; people with disabilities; service families; travellers²⁷; people who rent their homes and people wishing to commission or build their own homes.”*

- 1.4 Footnote ²⁷ makes clear that Planning Policy for Traveller Sites sets out how travellers' housing needs should be assessed for those covered by the definition in Annex 1 of that document.

Interpretation

- 1.5 Policies relating to the provision of sites for Gypsies and Travellers are to be considered out-of-date if the Local Planning Authority is unable to demonstrate that it has a five-year supply of deliverable land to satisfy the identified need. In such circumstances, the "tilted" balance should be applied whereby, planning permission should be granted for proposed traveller sites unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits.

Green Belt

- 1.6 Paragraph 143 of the NPPF sets out the five purposes of including land within Green Belt as being:
- a. to check the unrestricted sprawl of large built-up areas;
 - b. to prevent neighbouring towns merging into one another;
 - c. to assist in safeguarding the countryside from encroachment;
 - d. to preserve the setting and special character of historic towns; and
 - e. to assist in urban regeneration, by encouraging the recycling of derelict and other urban land.
- 1.7 Paragraph 148 states that: *"Where it is necessary to release Green Belt land for development, plans should give priority to previously developed land, then consider grey belt which is not previously developed, and then other Green Belt locations"*.
- 1.8 In this context Grey Belt is defined in the Glossary as: *"land in the Green Belt comprising previously developed land and/or any other land that, in either case, does not strongly contribute to any of purposes (a), (b), or (d) in paragraph 143. 'Grey belt' excludes land where the application of the*

policies relating to the areas or assets in footnote 7 (other than Green Belt) would provide a strong reason for refusing or restricting development.”

1.9 Footnote 7 states that: *“The policies referred to are those in this Framework (rather than those in development plans) relating to: habitats sites (and those sites listed in paragraph 189) and/or designated as Sites of Special Scientific Interest; land designated as Green Belt, Local Green Space, a National Landscape, a National Park (or within the Broads Authority) or defined as Heritage Coast; irreplaceable habitats; designated heritage assets (and other heritage assets of archaeological interest referred to in footnote 75); and areas at risk of flooding or coastal change.”*

1.10 Paragraph 153 sets out the presumption against inappropriate development. When considering any planning application, local planning authorities should ensure that substantial weight is given to any harm to the Green Belt, including harm to its openness⁵⁵.

1.11 Paragraph 153 is qualified by footnote 55 which makes clear that it applies other than in the case of development on previously developed land or grey belt land, where development is not inappropriate.

1.12 Paragraph 155 provides that the development of homes, commercial and other development in the Green Belt should not be regarded as inappropriate where:

- a) The development would utilise grey belt land and would not fundamentally undermine the purposes (taken together) of the remaining Green Belt across the area of the plan;
- b) There is a demonstrable unmet need for the type of development proposed⁵⁶;
- c) The development would be in a sustainable location, with particular reference to paragraphs 110 and 115 of this Framework⁵⁷; and
- d) Where applicable the development proposed meets the ‘Golden Rules’ requirements set out in paragraphs 156-157 below.

1.13 Footnote 56: Which, in the case of applications involving the provision of housing, means the lack of a five year supply of deliverable housing sites, including the relevant buffer where applicable, or where the Housing Delivery Tests was below 75% of the housing requirement over the previous three years; and in the case of traveller sites means the lack of a five year supply of deliverable traveller sites assessed in line with Planning Policy for Traveller sites.

1.14 Footnote 57: In the case of development involving the provision of traveller sites, particular reference should be made to Planning Policy for Traveller Sites paragraph 13.

1.15 Paragraph 110, referred to in paragraph 155(c), states amongst other things: *“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”*.

Interpretation

1.16 Openness in Green Belt terms is not freedom from all development but, is freedom from inappropriate development. The development of traveller sites is not to be regarded as inappropriate development in the Green Belt, where the Local Planning Authority does not have a five-year supply and, the development will take place on previously developed land or “Grey Belt”, i.e. land that does not contribute towards checking the unrestricted sprawl of large built-up areas; preventing neighbouring towns merging into one another; and, preserving the setting and special character of historic towns.

Planning Policy for Traveller Sites (PPTS)

1.17 Paragraph 16 of PPTS reiterates that inappropriate development is harmful to the Green Belt and should not be approved, except in very special circumstances. Traveller sites (temporary or permanent) in the Green Belt are inappropriate development **unless** [my emphasis] the exceptions set out in Chapter 13 of the National Planning Policy Framework apply.

1.18 Paragraph 18 makes clear that the “Golden Rules”, set out in chapter 13 of the National Planning Policy Framework, do not apply to traveller sites.

2.0 NEED FOR TRAVELLER SITES

- 2.1 There are no public gypsy sites in South Staffordshire and existing private sites largely comprise small sites accommodating extended family groups. All existing private sites, so far as I am aware, are full, including the sites with pitches for rent at Featherstone and Kingswood Colliery.
- 2.2 The site allocations made in SAD were based on Policy H6 of the Core Strategy which, in turn, was based on a GTAA carried out in 2008. The Council has subsequently commissioned a GTAA, published in 2021, which estimates that there is a need for the provision of 154 additional residential pitches in the period 2021-2038, including 99 pitches required to be provided by the end of the current 5-year period, 2024-2028. The SAD allocated land for the provision of only 20 pitches of which some have already been developed prior to 2020, leaving a considerable shortfall which, in South Staffordshire, can only be met on windfall sites coming forward in the Green Belt.
- 2.3 Paragraph 7b) of PPTS requires that local planning authorities should prepare and maintain an up-to-date understanding of the likely permanent and transit accommodation needs of their areas over the lifespan of their development plan. The GTAA undertaken in 2008 is now 16 years old. It is now out-of-date and, clearly cannot provide an up-to-date understanding of the likely permanent accommodation needs of gypsies and travellers in South Staffordshire. The 2021 GTAA provides a more reliable guide to the five-year requirement and, the existing site allocations do not come close to providing a five-year supply.
- 2.4 It is axiomatic that, in a district where there are no public sites and where existing private sites are full, there are no alternative sites available to which the applicant can relocate the family's caravans. The only additional pitches approved in South Staffordshire since the beginning of the GTAA assessment period are as follows: 2 pitches on land at the corner of Hobnock Road/Burnsnips Road, Essington; 2 pitches adjoining The Paddock, Burnsnips Road, Essington; 2 pitches at Horden Lodge, Coven Heath; and, a single pitch on Hobnock Road, adjoining Essington Primary School.

2.5 The Council's strategy for new Gypsy, Traveller and Travelling Showperson provision will be to continue to deliver privately owned sites/pitches to meet the needs of existing families. The Local Plan Review supports an approach of looking to allocate existing temporary or unauthorised sites to permanent (subject to other planning considerations) and looking to intensify and extend existing sites to meet identified family need, rather than allocating wholly new sites that may have been suggested by landowners without any connection or agreement to meet local needs, and where deliverability is more uncertain. The Local Plan Review proposes to allocate land for a total of 37 additional pitches and, therefore, will not be sufficient to identify a five-year supply of deliverable land.

2.6 I attach an appeal decision at **Appendix PBA 1**, dated September 2024, in which it was accepted that the Council could not demonstrate a five-year supply of deliverable land for traveller sites.

3.0 CASE ON BEHALF OF THE APPELLANT

3.1 The fact that there is no five-year supply means that the policies most relevant to determination of this appeal are out-of-date and, as such, the "tilted" balance should be applied whereby, planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits.

3.2 Furthermore, paragraph 155 of the NPPF is engaged, whereby, the appeal proposals should not be regarded as inappropriate within the Green Belt provided that, amongst other things the development will take place on previously developed land or "Grey Belt", i.e. land that does not contribute towards checking the unrestricted sprawl of large built-up areas; preventing neighbouring towns merging into one another; and, preserving the setting and special character of historic towns.

3.3 In this case, the site is not undeveloped, greenfield land. It can already accommodate stables, barn and hardstanding, and constitutes previously developed land. Even if this were not accepted, development of the appeal site would not result in the sprawl of a large built-up area; erode the gap between neighbouring towns; or, affect the setting or special character of a historic town. The site therefore constitutes Grey Belt land.

- 3.4 Furthermore, the proposed development is not of a scale or in a location where it could fundamentally undermine the purposes (taken together) of the remaining Green Belt across the area of the plan (criterion a. of paragraph 155). There is a demonstrable unmet need for the type of development proposed (criterion b.); and, the “Golden Rules”, set out in chapter 13 of the NPPF, do not apply to traveller sites.
- 3.5 The final criterion of Paragraph 155 requires that the development would be in a sustainable location, with particular reference to paragraphs 110 and 115 of this Framework.
- 3.6 Policy C of PPTS makes clear that some sites will be in rural areas and the countryside. This advice is qualified by Policy H (paragraph 23) which states that sites should be very strictly limited in the open countryside **away from** existing settlements. The term “*away from*” infers a significant degree of detachment, such that the site may be considered to be isolated. In this case, the proposed development is less than 500 metres from the hamlet of Whiston. Clearly, the appeal site is not away from settlements for the purposes of PPTS.
- 3.7 I attach an appeal decision at **Appendix PBA 2** in which the Inspector found a proposed traveller site to have reasonable access to local services and facilities even though this site was 800 metres from Bings Heath, a small hamlet with no services, 2 miles from Shawbury, the closest settlement containing local services, and 4 miles from Shrewsbury, the closest major settlement.
- 3.8 The Inspector considered that, although there was a bus service in Bings Heath, the occupiers of the site would be reliant almost entirely upon the private motor car for most of their day-to-day travel needs. However, he found that this degree of reliance is not that uncommon in a mainly rural area, and the distances involved were not excessive by rural standards. In terms of location, the Inspector took the view that the site was not totally isolated from nearby settlements for the kind and scale of the development.
- 3.9 Having established that gypsy sites can be appropriately located outside of existing settlements, within rural and semi-rural areas, it is self-evident that gypsy sites will generally not be as conveniently located for access to

local services as conventional housing. Paragraph 110 of the NPPF recognises that different policies and measures will be required in different communities and, opportunities to maximise sustainable transport solutions will vary from urban to rural areas. Paragraph 110 generally seeks to direct developments that generate significant movement to locations where the need to travel will be minimised and the use of sustainable transport modes can be maximised. A development of 4 caravan pitches would not generate significant movement, i.e. requiring submission of a Transport Statement or Transport Assessment (para. 118 of the NPPF) and, although dependent on the private motor vehicle, trips to access local services and community facilities would be small in number and, short in duration. In my opinion, and that of the the appeal site provides reasonable access to local services and community facilities in accordance with criterion (c) of paragraph 155 of the NPPF..

3.10 PPTS makes no mention of distances to services or modes of travel when assessing the sustainability of gypsy sites. PPTS expects local planning authorities to ensure that gypsy sites are sustainable economically, socially and environmentally – by promoting access to appropriate health services, and ensuring that children may attend school regularly. “Access” in this sense is related to the fact that gypsies may only have the right to register with a GP or obtain education if they have a settled base. I attach an appeal decision at **Appendix PBA 3** in which the Council’s principle objection was that the site lay in such a location that the development would result in unsustainable travel. The Inspector examines distance to services and modes of transport in paragraphs 50-52 of her decision, but goes on to consider sustainability in its wider sense. In paragraph 53, the Inspector makes clear that the NPPF and PPTS require a consideration of the effects of development on a broader basis than simply in relation to transport. *“That is true of all developments – but particularly sites for gypsies, because they have a travelling way of life by definition and this must be factored into the planning assessment.”* The Inspector examines the wider sustainability benefits in paragraphs 54-57, and concludes, in paragraph 60, that the development (for an extra 5 residential pitches) is not unacceptably unsustainable, despite her finding that the site residents would be reliant on the private motor car for access to a range of local services in Leighton Buzzard, 5 kilometres away.

- 3.11 The proposed caravan site would be located within a reasonable distance of a range of local services and community facilities, including a primary school, doctor's surgery and, shops and services in Penkridge. The site is only about 2.5 kilometres from the centre of the village. Considering its rural location, the appeal site is a sustainable location for a small gypsy site: far more sustainable in fact than the sites approved under the appeals attached at **Appendices PBA2 and PBA3**.
- 3.12 Furthermore, with regard to the wider sustainability objectives of providing permanent traveller sites, the proposed development would provide the opportunity to promote peaceful and integrated co-existence between the site residents and the local community (paragraph 13a of PPTS). The provision of a settled base would allow the site residents to register with a local GP, and access appropriate health services (paragraph 13b); it would allow the appellant's children to attend school regularly (paragraph 13c); and reduces the need for long range or frequent travelling (paragraph 13d). There is no suggestion that occupants of the site would be subject to any adverse environmental effects, such as noise or poor air quality (paragraph 13e); the site would not place undue pressure on local infrastructure and services (paragraph 13f); and the site is not located in an area at high risk of flooding (paragraph 13g).
- 3.13 The appeal proposal would satisfy 7 of the 8 criteria for sustainability set out in paragraph 13 of PPTS, and criterion (h), relating to living and working in the same location, is not relevant to this appeal. The proposed site is therefore sustainable economically, socially and environmentally for the purposes of PPTS.

4.0 CONCLUSIONS

- 4.1 The recent seismic shift in planning policies aimed at greatly increasing the supply of housing, including traveller sites, has completely changed the way in which this appeal should be determined.
- 4.2 The proposed development falls squarely within one of the exceptions to the application of Green Belt, whereby the appeal site can now be regarded as Grey Belt where the development of a traveller site is not to be regarded as inappropriate. The appellant no longer has to prove that very special circumstances exist to justify the granting of planning permission.

- 4.3 Furthermore, the lack of a five-year supply of deliverable land for traveller sites has been admitted by the Council. As such, the tilted balance is engaged for determination of this appeal by which any adverse impacts of granting permission must significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole, before planning permission should be refused.
- 4.4 In this case, removal of any Green Belt objection leaves the Council with two reasons for issuing the enforcement notice: alleged harm to the character and appearance of the countryside: and, harm to the setting of Whiston Mill.
- 4.5 For planning permission to be refused these harms must significantly and demonstrably outweigh the benefits of granting permission. In my opinion, the harm identified falls well short of outweighing the matters which weigh in favour of the scheme: the unmet need; absence of a five-year supply; lack of alternative sites; failure of the Development Plan to meet the full identified need; the likelihood that any new gypsy sites will be in the Green Belt; compliance with the Council's locally specific criteria; the personal accommodation needs and personal circumstances of the appellants' extended family; and, the needs of the children.

5.0 LIST OF APPENDICES

Appendix PBA 1 – Appeal decision – Hobnock Road, Essington

Appendix PBA 2 – Appeal decision – Bings Heath, Shropshire

Appendix PBA 3 – Appeal decision – Willows Park, Slapton



Appeal Decision

Hearing held on 3 September 2024

Site visit made on 3 September 2024

by Helen Hockenhull BA (Hons) B.PI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24th of September 2024

Appeal Ref: APP/C3430/W/24/3343269

Land north-east of Essington Primary School, Hobnock Road, Essington, Staffordshire, WV11 2RF

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr Barney McCarthy against the decision of South Staffordshire District Council.
 - The application Ref is 23/00328/FUL.
 - The development proposed is the change of use of land to use as a residential caravan site for two Gypsy/Traveller families, each with two caravans including no more than one static caravan/mobile home, together with laying of additional hardstanding.
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Decision

1. The appeal is allowed and planning permission is granted for the change of use of land to use as a residential caravan site for two Gypsy/Traveller families, each with two caravans including no more than one static caravan/mobile home, together with laying of additional hardstanding on land north-east of Essington Primary School, Essington, WV11 2RF in accordance with the terms of the application, Ref 23/00328/FUL, subject to the conditions in the attached schedule.

Preliminary Matters

2. The appeal proposal is part retrospective in that a change of use of the land, the siting of a static caravan, the siting of two tourers and additional hardstanding have already taken place. The existing approved stable building on the site, whilst not specifically referenced in the description of development, is shown on the submitted plans to be converted to an amenity building. This has not yet taken place. I have considered the appeal on this basis.
3. During the event, a revised Unilateral Undertaking was submitted by the appellant, to reflect the increased financial contribution required by the Council towards the Strategic Access Management and Monitoring Measures (SAMMM). I have taken this into account in my decision.
4. The Gypsy status of the appellant and his family are not in dispute.

Main Issues

5. The main issues in this case are :

- whether the proposal forms inappropriate development in the Green Belt;
- the effect on openness and the purposes of including land in the Green Belt;
- the effect of the proposal on the integrity of the Cannock Chase Special Area of Conservation (SAC);
- whether other material considerations, clearly outweigh the harm to the Green Belt and any other harm, such that very special circumstances exist.

Reasons

Background and Planning History

6. The appeal site comprises a roughly rectangular piece of land to the north east of Essington village. It is set back approximately 75 metres from Hobnock Road. St Johns Primary School lies immediately to the western boundary.
7. The site is occupied by a stable building which includes two loose boxes and a tack room granted planning permission in 2018 and extended to include a hay barn in 2019. Amendments to the permitted building have been approved to install gable end windows and change the materials of the roof to slate. The building currently on the site has also had three rooflights installed and the approved stable doors have been replaced with full height window and door openings. The submitted plans show these as part of the appeal proposals.
8. The site lies within the West Midlands Green Belt and is also within the zone of influence of the Cannock Chase Special Area of Conservation (SAC).

Inappropriate development, Openness and Green Belt purposes

9. The Framework is clear that the government attaches great importance to Green Belts and that their essential characteristics are their openness and permanence.
10. Policy E of the Planning Policy for Traveller Sites (PPTS) specifically defines traveller sites as inappropriate development in the Green Belt (paragraph 16). The parties agree in the Statement of Common Ground (SoCG) that in principle the proposal forms inappropriate development in the Green Belt. I concur with this view.
11. Turning to openness, this is an essential characteristic of the Green Belt. It has a visual dimension and a spatial aspect. I saw on my site visit that the site is set back from Hobnock Road. There is an existing hedgerow along the road though there are gaps within it allowing glimpses of the appeal site. There is also a laurel hedge located on the southern site boundary. These two hedges assist to screen the existing consented stable block, which itself screens one of the proposed mobile homes and touring caravans.

12. Looking down the access drive, views of the site can be achieved. There is an existing sliding gate at the top end of the drive which when closed restricts views into the site. Having regard to the proposed layout, it is likely that the upper part of one of the proposed mobile homes may be visible above the gate, but it would not be highly visible from the highway given the set back from the road and the provision of planting.
13. There would inevitably be some domestic paraphernalia on the site. Such items would not be large or visually dominant from public viewpoints. The increased area of hardstanding creates a harder urban character to the site. However, it can only be appreciated from the site frontage itself and so would have little negative effect visually. Given the above, and that many of the views of the site would be gained by passing motorists and therefore fleeting, I consider the perception of visual harm would be very limited.
14. That said, the siting of two mobile homes and two touring caravans, the proposed extended hardstanding together with the parking of vehicles and other domestic equipment would introduce a significant level of development over and above the approved stable block. This would further urbanise the site, introduce development where currently there is none, and cause significant harm to the spatial aspect of openness.
15. The appellant brings my attention to the Court of Appeal case of *Turner v SSCLG and East Dorset Council*. In this case it was determined that where a development in the Green Belt has limited or no visual impact, it follows that the impact on openness is reduced from that of a more visible development. It was determined that it was not irrational for an Inspector to decide that the impact on openness of movable development such as caravans and mobile homes, is less than the impact of an equivalent permanent structure. This case however involved the replacement of a mobile home and storage yard with 11 parked lorries with one bungalow. It is therefore not comparable to the situation in the appeal case where there is an existing single stable/haystore building with the remainder of the site devoid of development.
16. Paragraph 143 of the Framework sets out the five purposes of the Green Belt. The Council's South Staffordshire Green Belt Study 2019 identifies the site as being within an area making a strong contribution towards checking the unrestricted sprawl of large built-up areas and safeguarding the countryside from encroachment.
17. The appeal site lies on the north eastern edge of the village of Essington. This is not a large built-up area but a rural village. The development of the scale proposed, would not result in the unrestricted sprawl of a large built-up area or result in neighbouring towns merging into one another. However, the increased urbanisation of the site and level of development proposed would not safeguard the countryside from encroachment. Given the extent of consented development on the site, I am not persuaded that it causes more than moderate harm.
18. In summary, the appeal proposal would form inappropriate development in the Green Belt, would cause harm to openness and conflict with one of the purposes of including land within it. This harm attracts substantial weight as set out at paragraph 153 of the Framework. It would also be contrary to

Policies GB1 and H6 of the adopted South Staffordshire Core Strategy which seek to support national Green Belt Policy.

19. As the proposals are part retrospective, intentional unauthorised development has taken place. A Written Ministerial Statement (WMS) published in December 2015 sets out that this is a material consideration that can be weighed in determining planning applications and appeals. In this instance, the actual harm as a result of the siting of the caravans is minimal, as the mobile homes are removable structures. Whilst the extended hardstanding has a greater impact, I accept it could be removed and the land reinstated. Overall, I conclude that the harm as a result of intentional unauthorised development is limited.

Locally Specific Criteria for Gypsy and Traveller Sites

20. Policy H6 of the South Staffordshire Core Strategy relates to Gypsies, Travellers and Travelling Showpeople. It states that the Council will grant planning permission in suitable locations for additional pitches subject to nine criteria. Criterion 4 and 5 do not apply to this case as they relate to transit or travelling showpersons sites.

21. The appeal site has mains electricity and water (criterion 2), and the site would provide a satisfactory living environment. Its use would not adversely affect the amenity of any neighbouring residential properties (criterion 3). The site has a safe access from Hobnock Road and provides adequate on site car parking and turning facilities (criterion 6). The provision of two pitches would not put an unacceptable strain on local infrastructure or over dominate the nearest settled community (criterion 7). The appeal site is also not located in an area at risk of flooding (criterion 9).

22. The Council considers the proposal conflicts with criterion 8 which requires a proposal to be sited and landscaped to ensure that any impact on the character and landscape of the locality is minimised including impacts on biodiversity and nature conservation. In addition, in areas of national or local designations eg Green Belt, the Policy states in part a) that planning permission will only be granted where the objectives of the designation would not be compromised.

23. The first part of criterion 8, relating to the impact on character and landscape of the locality, is not mentioned in the Council's reason for refusal; only the harm to Green Belt openness is referred to. In their Statement of Case, the Council refers to Policies EQ4 Protecting and Enhancing the Character and Appearance of the Landscape; Policy EQ11 Wider Design Considerations and Policy EQ12 Landscaping to support their view that the proposal would cause harm to the character and appearance of the area. None of these policies are mentioned in the reasons for refusal. Nevertheless, both parties address the issue of character and appearance in evidence.

24. The appeal site is on the edge of the village next to the primary school. The existing consented access to the site runs immediately parallel to the access to the school car park and drop off zone. In my view, the access appears to be within the village and in this context, causes no harm to local character. New residential development is being constructed immediately to the south of the appeal site on Hobnock Road. There is a footpath along the southern side

of the highway, street lighting and a 30mph speed limit. The speed limit increases just past Aspen Road, the entrance to the new housing.

25. The appeal site, in my view, relates more to the settlement than to the open countryside. Existing and proposed hedge planting, assist to screen the site from public viewpoints. Whilst glimpses of the development would still be possible from Hobnock Road, more so in the winter months, such views would be heavily filtered such that the proposal would not appear significantly incongruous or obtrusive. As a result, the impact on the character of the area would be limited.
26. Part a) of Policy H6 refers to the Green Belt and sets out that planning permission will not be granted if a proposal results in a demonstrably harmful impact on openness. In light of my findings above, that the proposal causes harm to openness, the development would conflict with this part of Policy H6.

Cannock Chase SAC

27. The appeal site lies within the zone of influence of the Cannock Chase Special Area of Conservation (SAC). The SAC is designated for its unique heathland habitat.
28. Policy EQ2 of the Core Strategy states that development will be permitted where it can be demonstrated that it will not be likely to lead directly or indirectly to an adverse effect on the integrity of the Cannock Chase SAC.
29. Under the Conservation of Habitats and Species Regulations 2017, the Habitat Regulations, as competent authority I am required to undertake an Appropriate Assessment of the proposal. The development would be likely to lead to increased recreational activity in the area of the SAC. In the absence of avoidance or mitigation measures, the proposal would likely have a significant adverse effect on its integrity.
30. The Cannock Chase SAC Guidance (April 2023) states that the 'in combination' impact of proposals involving a net increase of one or more dwellings within a 15 km radius of the SAC would have an adverse effect on its integrity unless avoidance or mitigation measures are in place.
31. The Cannock Chase SAC Partnership has agreed a series of mitigation and avoidance measures with Natural England. These are referred to as Strategic Access Management and Monitoring Measures (SAMMM). In line with the Council's approach to such matters, a mitigation payment per net residential unit is required. Such monies would be used to contribute to the SAMMM.
32. The appellant has provided a Unilateral Undertaking to make the necessary financial contributions. I am satisfied that with mitigation, the proposal would not result in adverse effects on the integrity of the Cannock Chase SAC either alone or in combination with other plans and projects. I note that Natural England has raised no objection to the proposal subject to appropriate mitigation being secured.
33. The appeal proposal would therefore meet the provisions of the Habitat Regulations and comply with Core Strategy Policy EQ2. These seek, among other matters, for development to be resisted if it would lead to an adverse effect upon the integrity of the SAC.

Other considerations

The need and supply of Gypsy sites

34. Policy H6 of the Core Strategy sets out the Gypsy and Traveller pitch requirements for South Staffordshire to 2028 and includes a commitment to maintain a 5 year supply. The most recent position is provided by the updated Gypsy and Traveller Accommodation Assessment (GTAA) 2024, which was produced to support the Local Plan Review.
35. This document identifies a need for 142 pitches up to 2042 for those meeting the planning definition of a Gypsy or Traveller, 24 pitches for undetermined households and a further 18 pitches for those who do not meet the definition. This provides a total need of up to 184 pitches. The GTAA identifies a 5 year need of 92 pitches from 2024-2028. I acknowledge that this document has not been tested through the Local Plan examination process, but nevertheless it indicates a significant need in the Borough over the next five years and to 2042.
36. The Council has confirmed that they do not currently have a 5 year supply of pitches. The Council also advises that 20 pitches in total have been granted planning permission in the Green Belt since the adoption of the 2018 Site Allocations Document (SAD). These comprise 13 permanent pitches and a resolution to grant permission for a further 7 permanent pitches. Fourteen of these pitches are additional to the 20 pitches allocated in the SAD and have been considered in line with the criteria in Policy H6.
37. Whilst I acknowledge the Council has taken a positive approach to allowing new sites in the Green Belt under Policy H6, it is clear from the evidence before me that there has been a continuing shortfall of pitches in the Borough over recent years. This shortfall is significant.
38. I understand that the Local Plan Review, which is at Regulation 19 stage, allocates 37 pitches, which is well below the identified need over the plan period. These allocations are in the main to meet the 5 year needs of existing families. It is notable that all these sites are within the Green Belt.
39. I understand from the SoCG that the Council are trying to address the shortfall. A search for a suitable public site has so far proved fruitless. Under the Duty to Cooperate, the Council have approached adjoining authorities in the same housing market area to see if they can assist to meet the unmet need. No firm offers of assistance have been forthcoming to date.
40. The Council is in a difficult position, and I recognise that they are trying to address the matter. However, the failure of the development plan process to meet the needs of Gypsies and Travellers is a material consideration. The emerging Local Plan is likely to be submitted for examination in the winter of 2024/25, with adoption likely to be the end of 2025 or early 2026. Allocated sites will then need time to come forward, gain planning permission and be implemented. In my view it is likely that allocated sites would not be available for at least 2 years. I also understand that allocated sites are either unauthorised sites or extensions of existing sites to accommodate individual family needs. It is therefore unlikely that they would be available to the appellant.

41. Overall, there is an unmet need for Gypsy and Traveller sites in the Borough and no 5 year supply of sites, as required by PPTS. There is an identified ongoing policy failure to meet the identified needs of Gypsies and Travellers. The matter of unmet need is critically important and carries great weight in favour of the proposal.

Alternative accommodation

42. I understand that the appellant has been living on the appeal site since April 2023. Prior to that the family were living on a public site in Wolverhampton and then doubling up with the appellant's father on a different site in Wolverhampton. The family had to move off this site as it is full.

43. There are no public sites in South Staffordshire and all existing private sites are full. It is agreed between the parties that there are no other alternative sites in the Borough for the appellant and his family. I have no reason to disagree with this assessment. The lack of suitable alternative accommodation weighs in favour of the appeal.

Personal Circumstances

44. The appeal site provides two pitches for the extended McCarthy family. One pitch is to be occupied by the appellant, his wife and five of their children. Two children are over 18 and three are school age. The two youngest attend a Catholic Primary School in Cannock and an older child is home tutored. The Catholic Primary School is clearly not the closest primary school to the appeal site, with Essington Primary School immediately next door. However, I am advised it is the closest Catholic Primary School. The appellant finds work as a builder/paving contractor in the Wolverhampton and Birmingham area, though also travels further afield for work.

45. The second pitch is to be occupied by the appellant's adult daughter and her pre-school child. A settled permanent base would be of benefit to the school age children and their ongoing education.

46. I am advised that the family are all registered with the local health centre in Essington and that the appellant has some health issues. Access to education and healthcare would be advantageous to the wellbeing of the extended family and would be in the best interests of the children. These matters count in favour of the proposal and accord with the aims of the PPTS to enable the provision of suitable accommodation from which travellers can access education, health, welfare and employment infrastructure.

47. Based on the lack of any identified available, alternative accommodation there is at least a possibility that the family would have to resort to life on the road in the event that they were unable to stay on the appeal site. Such an existence in itself presents challenges in terms of maintaining a good standard of health and wellbeing and is not in the best interests of the children.

Other appeal decisions

48. The Council referred to three appeal decisions at New Acre Stables¹, Streets

¹ APP/C3430/A/13/2210160

Lane² and Doveleys Farm³ which were issued in 2014, 2019 and 2022. The decisions all relate to sites within South Staffordshire and also within the Green Belt. I can see from the appeal decisions that there are differences between them and the appeal case in terms of the personal circumstances of the appellants and other material considerations. However, I note that in each of these cases, there was a significant shortfall of pitches in the Borough which has still not been addressed through the allocation of sufficient sites in the local plan process. Whilst I have had regard to the above appeals, each proposal should be determined on its individual merits.

49. The Council refer to the above Inspectors decisions in regard to the proportionality to human rights of development proposals that would be demonstrably harmful to the interests of protecting the Green Belt. I return to this issue in the planning balance below.

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.

50. The Framework in paragraph 144 states that substantial weight should be given to any harm to the Green Belt and that very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness and any other harm is clearly outweighed by other considerations. PPTS paragraph 16 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.

51. The proposal represents inappropriate development by definition. I must give substantial weight to this harm. The proposal would also result in harm to openness and one of the Green Belt purposes, namely to safeguard the countryside from encroachment, albeit I consider harm to be limited in visual terms.

52. There is a significant local need for Gypsy and Traveller accommodation and some uncertainty as to whether and when the policy approach to meeting this need is to be established and adopted through the review of the Local Plan. The Council cannot demonstrate a five year supply of pitches and no alternative sites have been identified. The evidence before me indicates an ongoing failure to meet national policy requirements for the delivery of sites. These considerations carry significant weight.

53. The proposal would ensure that the extended family remain together and provide stability for dependent children in terms of educational needs along with healthcare access. In the absence of alternatives, it would also prevent the appellant and his family being forced into a roadside existence. This also carries significant weight.

54. Bearing in mind that around 80% of Borough is Green Belt, and given the competing interests in land use, it is fair to expect that any additional pitches would not be within settlements and so would be in the Green Belt. I attribute moderate weight to this factor.

² APP/C3430/W/18/3201530

³ APP/C3430/C/21/3274332

55. Bringing all the above together, I find in the circumstances of this case, the Green Belt harm and any other harm are outweighed by the other considerations set out above. In coming to this conclusion, I have given weight to the appellant's personal circumstances. It is therefore justified and appropriate that a personal permission be granted, limiting occupancy to the appellant and his extended family. I do not consider that this should be for temporary period, bearing in mind the level of unmet need and the doubt around whether and when this would be addressed.

56. Accordingly, the very special circumstances necessary to justify the development have been demonstrated. The development accords with the Framework strategy for the protection of the Green Belt and Policy GB1 of the adopted South Staffordshire Core Strategy which seeks to protect Green Belt in line with national policy.

57. As I am allowing the appeal subject to a personal condition, my decision would not interfere with the appellant's and their family's rights to respect for private and family life and their home. As such, there would be no interference with the occupiers' human rights under Article 8 of the European Convention of Human Rights as enshrined in the Human Rights Act 1998 (Article 8).

58. I have also had due regard to the Public Sector Equality Duty (PSED) contained in section 149 of the Equality Act 2010. This sets out the need to advance equality of opportunity and foster good relations between people who share a protected characteristic and those who do not share it. This includes those of a particular race and so the occupants of the development. Granting planning permission would allow the opportunity for the site's residents to continue to foster good relationships with the local community and to provide support to one another in the furtherance of the Gypsy way of life. Therefore, my decision advances opportunity in line with the PSED.

59. I have had regard to the appeal decisions put before me by the Council which relate to human rights and when interference is justified in the public interest, such as to protect the Green Belt. They do not however alter my overall decision.

Conditions

60. The Council have suggested a number of conditions should the appeal be allowed which I have assessed against the tests in the Framework and Planning Practice Guidance. I have amended the wording of some conditions in light of comments made and for reasons of precision.

61. I impose a condition requiring the development takes place in accordance with the approved plans for clarity and the avoidance of doubt. A condition restricting the occupancy of the site to Gypsies and Travellers is also necessary. I have amended the Council's suggested wording for clarity.

62. The permission is personal and therefore a condition restricting occupancy to the appellant and his extended family, and resident dependants is necessary. A further condition requiring the restoration of the land to its original condition within three months should the appellant cease to occupy the site is also necessary.

63. A condition is required in the interest of the character and appearance of the area, to control the number of pitches and caravans on the site. Further conditions are necessary to prevent the site being used for commercial activity and to limit the size of vehicles in order to protect the character and appearance of the area and to safeguard the amenity of nearby residents and uses.

64. As the development has already commenced, it is necessary to impose a condition to require the submission of a site development scheme to include details of landscaping, surface water drainage, the internal layout of the amenity building and the provision of lighting to safeguard the character and appearance of the area. There is a strict timetable for compliance, three months, because permission is being granted retrospectively. The condition will ensure that the development can be enforced against if the requirements are not met.

Conclusion

65. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should be allowed.

Helen Hockenfull

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Phillip Brown

Philip Brown Associates Ltd

Barney McCarthy

Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Paul Turner

Planning Consultant

DOCUMENTS SUBMITTED AT THE HEARING

1. Revised Unilateral Undertaking, signed and dated 3 September 2024

DOCUMENTS SUBMITTED AFTER THE HEARING

1. Further revised Unilateral Undertaking dated 18 September 2024

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall be carried out in accordance with the following submitted plans: Site Layout Plan (undated, no drawing no.), Amenity Building Floor Plan and Elevation Drawing dated July 2023 and Drawing no. PBA4 - Post and Rail Fence.
- 2) The site shall not be occupied by any persons other than Gypsies and Travellers, defined as persons of a nomadic habit of life whatever their race origin, including such persons who on grounds only of their own or their family's or dependant's educational or health needs or old age have ceased to travel temporarily or permanently, but excluding members of an organised group of traveling show people or circus people travelling together as such.
- 3) The occupation of the site hereby permitted shall be carried on only by the following and their resident dependants:
 - i. Barney McCarthy and Sara McCarthy
 - ii. Rose McCarthy.
- 4) Within three months of the land ceasing to be occupied by those named in condition 3 above, the use hereby permitted shall cease and all caravans, structures, materials and equipment brought on to or erected on the land, and/or works undertaken to it in connection with the use, shall be removed and the land shall be restored to its condition before the development took place.
- 5) No more than four 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 two shall be a static mobile home), shall be stationed on the site at any time.
- 6) No vehicle over 3.5 tonnes shall be stationed, parked or stored on the site.
- 7) No commercial activities shall take place on the land, or within the buildings, including the storage of materials.
- 8) The use hereby permitted shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed within 3 months 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 site development scheme providing the details of landscaping, surface water drainage, the internal layout of the proposed amenity building, and the provision of external lighting 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) 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 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.

Appeal Decision

Hearing and site visit held on 17 June 2014

by **A U Ghafoor BSc (Hons) MA MRTPI**

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

Decision date: 26 September 2014

Appeal Ref: APP/L3245/A/14/2215836

150 Sparrow Cottage, Shawbury Heath, Shawbury SY4 4EA¹

- 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 John Dean Price against the decision of Shropshire Council.
 - The application Ref 13/03489/FUL, dated 27 August 2013, was refused by notice dated 24 October 2013.
 - The development proposed is described in the planning application form as: '*material change of use of land to use as a residential caravan site for two Gypsy families, each with two caravans including one static caravan/mobile home*'.
-

Decision

1. The appeal is allowed and planning permission is granted for a material change of use of land to form a residential caravan site for two gypsy families to include two pitches and the erection of an amenity building at 150 Sparrow Cottage, Shawbury Heath, Shawbury SY4 4EA in accordance with the terms of the application, Ref 13/03489/FUL, dated 27 August 2013, and the plans submitted with it, subject to the conditions set out in the annex to this decision².

The appeal site and background information

2. The site is an area of land situated off the A53 – Market Drayton to Shrewsbury highway. It is about 120m away from the road and is accessed via an unmade track. The planning application was submitted prior to moving to the site in March 2014. The appellant and his family live on the site.
3. On 19 November 2010, the Council issued an enforcement notice in relation to the unauthorised use of the site. It alleged: '*Without planning permission, the change of use of land to a mixed use for the siting of a caravan for the purposes of residential use in the approximate location on the land marked with a red cross on the attached plan and use for the storage of motor vehicles*'. An appeal made under Section 174 (2) (g) of the Town and Country Planning Act 1990 as amended ('the 1990 Act') was dismissed on 1 June 2011³.
4. Planning permission for the appeal development before me was refused on four grounds. Reason no. 1 states that the site is located within the countryside

¹ This is the correct address of the site as agreed at the Hearing.

² For clarity's sake, I have adopted the Council's amended description of the development in my decision with some minor variation.

³ Appeal ref: APP/L3245/C/10/2142926.

and is classed as a rural exception site. No evidence has been demonstrated to show that the appellant and/or his family have strong local connections. Reason no. 2 raises concerns about sustainable development, reason no. 3 refers to the effect of the development upon the character and appearance of the area and reason no. 4 refers to its potential effect upon local ecology.

5. In terms of reason no. 1, the Council refer to Policy CS5 and CS12 of the Shropshire Local Development Framework Adopted Core Strategy (CS) 2011. Policy CS5, Countryside and Green Belt, restricts housing development to that for countryside workers, affordable and local needs housing. Policy CS12 specifically relates to Gypsy and Traveller provision. The application of these Policies is illustrated in the *Type and Affordability of Housing* supplementary planning document (SPD). In so far as Policy CS5 relates to rural exception sites, the Council confirmed that it is no longer relevant in the context of this appeal, because the site has not been identified as a rural exception site.
6. CS Policy CS12, and elements of the SPD, has a bearing upon the supply of housing. The Council cannot demonstrate a five-year supply of deliverable sites for gypsies and travellers. Policy CS12 is, therefore, out-of-date given the advice contained in paragraph 49 of the National Planning Policy Framework.
7. The Council also acknowledged that it did not require the appellant to demonstrate strong local connections due to advice found in paragraph 22 (e) of the Planning Policy for Traveller Sites ('the PPTS'). This states that Councils should determine applications for sites from any travellers and not just those with local connections. These upfront concessions have, mainly, been made because of a recent appeal decision⁴.

Reasons

8. Against all of the background information, the **main issues** are the following:
 - (i) Whether the appellant is a Gypsy and Traveller for planning purposes,
 - (ii) Whether or not the development of this site is sustainable, having particular regard to accessibility to local services and local and national planning policies relating to sustainable development,
 - (iii) The effect of the development upon the character and appearance of the surrounding area with particular regard to the rural woodland setting of the locality,
 - (iv) The effect of the development upon local ecology having particular regard to protected species,
 - (v) The need for and provision of sites for gypsies and travellers in the area and the availability of alternative sites and,
 - (vi) The appellant's need for a settled site and personal circumstances.

Gypsy and Traveller status

9. Annex 1 of the PPTS states: '*For the purposes of this planning policy "gypsies and travellers" means: Persons of nomadic habit of life whatever their race or origin, including such persons who on grounds only of their own or their family's or dependants' educational or health needs or old age have ceased to*

⁴ Appeal decision ref: APP/L3245/A/13/2196615, dated 7 February 2014, allowed, at Adbo Farm, Rosehill near Market Drayton, Shropshire.

travel temporarily or permanently, but excluding members of an organised group of travelling showpeople or circus people travelling together as such'.

10. The underlying purpose of the definition is to identify those persons who have particular land use requirements arising out of their nomadic habit of life. It does not alter the need to carefully scrutinise the current and past lifestyles of individual site occupants and it is down to the appellant to make his own case out.
11. The site is currently occupied by Mr Dean Price (appellant), Debbie Price (wife) and four children: Chasey (4 year old), Lilly (3 year old), Nemo (2 year old) and Lilo (18 months). They are expected to be joined by Mr Price's parents, John and Jane Price.
12. The family are Romany Gypsies who originate from the South Wales region. They travelled for economic purposes and mainly sought a livelihood through building renovation work and the buying and selling of motor vehicles. The family attended horse fairs and lived on various authorised/unauthorised gypsy and traveller sites. Although the appellant's parents have given up travelling due to old age and health conditions, Mr Price stated that he is the main bread-winner and continues to travel for economic purposes. He continues to renovate vehicles, buy and sell motor vehicles in the West Midlands region. He also explained that his family has never lived in a traditional house given their aversion to bricks and mortar. At the Hearing, the Council conceded that, given the appellant's habit of life and ethnic origins, the travelling is characteristic of a past and present nomadic way of life.
13. Taking all of the above points together, I conclude that the appellant, his wife and parents have gypsy status for planning purposes. It follows that gypsy planning policies should be taken into account in this appeal.

Sustainable development

14. CS Policy CS6 relates to sustainable design and development. Amongst other things, it seeks to ensure that development protects, restores, conserves and enhances the natural, built and historic environment and is appropriate in scale taking into account local character. It also seeks to ensure that there is capacity and availability of infrastructure to serve any new development. Broadly, these aims and objectives reflect guidance contained in the Framework⁵. It states that there is a presumption in favour of sustainable development, which means approving development proposals that accord with the development plan, and where the development plan is absent, silent or relevant policies are out of date, granting permission unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, or specific policies in the Framework indicate development should be restricted.
15. The PPTS advises, in paragraph 23, that local planning authorities should strictly limit new traveller site development in the open countryside that is away from existing settlements or outside areas allocated in the development plan. Paragraph 11, Policy B, gives guidance on the allocation of sites for travellers. It requires traveller sites to be sustainable economically, socially and environmentally, and sets out a number of requirements that local

⁵ In particular, paragraphs 7, 9, 17 and 55.

planning policy should meet. Although this Policy strictly applies to the allocation of traveller sites in local plans, the tests set out in paragraph 11 are equally relevant in assessing whether proposed sites satisfy the requirement that they should be sustainable.

16. The Council, supported by the Parish Council and some local residents, are concerned about the location of the site relative to nearby facilities. They question the sustainability of the site given its distance from Shawbury which is about 2 miles away. Shawbury has a limited range of facilities such as a Post Office, some retail shops and a doctor's surgery. Shrewsbury, which is the nearest town with a wider choice of facilities, is about 4 miles away. Bings Heath, the closest settlement, is 800m but it is a small hamlet without any amenities. The nearest bus stop is in Bings Heath but this section of the A53 is unlit and it does not have footpaths making potential use of public transport facilities by the occupiers of the site less attractive.
17. For these reasons, it is likely that the occupiers of the site would be reliant almost entirely upon the private motor car for most of their day-to-day travel needs. Currently, that is how the appellant gets around. However this degree of reliance is not that uncommon in a mainly rural area such as this, and the distances involved are not excessive by rural standards. In addition, Shrewsbury is also a short car journey away. In terms of location, I take the view that the site is not totally isolated from nearby settlements for the kind and scale of the development.
18. Furthermore, there is no evidence to show that the capacity of the existing infrastructure is under considerable stress or is unable to meet the needs of the site's occupiers. Given the number and scale of the residential pitches created by the development, I find that the development is unlikely to considerably increase pressure on facilities in nearby Shawbury.
19. The PPTS recognises that caravan sites for gypsy and travellers could be allowed in rural or semi-rural locations that respect the scale of and do not dominate the nearest settled community. The site is small in scale and there is no evidence to suggest that the development has dominated the settled community, irrespective of the objections to the development from the Parish Council and some local residents. In terms of social integration, a settled base gives the family an opportunity to integrate and co-exist with the local community. Given the limited distances between the site and nearby settlements, contact with the settled community is likely to occur when accessing health, education and other local facilities.
20. The site is owned by the appellant and he travels closer to home to earn a livelihood which is an economic benefit. It reduces his need to travel longer distances in order to find places to work, which assists in reducing his carbon footprint.

Character and appearance

21. CS Policy CS17, environmental networks, states that development will identify, protect, enhance and connect Shropshire's environmental assets, to create a multifunctional network of natural and historic resources. Amongst other things, this will be achieved by ensuring all development protects and enhances the local character. I find the main objectives of this Policy consistent with advice contained in paragraphs 17 and 56 of the Framework.

22. The site adjoins dense woodland and it is 0.23 ha in size. The surrounding area is characterised by rolling countryside and dwellings are sporadically located. The site plan shows the layout of two static caravans, two touring caravans, a utility building, hard-surfacing and post and wire fence positions. The appellant's truck is also parked on the site. All of these structures are likely to be visible from the A53. Nonetheless, the caravans and the associated paraphernalia stand out in this rural location as being out of place and keeping with the wooded character of the locality. However, due to the enclosed nature of the landscape, views from the highway and surrounding area are limited in extent to the immediate locality and filtered by the location and amount of the existing vegetation. The use of appropriate landscaping would, probably, soften the appearance of the site and over time mitigate, to some degree, the visual harm.
23. The Council argues that the manoeuvring of vehicles in proximity to the trees might require the removal of branches and impact upon the root protection area by vehicles. That, in turn, would result in the removal of the trees thereby resulting in harm to the wooded character of the locality.
24. There are seven trees on the site of note; two Oak trees and a small group of Scots Pine located to the west of the reed bed. The canopy of the Oak trees are identified as having a 4m spread, but the levels of the site have not been altered nor are there any proposals to hard-surface the area immediately around the trees' trunk. There are hardstandings around the group of Scots Pine, but their branches are very tall and the canopy spread is unlikely to be affected by the height of the caravans. There is no evidence to suggest that the use of the land as a gypsy and traveller site is likely to result in the long-term harm to the well-being of the trees, and a condition could be imposed to require a landscaping scheme including areas for hard surfacing.

Local ecology

25. The site is not designated or classified for its ecological interest, but it is considered to be part of Shropshire's environmental assets. Amongst other matters, CS Policy CS17 seeks to ensure that all development contributes to local distinctiveness having regard to the quality of Shropshire's environment including biodiversity. These aims are broadly consistent with advice contained in paragraphs 7, 109, 114, 117 and 118 of the Framework. The general approach is to promote sustainable development by ensuring that biological diversity is conserved and enhanced as an integral part of social, environmental and economic development.
26. The Council, supported by some local residents, raise concerns about the existence of protected species on the site and, in support of these assertions, refer to an ecological report by Turnstone Ecology. Although the report criticises the appellant's planning statement, the appeal site itself was not actually inspected by representatives of Turnstone Ecology. The Council acknowledged that they did not do a survey and relied upon the planning agent's walkover of the site.
27. Nonetheless, a visit to the land immediately adjacent to the eastern boundary of the site was carried out by Turnstone Ecology who made representations on behalf of their client who owns the adjacent land. However, for the following reasons and on the basis of the evidence, I am quite satisfied that the development is unlikely to harm protected species or their habitat.

28. The report confirms that there are no ponds within 200m of the site though there are eight ponds within 500m and two ditches between 100m and 150m. These could be suitable habitats for Great Crested Newts (GCN) given that these species are known to be present in the Bings Heath area. However, at the time of the walkover survey, Turnstone Ecology's site visit to the adjacent land and the Hearing, GCNs or Reptiles were not identified on the site.
29. The Turnstone report states that a fresh badger latrine was found along the eastern boundary of the site and fresh badger prints were also identified in mud along the edge of the field immediately to the east. I recognise that woodland is potentially good foraging ground for badgers and the home range, which consists of feeding grounds and one or more setts, can be fairly extensive. However, the presented evidence does not confirm the existence of badgers on the site. Even if parts of the un-surfaced areas are used as foraging ground, these grassed areas are to remain as a result of the development.
30. Bats tend to inhabit broad-leaved trees and woodlands. There are two specimens of Oak trees on the site but they are not to be removed. The site is situated within woodland clearing with mature and semi-mature trees present along its boundaries. There is mixed woodland to the west and north of the access track. The evidence does not indicate the presence of bats on the site.
31. In addition, there is concern about the existence of invasive plants. I observed that the hard-surfaced areas used for the stationing of the caravans for residential purposes are not affected by Japanese Knotweed or Himalayan Balsam. The grassland areas around the periphery of the caravan site are to remain and the development does not affect these landscaped areas.
32. I find that the presented evidence does not show that the site contributes to a network of natural habitats which, because of their linear and continuous structure, or their functions as stepping stones, are essential for migration, dispersal and genetic exchange.

The need for gypsy and traveller sites and the availability of alternative sites

33. There is agreement between the appeal parties that CS Policy CS12 is not up to date, but it aimed to facilitate the provision for 79 residential pitches through the Core Strategy up to 2017. This figure derives from the Gypsy and Traveller Accommodation Assessment (GTAA) 2008. At the Hearing, the agreed updated figure in relation to outstanding need for pitches is 39⁶. Arc4 consultants have been appointed to carry out an up-to-date assessment of need, but no specific details were published, and there is no indication of the need for sites beyond 2017.
34. To meet future need for gypsy and traveller sites, the Council's intention is to allocate sites via the Site Allocations and Development Management Plan (SAMdev). At the time of the Hearing, details of potential sites have not been published given the on-going research by the consultants. In terms of the SAMDev adoption timetable, the Council intends to hold an examination in the autumn of 2014, but that is subject to additional work being undertaken. So, given the outstanding issues over the status of the SAMDev and the future level of the need for gypsy and traveller sites, the SAMDev can only be given

⁶ The need for gypsy and traveller pitches as of 28 March 2014 until 2017.

- limited weight in the context of this appeal. That said, there are no relevant policies in the SAMDev regarding the provision of gypsy and traveller sites.
35. The Council accepted that there is no 5-year supply of deliverable sites for gypsies and travellers, which conflicts with paragraph 9 of the PPTS. Furthermore, the Council are yet to produce any Plan which would attempt to address the situation. Thus, there is a vacuum as no mechanism is in place to meet the identified need through planned provision of sites.
 36. Paragraph 49 of the Framework indicates that the lack of a 5-year supply of deliverable sites means that the presumption in favour of sustainable development is engaged. In addition, paragraph 25 of the PPTS states that the lack of a 5-year supply of deliverable sites should be a significant material consideration for the grant of a temporary planning permission. However, there is no reason why this should not be a material consideration for the granting of a permanent planning permission.
 37. If planning permission was refused, the Council acknowledges that there is no available plot for the family to go to on any of its sites. At the Hearing, I was told that the appellant is likely to resort to roadside or unauthorised encampments given that there is no space for him and his family on sites occupied by family and friends. There is no available alternative site for the appellant to resort to.
 38. While I recognise the Council's attempts to address the current substantial unmet need for gypsy sites, it does not have a 5-year supply of specific deliverable sites. In addition to that there is an absence of allocated sites to meet the identified need, and a lack of alternative sites for the appellant to go to. All of these matters provide significant weight in favour of the appeal.

The appellant's need for a settled site and personal circumstances

39. The appellant indicated that he has relatives living on nearby sites in Wem and Market Drayton, but there is no suggestion that these other sites can accommodate the family's needs.
40. The PPTS acknowledges that settled accommodation can provide benefits in terms of access to health, welfare and education. The family are registered with a medical practice in Shawbury. In broad terms access to continuous healthcare for the site occupants is a benefit. Additionally, Mr and Mrs Price's children attend school in Shawbury. In this particular school, I heard that the children receive additional educational support from the Gypsy and Traveller education liaison officer, which is of significant benefit to the children. Accessing such facilities from an unsettled base is problematic as opposed to a more permanent abode. It is not necessary for these needs to be met from this particular site, but there is no suggestion that there are alternative sites closer to local centres to meet these needs.
41. The proposal would provide a settled base to enable the family to live together as a group where they are able to provide support to one another. This is part of the gypsy way of life which the PPTS seek to facilitate. These general benefits provide further weight in favour of the appeal.

Other matters

42. The access track connecting the site to the A53 has adequate vehicle visibility splays in both directions. The access track is unmade though the local highway authority recommends its surfacing for the first 5m, which could be addressed through a planning condition. There is, nonetheless, adequate turning space within the site given its size. In my view, vehicles would have sufficient space to manoeuvre and exit in forward gear. I find that the development does not result in an increased risk to other highway users. This also goes in favour of the proposal.

Conclusions

43. The development satisfies many of the matters to be taken into consideration of whether or not a particular site is sustainable economically, socially and environmentally. The use of this particular site by gypsies and travellers does not have a materially harmful visual effect upon the character and appearance of the surrounding area, subject to the imposition of suitably worded conditions which I will come to later. The development does not have a materially harmful effect upon ecological interests. Accordingly, the development complies with CS Policies CS6 and CS17, and advice contained in the PPTS and the Framework.

44. Additionally, the substantial unmet need for gypsy sites, the lack of a 5-year supply of specific deliverable sites and alternative available sites combined with the ongoing failure of the Council to meet that need through the development plan process and the appellant's personal needs, all provide significant weight in favour.

45. For all of the above reasons and having considered all other matters, I conclude that there are strong planning reasons for the grant of planning permission in this particular case.

46. If the appeal was dismissed, I was asked to consider the effect of that decision upon the appellant and his family's human rights under the provisions of Article 8 of the European Convention on Human Rights, and the implications of the public sector equality duty. I have had regard to these matters and find that a grant of full planning permission safeguards the appellant's human rights.

Conditions

47. The Framework and Planning Practice Guidance indicate that suitably worded conditions can enhance the quality of development. Conditions must be necessary, reasonable and relevant to the permitted development. They should also be enforceable and precise. The Council submitted a list of suggested conditions which the planning agent agreed as being standard stipulations in gypsy and traveller appeals.

48. There is no need for a time commencement condition as the development has already started.

49. To define the development, it is necessary to restrict site occupation to gypsies and travellers.

50. A site plan has been submitted with the application for planning permission and it is necessary to stipulate that the development is carried out in accordance with the site plan at a scale of 1:500.
51. In the interests of safeguarding the character and appearance of the surrounding area, it is necessary to impose the following stipulations: a) restrict the number and type of caravans, b) prevent commercial activities and the parking of vehicles over 3.5 tonnes and, c) notwithstanding the submitted site plan, the submission of a site layout plan. The plan should include details for the utility building, proposed landscaping, areas of hard standings, parking and turning, means of enclosures, retained hedgerows and trees, lighting and other services such as drainage.
52. In the interests of highway safety, it is necessary and reasonable to require the access to be suitably surfaced for the first 5m as required by the local highway authority. The appellant has control over the access, but details of the junction between the access track and the highway are not adequately shown on the site plan. These should, therefore, be submitted within a specified timescale.
53. In terms of the condition requiring details to be submitted, the Council suggested that I impose stringent timescales for compliance; that the use shall cease within 28 days if the details were not lodged. However, I will impose a stipulation which will require the submission of the details within 3 months and that the development is carried out in accordance with the approved details. This timescale would be reasonable and necessary to ensure that the development is made acceptable.

Overall conclusion

54. For all of the above reasons and having considered all other matters, I conclude that the appeal should succeed subject to conditions set out in the Annex attached to this Decision.

A U Ghafoor

Inspector

Annex to Appeal Decision APP/L3245/A/14/2215836

- 1) The development hereby permitted shall be carried out in accordance with the following approved plan: Proposed Site Plan scale 1:500 stamped 13/0348.
- 2) The site shall not be occupied by any persons other than gypsies and travellers as defined Annex 1 of the Planning Policy for Traveller Sites Department for Communities and Local Government March 2012.
- 3) There shall be no more than 2 pitches on the site and on the pitches hereby approved no more than 2 caravans on each of the two pitches (as defined by the Caravan Sites and Control of Development Act 1960 as amended and the Caravan Sites Act 1968 as amended) 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) No commercial activities shall take place on the land, including the storage of materials.
- 6) Notwithstanding condition number 1, within 3 months of the date of this decision, a site layout plan shall be submitted to the local planning authority for its written approval. The details shall include the following:
 - a) the location and dimensions of the utility building including the type of materials used on the external elevations,
 - b) hard and soft landscaping including details of existing hedgerows and trees,
 - c) details for foul and surface water drainage,
 - d) areas for the parking of motor vehicles and turning spaces,
 - e) means of enclosures,
 - f) external lighting and
 - g) a timetable for implementation of the approved details.The development shall be carried out in accordance with the approved details and timetable for the implementation of the details.
- 7) 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 completion of the development, any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the local planning authority gives written approval to any variation.
- 8) Within 3 months from the date of this decision, details of the junction between the access track and the highway shall be submitted to the local planning authority for its approval. The details shall include the hard surfacing with a bound material for the first 5m between the junction and highway and a timetable for implementation. The development shall be carried out in accordance with the approved details and timetable for implementation of the details.

End of Annex to Appeal Decision APP/L3245/A/14/2215836

Appeal Decisions

Hearing held on 23 July 2013

Site visit made on 23 July 2013

by Jean Russell MA MRTPI

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

Decision date: 6 September 2013

Appeal A: APP/J0405/C/13/2193582

Land at Willows Park, Horton Road, Slapton, Buckinghamshire

- 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 Edward Doherty against an enforcement notice issued by Aylesbury Vale District Council.
- The Council's reference is EN2/2013.
- The notice was issued on 21 January 2013.
- The breach of planning control alleged in the notice is failure to comply with conditions nos. 4 and 7 of planning permission ref: 95/0571/APP, granted on 22 February 1996.
- The development to which the permission relates is the siting of five mobile homes and two towing caravans for residential use, with laying of hardcore on access drive.
- Condition no. 4 states that: the site shall not be occupied except by Mr Peter Smith, Mrs Caroline Smith, their offspring and the spouses and dependants of those offspring.
- Condition no. 7 states that no more than five mobile homes and two towing caravans shall be present on the site at any one time, and they shall not be located elsewhere than within the area edged red on the attached plan [to the decision].
- The notice alleges that the conditions have not been complied with in that the land is occupied by persons other than those permitted by condition no. 4 and more than five mobile homes are present on the land referred to in condition no. 7.
- The requirements of the notice are to:
 - (1) Cease the use of the Land by all persons other than those who are gypsies and travellers as defined in Annex 1 of the Department for Communities and Local Government Planning Policy for Traveller Sites 2012; and
 - (2) Reduce the number of mobile homes on the Land to no more than five; and
 - (3) Reduce the number of towing caravans on the Land to no more than two.
- The period for compliance with the requirements is 6 months.
- The appeal is proceeding on the ground set out in section 174(2)(a) of the 1990 Act as amended. Since the prescribed fees have been paid within the specified period, the application for planning permission deemed to have been made under section 177(5) of the Act as amended also falls to be considered.

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

Appeal B: APP/J0405/C/13/2193601

Land adjacent Willows Park, Horton Road, Slapton, Buckinghamshire

- The appeal is made under section 174 of the 1990 Act as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Edward Doherty against an enforcement notice issued by Aylesbury Vale District Council.
- The Council's reference is EN3/2013.
- The notice was issued on 21 January 2013.
- The breach of planning control as alleged in the notice is: without planning permission,

the change of use of the Land from an agricultural use to use for the siting of caravans in residential use.

- The requirements of the notice are to:
 - (1) Cease the use of the Land as a residential caravan site; and
 - (2) Remove the mobile homes, caravans, commercial and other vehicles, portable buildings and other ancillary items, including, but not limited to, domestic paraphernalia associated with the unauthorised use from the Land; and
 - (3) Cease bringing onto the land hardcore, concrete, stone, brick and any other such materials associated with the unauthorised development; and
 - (4) Break up the hardcore surfaced private driveway and hard standings on the Land and remove all debris and materials arising therefrom [sic] from the Land; and
 - (5) Remove from the Land any concrete, hardcore, stone, brick and any other such materials stored on the land; and
 - (6) Remove the waste disposal units, septic tanks, drainage works and any other service equipment or media from the Land; and
 - (7) Restore the Land by the laying of topsoil and reseeded with grass in accordance with the manufacturer's instructions.
- The periods for compliance with the requirements are 6 months in relation to steps (1)-(6) and before the end of the first following grass growing season in relation to step (7).
- The appeal is proceeding on the grounds set out in section 174(2)(a), (c) and (f) of the 1990 Act as amended. Since the prescribed fees have been paid within the specified period, the application for planning permission deemed to have been made under section 177(5) of the Act as amended also falls to be considered.

Summary of Decision: The appeal succeeds in part and permission for that part is granted, but otherwise the appeal fails and the enforcement notice as corrected is upheld as set out in the Formal Decision.

Preliminary Matters

1. As implied above, the land subject to Appeal A is a residential caravan site known as Willows Park. I refer to the planning permission granted for the use of that site as the '1996 permission'. Appeal B concerns adjoining land that is alleged in effect to be used as an extension to Willows Park.

Appeal B

2. During the course of the appeal, the appellant withdrew the appeal on ground (f) and substituted ground (d). At the hearing, ground (f) was re-introduced with the Council's agreement.
3. Under s176(1) of the 1990 Act, I may correct any error, defect or misdescription in the enforcement notice if there would be no injustice to the appellant or the Council. It was agreed at the hearing that the site address should be written as 'Land adjacent to Willows Park' with the postcode being LU7 9DD. The notice should also be corrected to allege 'the *making of a material* change of use...'
4. I raised concerns at the hearing regarding requirements 3 and 5 of the notice. As discussed below, a notice directed at a material change of use of land may require the removal of works integral to and undertaken to facilitate the use. However, a notice cannot seek to prohibit possible future breaches of planning control and yet step 3 is to cease *bringing* materials onto the land. Step 5 is problematic in that it requires the removal of items stored when no storage use is alleged. The Council confirmed that it does not consider the land to be in use for storage.
5. The parties agreed that, in order to remedy the breach, it would suffice for the notice to require, after steps (1) and (2), removal of associated physical works and materials and restoration of the land to its previous condition. I have corrected the notice so that steps 3, 4 and 5 are merged and simplified and steps 6 and 7 are re-

- numbered. The parties also agreed that it is unnecessary to require top-soiling and re-seeding 'in accordance with the manufacturer's instructions'. The time for compliance is re-worded to reflect the reduced number of steps and expressly incorporate an informative relating to the grass-seeding season.
6. For the purposes of this appeal, the land subject to the notice is considered in three parcels. 'Area 1' is to the south east of Willows Park. 'Area 2' is land to the south and south west of Willows Park and Area 1; it was subject to a grant of planning permission on 3 January 2007 (ref: 06/00659/APP) for 'extension to existing gypsy site to accommodate 3 residential pitches, including the laying of hardstanding and landscaping'. I refer to this as the '2007 permission'. 'Area 3' comprises land between Area 2 and the Horton Road boundary of the appeal site.
 7. The appellant confirmed at the hearing that Area 1 is subject to the appeals on grounds (d), (a) and (f), while Area 2 is subject to the appeals on grounds (c), (a) and (f). Area 3 is not subject to any ground of appeal. The parties agreed that, depending on the outcome of the appeal, that anomaly could be addressed by substituting the plan attached to the notice. The replacement plan could either serve to delete Area 3 or identify the different parts of the site. For reasons given below, I have taken the latter option and upheld the notice in relation to Area 3.
 8. The appellant has submitted a planning application (ref: 13/01314) to use the site as an 'extension to existing gypsy caravan site to provide 8 additional pitches... together with the laying of hardstanding and construction of access road'. This application was not determined at the date of the hearing and it is outside of my remit. Where relevant, however, I make reference to it as the '2013 application'.

Appeal A on Ground (a) and the Deemed Planning Application

Main Issue

9. Planning permission is sought for the development as approved without compliance with conditions 4 and 7 but subject to new conditions. The main issue is whether the suggested conditions would address the reasons for taking enforcement action.

Reasons

Condition no. 4

10. Condition no. 4 served to limit occupation of Willows Park to named beneficiaries who were gypsies or travellers. The notice does not require compliance with the condition because the Council does not find it expedient to continue to restrict the use of the land on a personal basis. When the notice was issued, however, the site was occupied by persons who are not gypsies or travellers as defined in *Planning Policy for Traveller Sites* (the Traveller Policy).¹ The Council considers this an unsustainable location for a general residential site – and that the loss of traveller pitches could lead to an under-supply. The notice seeks to ensure the continued use of Willows Park as a gypsy site.
11. As appellant observed, the 1996 permission does not restrict use of Willows Park to gypsies and travellers. The notice cannot serve to impose a new condition on the 1996 permission, but this is effectively what it seeks to do. The Council accepts that, to address the reasons for taking enforcement action, it would be appropriate for me to allow the appeal and grant permission subject to a new condition which restricts occupation of the site to gypsies and travellers only. I agree that such a decision would acceptably ensure retention of Willows Park as a traveller site.

¹ The appellant lives at Willows Park and there is no dispute that he has gypsy status. The question of status is relevant to those who rent other pitches from the appellant. It appears that the current occupiers are travellers.

Condition no. 7

12. There is no dispute that the permitted number of caravans on the land has been increased. The Council suggests that there were 9 mobile homes, some within 1m of each other, at the date of the issue of the notice. This evidence is supported by an aerial photograph taken in 2012. The Council's concern is that allowing an uncontrolled increase in the number of caravans at Willows Park could lead to a cramped layout and harm to the living conditions of occupiers.
13. The appellant proposes that condition no. 7 should be discharged and replaced by a new condition that limits the number of pitches to 5, and the number of caravans per pitch to 2, with no more than 1 being a static caravan. He argues that such a condition would be consistent with an equivalent imposed on the 2007 permission – and would reflect advice in *Designing Gypsy and Traveller Sites: Good Practice Guide* (GPG) that sites should contain pitches able to accommodate families.
14. On the basis that the site would be limited to use by gypsies or travellers, the Council does not object to the appellant's suggestion. I saw that 5 pitches are already laid out with space for the number and type of caravans proposed. The new condition should not give rise to overcrowding. By limiting the number of pitches to 5, rather than caravans to 7, the condition could serve to reduce the number of families able to live on the site. However, since each pitch would be able to accommodate a static and touring caravan, the proposed restriction would render the site as a whole more suitable for traveller families in the long-term.
15. For these reasons, I shall allow the appeal subject to the suggested condition. It shall be worded to qualify the description of development in the 1996 permission, which refers to the original number of caravans approved. It is also necessary, in my view, to impose another new condition to require the submission and approval of a site layout scheme. The Council does not object to the existing arrangement of 5 pitches but caravans may be moved by definition. Condition no. 7 provided a minor degree of control by requiring that caravans are located within the site – but this condition will now be replaced. The site layout is not shown in a plan subject to the 1996 permission or restricted by any other condition.

Conclusion

16. I conclude that the uncontested appeal on ground (a) and application for deemed planning permission should succeed. Where an appeal against a notice regarding a breach of conditions is allowed on its merits but other conditions are required, the old conditions can be discharged and the new ones substituted using powers under s177(1)(b) and s177(4). The deemed planning application also provides for a grant of a fresh permission subject to conditions.
17. The new conditions discussed above must be imposed on the fresh and the 1996 permissions, so as to avoid confusion as to which has been implemented. For the same reason, the undisputed conditions imposed on the 1996 permission will be re-imposed on the permission granted via this appeal.

Appeal B on Ground (c)

18. The appeal on ground (c) is that the matters alleged in the notice do not constitute a breach of planning control. As with ground (d), the onus of proof is on the appellant and the standard of proof is the balance of probabilities.
19. As indicated above, ground (c) relates only to Area 2. The Council suggests that the land has not been developed in accordance with conditions imposed on the 2007 permission and the alleged use for the siting of caravans in residential use is

- in breach of planning control. The appellant argues that the permission has been implemented because there has been no breach of any 'condition precedent' and the development was commenced within three years of the date of the permission through works amounting to material operations.
20. A 'condition precedent' is one that goes to the heart of the permission and expressly prohibits development from taking place before a specific requirement is met. A breach of such a condition would mean that the development undertaken is development without planning permission – as is alleged in this case. If a condition that merely requires some action before commencement is not complied with, then the breach of that condition could be enforced against but the development undertaken would not be development without planning permission.
 21. The only condition precedent imposed on the 2007 permission was no. 3, which required that no part of the development would begin until visibility splays were provided at the intersection of the site access and Horton Road. The Highways Authority stated in consultation on the planning application that the splays *could* be achieved if the hedge and shrubs within the verge were cut back – but the Council officer's report suggested that the access as *existing* had appropriate splays.
 22. I note that the access had served Willows Park for some ten years by the date of the 2007 permission, and it continued to do so afterwards. A separate permission was granted in August 2010 (ref: 10/00935/APP) for the provision of a turning area for service vehicles on land to the north west of Willows Park, again utilising the same access. The officer's report noted that the access is of 'a good standard/visibility' and the Council did not impose a condition relating to visibility splays. On the balance of probabilities, there was no breach of condition no. 3 which would render the 2007 permission incapable of lawful implementation.
 23. Conditions nos. 5 and 6 on the 2007 permission, which required the submission of a woodland planting scheme within one month of occupation of the site and the replacement of any trees that die within five years, are not conditions precedent. They do not impose a continuing requirement on the authorised use. Any breach of these conditions could be enforced against as such, but would not render the permission incapable of lawful implementation.
 24. The next question is whether the development commenced. To ascertain whether a planning permission is *lawfully* implemented, it is necessary to consider if works undertaken are in accordance with the permission and material in the sense of not being de minimis. This involves analysis of any similarities and differences between the works and approved plans, and the degree to which the works are useable for the development permitted.
 25. A related question in this case is that raised by the Council: whether there has been a breach of condition no. 2, which requires that the development is carried out in accordance with the approved plan. This is not a condition precedent, but where a condition requires conformity with plans and works undertaken deviate *significantly*, the development as a whole will be without planning permission.
 26. An aerial photograph taken in December 2009 shows that land was cleared if not hardsurfaced before the 2007 permission expired, to facilitate the use of Area 2 as a caravan site. Grass and soil were removed from the areas to be laid out as pitches and used for access from Willows Park and Area 1. Meanwhile, much of the land to be retained as paddock was indeed kept as pasture. The works undertaken reflected the approved plan to a degree.

27. However, land was also cleared from the area proposed for woodland planting – and in a distinct strip through the paddock.² The strip appears designed to provide an unauthorised access to the pitches from the shared drive; an access is shown in the same position on the plans submitted with the 2013 application. These works departed significantly from the approved plan. The description of development permitted includes no reference to the creation of any new site access.
28. The aerial photograph also shows a package treatment plant (PTP) installed in Area 2. I find the work material to the 2007 permission.³ However, the PTP cover is within the area identified as 'pitch 3' on the approved plan. As a matter of fact and degree, the effect of the PTP is that works to clear the land were not useable for the development permitted; the pitches could not have been laid out as approved. I also saw that a pipe stands above ground in the approved access area and would impede vehicular movement. Its location could explain why – or have been made possible because – an alternative site access was formed through the paddock.
29. The appellant suggests that the development could not be rendered unlawful through a breach of condition no. 2 because works were not completed. Even if that is the case, the appellant has not shown that the development commenced. As a matter of fact and degree, it appears that the operations undertaken were intended to facilitate development of a different character to that approved. On the balance of probabilities, the works were not in accordance with the permission such that it was not lawfully implemented and so it lapsed after three years.
30. There is no dispute that Area 2 has been used for the siting of caravans in residential use. Thus, there has been a material change of use of land for which planning permission is required but not granted. I conclude that there has been a breach of planning control as alleged. The appeal on ground (c) fails.

Appeal B on Ground (d)

31. The ground of appeal is that, at the date the notice was issued, it was too late to take enforcement action against the matters stated in the notice. As noted above, this ground of appeal relates to Area 1.
32. Under s171B(1), where a breach of planning control consists of operational development, no enforcement action may be taken after four years from the date of substantial completion. The appellant initially pleaded ground (d) on the basis that the hardstanding on the land has been in situ for more than four years. However, the alleged breach is simply a material change of use of land – not the undertaking of any operational development. The notice requires the removal of hardstanding but whether it should do so falls to be considered under ground (f).
33. The appellant confirmed at the hearing that ground (d) is also pleaded in relation to the alleged use of Area 1. Under s171B(3), no enforcement action may be taken after ten years from the date of a material change of use of land. The notice was issued on 21 January 2013 and so the material date is 21 January 2003.
34. The appellant has submitted an aerial photograph taken in 2003. It must post-date 21 January because it shows trees in leaf. However, it also indicates that Area 1 and Willows Park were hardsurfaced in matching materials. The appellant argues that the hardstanding does not look new and must have facilitated the use of the Area 1 as an extension to Willows Park prior to the material date. It is said

² The area proposed for woodland planting was partly outside of the site subject to the 2007 permission.

³ There was no reference to a PTP in the description of development on the 2007 permission and the PTP was not shown on the approved plan. However, means of foul drainage is not normally incorporated into the terms of a planning permission. It was stated on the application forms that a PTP would be installed.

- that Area 1 was likely used for turning into a pitch at Willows Park around an established grassed island. The photograph also shows a static caravan on Area 1.
35. In cases pertaining to a material change of use of land, it is necessary to ascertain the correct planning unit or units, and their primary use or uses over the relevant period. The Courts have held that the tests for determining the planning unit turn on the concept of physical and functional separation.⁴ The 2003 aerial photograph indicates no physical or functional separation between Area 1 and Willows Park. The appellant suggests, therefore, that Area 1 has been in residential use in association with Willows Park for more ten years on the balance of probabilities.
 36. The appellant's argument is not implausible but I am not persuaded that the 2003 photograph can be used to reasonably date the hardstanding. The 'island' could appear 'established' but still have been recently formed if it was a remnant of the pre-existing field. There is no evidence that Willows Park and/or Area 1 were laid out and surfaced as depicted before rather than after 21 January 2003. The photograph neither confirms that a caravan was in situ or residential use on Area 1 by the material date. It does not show when the alleged use commenced.⁵
 37. Furthermore, the 2003 photograph does not demonstrate the continuity of any residential use of Area 1 from prior to the material date. An unauthorised use must continue substantially uninterrupted before it can acquire immunity from enforcement action.⁶ This principle applies even at gypsy sites, although the occupiers could be expected to travel and vacate the land at times.
 38. The appellant's agent suggests that the use of Area 1 as an extension to Willows Park was continuing when the 2007 permission was granted in respect of Area 2. Paragraph 3.2 of the Council officer's report indicates that the pitches proposed for Area 2 would be 'to the immediate front of the existing (authorised) pitches'. This suggests that the Council wrongly considered Area 1 to be part of Willows Park. However, that is not enough to show that the use of Area 1 had in fact become lawful. The Council may simply have neglected to look beyond the inclusion of Area 1 with Willows Park in the 'site edged blue' on the submitted location plan.
 39. The layout plan subject to the 2007 permission does not denote any *existing* residential use of Area 1. The land is not subdivided into pitches whereas five are shown at the 'existing caravan site' and three are 'proposed' on Area 2. A small structure is drawn on Area 1 but, although it is in the approximate position of the caravan shown on the 2003 photograph, its physical nature and use are not identified. It was proposed that Area 2 would only be accessed via Area 1 – but the application was not made on a retrospective basis and the plan does not indicate an existing use of Area 1 for vehicular manoeuvring. In contrast with the 2003 photograph, the plan shows fences between Willows Park and Area 1.
 40. Those fences are shown in the 2009 aerial photograph. Area 1 is still accessed from and hardsurfaced in the same material as Willows Park. Nevertheless, there is some physical separation and Area 1 is not likely relied upon for turning into any authorised pitch. The 2009 photograph also shows an increased number of caravans on Area 1, again including static caravans. Caravans were in place and residential use when the notice was issued. However, this is not sufficient to show that the change of use occurred prior to or continued from 21 January 2003.

⁴ *Burdle and Williams v SSE and New Forest DC* [1972] 1 WLR 1207

⁵ The 2003 photograph also shows numerous caravans in Area 2, including the paddock area, but these appear to have been brought onto the land directly from the drive to Willows Park and not via Area 1.

⁶ *Thurrock BC v SSETR & Holding (CA)* [2002] JPL 1278

41. The appellant's agent states that he has always seen caravans on Area 1 since he started to visit Willows Park in 2005. I do not dispute this claim but it is not so detailed that it can carry significant weight. Thus, the appellant has not shown that the alleged use of Area 1 commenced prior to the material date or continued for ten years. The aerial photographs and the 2007 plan indicate that there have been changes to the land over time. I conclude that it was not too late, on the balance of probabilities, to take enforcement action against the matters stated in the notice on the date that the notice was issued. The appeal on ground (d) fails.

Appeal B on Ground (a) and the Deemed Planning Application

Main Issues

42. As indicated above, this ground of appeal relates to Areas 1 and 2. The Council served the notice when and in part because the site was occupied by non-gypsies. However, the appeal is made to use the land as a gypsy and traveller site, with the use controlled by condition. It is proposed that Area 1 would be laid out to include 4 or, in the alternative, 2 traveller pitches. 3 pitches are proposed for Area 2, in line with the 2007 permission. Thus, the proposal is for 5 or 7 pitches in total.

43. It seems that the site occupiers may now be gypsies or travellers, but the land is not laid out as proposed. I saw 8 touring caravans and 5 static caravans on Area 1, plus 2 touring caravans on Area 2. Many of the caravans were occupied but I have no details of the number or composition of families currently on the land.

44. I consider that the main planning issues are: whether the development would represent a sustainable gypsy or traveller site; the general need for and availability of traveller sites in Aylesbury Vale; the provision of sites, including through the development plan; and the overall planning balance, with regard to whether permission should be granted on a permanent or temporary basis.

Planning Policy

45. The *Aylesbury Vale Local Plan (LP)* does not contain saved policies for gypsy and traveller development. The Council prepared a Core Strategy (CS) with Policy CS14 relating to traveller sites, but the CS was withdrawn prior to adoption. The Council has since published a *Planning Policy Position Statement: Providing for Gypsies and Travellers and Travelling Showpeople* (the Position Statement). Appendix 2 of the Position Statement sets out criteria, based on draft Policy CS14, to be used to assess applications for traveller site development.

46. I understand that draft Policy CS14 was not disputed in previous appeals, but the Position Statement has been updated and it does not have the status of a development plan document. I attach weight to it insofar as it is consistent with Government guidance as set out in the *National Planning Policy Framework* (the Framework) and the Traveller Policy. I will consider the weight to be attached to the LP Policies cited by the appellant on the same basis.

Reasons

Sustainability

47. The Framework seeks to avoid isolated new homes in the countryside – which is recognised for its intrinsic beauty and character. The reasons for the enforcement notice suggest that the site is unsuitable for use as a residential caravan site because it is in the open countryside. As noted above, however, this objection was predicated on occupation of the site by people who do not have gypsy status.

48. The Traveller Policy also resists the location of gypsy sites away from existing settlements or areas allocated in development plans. The appeal site is some 800m from the hamlet of Horton, 1.5km from the village of Slapton, 2-3km from the larger village of Cheddington and 5km from the town of Leighton Buzzard. It is in the countryside. However, the Traveller Policy allows for gypsy sites in rural areas, so long as the scale of the development does not dominate the nearest settled community. The Position Statement does not prohibit rural traveller sites.
49. The Council does not object to the use of the land as a gypsy site simply because it is in the countryside. The Council neither objects that the use is unacceptably harmful to the character or appearance of this rural area, since permission has been previously granted for the use of Area 2 as a gypsy site, and Area 1 is a small parcel of land between Area 2 and Willows Park. The Council does not argue that the site, taken with that existing, would dominate nearby communities or lead to a concentration of gypsy sites in the area, in conflict with the Position Statement.
50. The Council's principle objection is that the site lies in such a location that the development would result in unsustainable travel. The Position Statement requires that gypsy sites are at sustainable locations with access to local services, including shops, schools and healthcare – and are well-located on the highway network with safe and convenient vehicular and pedestrian access including public transport. There are no shops in Horton. There are few amenities in Slapton or Cheddington, although there is a school in the latter village. Occupiers of the site would need to travel to Leighton Buzzard to utilise most amenities essential for day-to-day living.
51. The site is served by school bus services but I find that occupiers would rely upon private motor vehicles to reach other amenities. Local public transport services are infrequent – and it would be unpleasant if not hazardous to walk to bus stops in Horton or the railway station in Cheddington when there is no footway on Horton Road, the verge is overgrown and traffic passes at speed. The distances to nearby settlements are such that occupiers would also be unlikely to use bicycles for routine employment or domestic trips.
52. Thus, occupiers of the site would likely drive moderate distances most days – but this would only be one impact of the development and I am not persuaded that it is crucial. Gypsy sites may be permitted outside of villages and towns, and the Framework recognises that opportunities to maximise sustainable transport solutions will vary from urban to rural areas. The Position Statement gives little guidance as to what is a sustainable location, save for advice in Appendix 3 that a site should be within 1 mile of a settlement – which this development is. The site is not unduly far from local services by rural standards and it is not unusual for country dwellers to rely upon the car.
53. The Traveller Policy and the Framework seek to ensure that development is sustainable economically, socially and environmentally. This means considering the effects of development on a broader basis than simply in relation to transport. That is true of all developments – but particularly sites for gypsies, because they have a travelling way of life by definition and this must be factored into the planning assessment. The Traveller Policy does not require gypsy sites to be accessible on foot or by public transport and this reduces the weight that I attach to the Position Statement.
54. The Traveller Policy promotes the provision of settled bases that reduce the need for long-distance travelling. That point is pertinent to this case because, in my reasoning below, I find a lack of alternative sites to this. Dismissing the appeal and upholding the notice would put occupiers at risk of homelessness. A life on the road could entail regular travelling just to find places to stay *as well as* to work and

- shop. The development could enable gypsy families to travel less overall – an environmental benefit.
55. The Traveller Policy seeks to ensure that that traveller sites are sustainable by promoting access to appropriate health services, and ensuring that children may attend school regularly. 'Access' in this sense is related to the fact that gypsies may only have the right to register with a GP or obtain education if they have a permanent address. I heard that occupiers of the site send their children to school (via local authority transport) and may be registered with local doctors. By providing the families with a settled base and access to education and healthcare, the development has social and economic sustainability benefits.
56. The Traveller Policy also promotes the provision of settled bases to reduce possible environmental damage caused by unauthorised encampments. This development is unauthorised but it is also well-screened and next to an existing gypsy site. I would not describe the land as previously developed, when parts are still grassed and the lawful use is likely to be agriculture. Nevertheless, an extension to Willows Park with 5 or 7 pitches served by the existing access could represent a more efficient use of land than the development of a new site or sites elsewhere.
57. The final point on the Traveller Policy is that it seeks to promote peaceful and integrated co-existence between gypsy sites and local communities. The distance to nearby villages may be a constraint, but occupiers of the site could still integrate with settled communities via use of amenities such as schools. The Position Statement expects gypsy sites to be to meet the needs of people with an existing significant and long-standing family, educational or employment connection to the area. This requirement is at odds with the Traveller Policy, which expressly states that local authorities should determine applications for sites from any travellers.⁷
58. LP Policies RA13 and RA14 permit developments of up to five dwellings on sites of less than 0.2ha within or on the edge of Slapton or Cheddington. These policies are broadly consistent with the Framework, which encourages the location of housing where it will enhance or maintain the vitality of rural communities. RA13 and RA14 do not allow for gypsy sites or new housing on the edge of Horton. However, new houses built outside Slapton would be scarcely more sustainable in terms of travel implications than an extension to Willows Park. The policies are justified because enlarging villages can enhance their sustainability in broader respects – but that is the case put forward for the appeal development.
59. I have noted that the appellant has made alternative proposals for 2 or 4 pitches on Area 1, and thus 5 or 7 pitches overall. The Council has not raised any specific concerns about either proposal in relation to the question of sustainability. I will therefore adjudge the size of the site when considering the planning balance. The Council suggests that it would be inappropriate to grant permanent permission prior to the adoption of a forthcoming development plan document (DPD) which may identify, following a sequential search, land for gypsy sites that are more sustainable. Again, I address this question later in this decision.
60. In summary, occupiers of this rural site would rely upon private motor vehicles and need to travel moderate distances in order to access shops and services. However, the development is no more unsustainable in travel terms than a small housing scheme that the LP would permit on the edge of Slapton. It also provides social, economic and environmental benefits by providing gypsy families with a settled base. I conclude that the development is not unacceptably unsustainable. It

⁷ I heard that planning applications would only be considered against this criterion if personal circumstances are put forward as a material consideration. However, the Position Statement does not say that and whether personal circumstances are relevant may not depend upon local connections.

conflicts with criteria in the Position Statement but it broadly complies with the Traveller Policy and the Framework, which should prevail in my view.

Need for and Availability of Traveller Sites

61. The Traveller Policy requires local planning authorities (LPAs) to set targets which address the likely need for traveller pitches; and to take account of the existing availability of and need for sites when determining applications.
62. The appellant has referred to the *Gypsy and Traveller Accommodation Assessment* (GTAA) for 2006-2011 produced by the Association of the Councils of the Thames Valley Region. The GTAA found that 57 gypsy pitches would be required in Aylesbury Vale by April 2011. Prior to that date, permanent planning permission was granted for 8 pitches, leaving a shortfall of 49. I heard that, since April 2011, permanent permission has been granted for 21 pitches at Burrows Field. The shortfall is reduced to 28 but this still equates to an unmet need for sites.
63. The appellant argues that there is an additional need for sites to accommodate: a) those residing at sites which only benefit from a grant of temporary permission – land adjacent to Dun Roaming Park (10 pitches), Causter Farm (11 pitches) and The Old Stables (1 pitch); b) those living on 13 pitches at New Park Farm where a temporary permission has expired; c) families living on other unauthorised sites; and d) families created through household growth from 2011.⁸ Adding a) to d) together, there is a need for 35+ pitches.
64. In relation to c), updated records provided by the Council at the hearing suggest that there are three unauthorised caravans at land at Swan Edge. The appeal site is occupied unlawfully and I heard that there may be two unauthorised caravans at Oakhaven Park. The appellant concedes that some families living on temporary or unauthorised sites will be those created through household growth.⁹ Even so, he suggests that the existing shortfall of 28 pitches against the 2011 target could not likely be wholly subsumed into the additional figure of 35+. The unmet need for pitches is said to be within the range of **35+ up to 63+** (28 + 35 + unauthorised sites + household growth).
65. The Council estimates the need for sites on the basis of a 2011 appeal decision pertaining to Causter Farm, rather than the GTAA. The Inspector found that the need to 2016 would be for 66 pitches. I have no reason to dispute his analysis and I also note that it is more up-to-date than the GTAA. However, the Council's latest records suggest that planning permission is only granted for 63 pitches, creating a shortfall of 3. The list includes the 2007 permission for 3 pitches on Area 2 but my findings on ground (c) mean that they should be discounted from the lawful supply and the shortfall thus becomes 6.
66. The Council has also confirmed that, of the permitted pitches, 35 are approved on a temporary basis.¹⁰ I do not accept that those pitches should be considered as part of the supply. The temporary pitches may provide families with somewhere to stay now, but the permissions will all expire before 2016 and the site occupiers in any event need somewhere to live on a permanent basis. That permanent need has to be considered, as well as the need relating to household growth, when calculating future requirements for gypsy sites.¹¹ Thus, the Council's figures

⁸ A planning application has been made to renew the permission pertaining to New Park Farm but it was not determined at the date of the hearing. I heard that officers would only recommend a further grant of temporary permission, so families on the land may still require permanent accommodation in any event.

⁹ Some unauthorised pitches have been created by subdividing lawful sites.

¹⁰ New Park Farm is included in the Council's list of temporary permissions, although it has lapsed.

¹¹ This finding is consistent with that of the Secretary of State in appeal decision ref: APP/C3430/A/10/2127121. He determined that temporary permissions should not be taken into account when calculating unmet need. He

suggest an outstanding need to 2016 for **41+** pitches (6 + 35 + unauthorised sites) to 2016; that figure is within the range estimated by the appellant.

67. In September 2012, the Council authorised the disposal of an existing site at Haddenham subject to a covenant restricting the use of the land to the siting of caravans for residential use by gypsies and travellers. I heard that the land has been sold to a gypsy family who have started to prepare the land for occupation. I agree that Haddenham represents a deliverable site and the 6 pitches here should be factored into the supply. However, they are already identified in the list of existing sites with permission.
68. The Council put it to the hearing that the occupation of the appeal site by non-gypsies could undermine the appellant's case for need. However, the site is likely occupied by travellers now and the appellant's past rental policy does not alter the number of other unauthorised or temporary sites. In this situation, and even if there is some error in my calculations, I find ample evidence of a significant unmet need for gypsy sites.
69. The Council conceded at the hearing that, although there may be 'vacancies' on unauthorised sites, there are no alternative lawful pitches that are currently available to occupiers of the site. I conclude that the development meets an identified need as required by the Position Statement – and it thereby supports the aim of the Traveller Policy to address under-provision of sites. The unmet need for and the lack of alternative sites are factors in favour of a grant of permission.

Provision of Traveller Sites

70. The Traveller Policy aims to promote more private traveller site provision and increase the number of traveller sites in appropriate locations with planning permission. It requires LPAs, in producing their local plans, to identify and update annually a five year supply of specific, deliverable traveller sites to meet their targets. Local plans should also include criteria to guide land allocations and planning decisions.
71. I have found that, notwithstanding the progress to deliver pitches at Haddenham, the Council still has a net shortage of sites. It has no five year supply to meet its target. As noted above, the LP contains no policies or site allocations for traveller sites. I have queried whether some criteria set out in the Position Statement are consistent with the Traveller Policy; I also find that they are not based on an up-to-date assessment of need. The Council is preparing a revised CS, due for adoption in February 2014, but I heard that this will not contain any traveller site policy.
72. The Council intends to set out policies and land allocations for gypsy sites in a DPD to be adopted in 2015. This will be based on an assessment of need set out in an updated GTAA, expected in August 2013. Allocations will be proposed following a sequential search for sites: looking at land on the outskirts of built-up areas or previously developed land before sites in rural or semi-rural areas.
73. I heard that adoption of the DPD is a priority for the Council. However, the revised GTAA will need to be agreed by all the local authorities in Buckinghamshire and it has already been delayed. Meanwhile, the Council has not commenced or even devised a timetable for work to identify and deliver potential allocations. I am doubtful that the DPD will be completed on time – but even if that is too pessimistic, there would be a time lag between adoption and the delivery of sites.

also noted that while temporary permissions have a role to play, they are not an adequate substitute for permanent sites, since they cause uncertainty to the site occupiers and local communities.

There is also no evidence as to whether the search could result in the allocation of sites in more sustainable locations than the appeal development.

74. There are reasons why the Council has faced delays in its development plan programme, but the facts remain that there is a local policy vacuum; travellers and local communities face uncertainty; and the Council has failed to meet the need for sites. I conclude that the Council does not have a five year supply of deliverable sites and work to prepare a gypsy and traveller DPD has not yet commenced. I could not make a realistic assessment as to when the existing need for sites will be met – or whether any allocated sites will be more sustainable than land adjacent to Willows Park. These findings weigh in favour of the appeal.

Planning Balance and Conclusion

75. I have had regard to all the other matters raised. I conclude that, although outside of a settlement, the development represents a sustainable gypsy site. There is a need for more traveller sites in Aylesbury Vale, including for the families currently residing on the appeal site. The development conflicts in some respects with the Position Statement, but it broadly complies with the Traveller Policy and the Framework, which sets a presumption in favour of sustainable development.
76. The Council concedes that there may be a case for a grant of temporary permission because of the shortage of gypsy sites. The Traveller Policy indicates that a lack of a five year supply should be a significant material consideration when considering a grant of temporary permission. But since the development causes no unacceptable harm in any material respects, it would be untenable for me to only allow the appeal on a time-limited basis. That work on the DPD has not begun and more sustainable sites will not necessarily be allocated adds weight to that assessment.
77. I also note that the Council actively considered granting temporary permission in relation to Area 2 in 2007, but approved the development on a permanent basis because there was a need for more gypsy sites **and** an 'absence of objection to the development on other planning grounds'. The changes to national planning policy since 2007 are not such that the site should now be considered unsustainable or that the Position Statement could prevail over the Traveller Policy.
78. Having found the development acceptable in policy terms, it is necessary to adjudge the number of pitches to be allowed on Area 1, given the appellant's alternative proposals for 2 or 4. Clearly, the more pitches that are permitted, the greater the benefit in terms of meeting the need for sites. However, as noted in respect of Appeal A, the GPG advises that pitches should be sized for families. The Position Statement expects sites to be large enough not only for caravans, but also parking, storage, play and landscaping – and to ensure privacy and amenity. The appellant has not shown that there is sufficient space within Area 1 to lay out 4 pitches capable of providing adequate living conditions plus a safe access to Area 2.¹² In this situation, I find that the number of pitches should be limited to 2.
79. I heard representations as to whether the rights of occupiers of the site, with regard to the best interests of the children, under the *Human Rights Act 1998* and Article 8 would be violated if the appeal is dismissed. Article 8 affords the right to respect for private and family life, including the traditions and culture associated with the gypsy way of life. This is a qualified right, and interference may be justified where in the public interest. The concept of proportionality is crucial.

¹² Some of the 13 caravans that I saw on Area 1 appeared closer together than would be permissible under the terms of a site licence. The plan submitted with the 2013 application shows 2 pitches on Area 1.

80. I have decided to grant full planning permission, but there may be more occupiers on the site at present than there would be if just 5 pitches are approved. A refusal to grant permission for 7 pitches could result in families losing their homes – but I cannot be certain of this because the appellant has not given details of the existing occupiers, including numbers of children. Any interference with their rights would also be in accordance with the law and in pursuance of the legitimate aims: to ensure acceptable living conditions and access arrangements. Overall, I find that a grant of planning permission for 5 pitches would be proportionate and necessary.
81. 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 and foster good relations between people who share a protected characteristic and people who do not share it. Since the appeal is made for the use of the land as a gypsy site and the current occupiers are likely to be travellers, they would have a protected characteristic for the purposes of the PSED.
82. It does not follow from the PSED that the appeal should succeed. However, the shortage of sites and the lack of any development plan policy for travellers may indicate inequality of housing opportunity for gypsies. A refusal of permission for a development acceptable in planning terms would also fail to foster good relations between the site occupants and the settled community. The PSED adds weight to my overall conclusion that the appeal on ground (a) should be allowed and the deemed planning application should be approved.

Conditions

83. To ensure that the development is retained as a gypsy site, it is necessary to impose a standard condition that restricts site occupation to gypsies and travellers. For the reasons given, I shall restrict the number of pitches as discussed, with no more than 2 caravans on each pitch, of which only 1 shall be a static caravan.
84. To protect the character and appearance of the area, I shall require the submission and approval of site layout and landscaping schemes, with details of the boundary treatment and any external lighting. Further conditions shall ensure that no other lighting is installed, and that trees which are planted but die within five years are replaced. Also to protect the character of the area, conditions shall prevent commercial activities and the parking or storage of vehicles over 3.5 tonnes on the land. To avoid pollution and ensure acceptable living conditions, details should be submitted to the Council of foul and surface water drainage schemes.
85. Since the development has commenced, the condition requiring the submission of schemes must set out a time limit for compliance, to ensure that the development is rendered unauthorised and could be enforced against and removed in the event of a failure to submit the schemes in breach of the condition. It was agreed at the hearing that the required details should be provided within three months.

Appeal B on Ground (f)

86. Since the appeal on ground (a) is allowed, the appeal on ground (f) does not fall to be considered in relation to Areas 1 or 2. As noted above, however, the appellant did not seek planning permission for the use of Area 3 for the siting of caravans.
87. Area 3 largely comprises part of an overgrown paddock, but it also includes land that has been cleared back to soil and become colonised with weeds. On this part of Area 3, there may be some hardstanding and building materials associated with works to hardsurface other parts of the site. This indicates that Area 3 has been subject to the alleged material change of use. I find it necessary to uphold the

enforcement notice in relation to Area 3. Amending the plan attached to the notice so as to delete Area 3 could serve to make the notice incorrect – and put the Council in a position where further enforcement action is required.

88. Although the appellant did not actively pursue any ground of appeal in relation to Area 3, he indicated at the hearing that this land should be deleted from the plan attached to the notice. Since I have opted not to do this, I will consider ground (f) in relation to Area 3. This ground of appeal is that the requirements of the notice are excessive. The appellant argues that it is unreasonable to require the removal of hardstanding. As noted above, however, a notice may require the removal of works undertaken to facilitate an unauthorised material change of use, so that the land is restored to its condition before the development took place.¹³
89. The notice alleges a material change of use of land and requires the use to cease. This suggests that the purpose of the notice is to remedy the breach of planning control. In order to achieve that aim, and notwithstanding that steps 3-5 of the notice are to be corrected, it is necessary and not excessive to require that Area 3 is restored to its previous condition. The appeal on ground (f) fails.

Conclusions

90. For the reasons given above, and having regard to all the other matters raised, I conclude that Appeal A should be allowed. I also conclude that Appeal B should be allowed in relation to Areas 1 and 2 but dismissed in relation to Area 3.
91. S180(1) of the 1990 Act as amended provides that where, after the service of a notice, planning permission is granted for any development carried out beforehand, the notice shall cease to have effect so far as inconsistent with that permission. The notice subject to Appeal B will be upheld as corrected but its requirements will only come into effect in relation to Area 3.

FORMAL DECISIONS

Appeal A: APP/J0405/C/13/2193582

92. The appeal is allowed and the enforcement notice is quashed. In accordance with s177(1)(b) and s177(4) of the 1990 Act as amended, conditions nos. 4 and 7 attached to the planning permission dated 22 February 1996, ref: 95/0571/APP granted by Aylesbury Vale District Council are discharged and the new conditions set out in Annex B to this decision are substituted.
93. Planning permission is granted on the application deemed to have been made under s177(5) of the 1990 Act as amended for the siting of five mobile homes and two towing caravans for residential use, with laying of hardcore on access drive without complying with conditions 4 and 7 but subject to the other conditions attached to planning permission ref: 95/0571/APP and the new conditions set out in Annex B to this decision.

Appeal B: APP/J0405/C/13/2193601

94. The enforcement notice is corrected by:
- 1) Inserting the word 'to' between 'adjacent' and 'Willows' in paragraph 2;
 - 2) Inserting 'LU7 9DD' between 'Buckinghamshire' and 'shown' in paragraph 2;
 - 3) Inserting 'making of a material' between 'the' and 'change' in paragraph 3;

¹³ *Murfitt v SSE* [1980] JPL 598

- 4) Deleting sub-paragraphs 5(3), 5(4) and 5(5) and substituting sub-paragraph '5(3) Remove the hardcore surfaced private driveway and hardstandings on the Land constructed to facilitate the unauthorised residential use and remove any hardcore, concrete, stone, brick, other materials and debris associated with or arising from the works';
 - 5) Re-numbering sub-paragraph 5(6) as 5(4);
 - 6) Re-numbering sub-paragraph 5(7) as 5(5) and deleting the phrase 'in accordance with the manufacturer's instructions';
 - 7) Deleting the reference to '5(6)' and substituting '5(4)' in paragraph 6(i);
 - 8) Deleting the text of sub-paragraph 6(ii) in its entirety and substituting 'with sub-paragraph 5(5) above, before the end of the first grass growing season, defined as 1 March to 31 May and from 1 September to 31 October in any calendar year, to commence following the completion of the steps set out in sub-paragraphs 5(1) to 5(4) above'; and
 - 9) The substitution of the plan attached to this decision for the plan attached to the enforcement notice.
95. The appeal is allowed insofar as it relates to the land shown edged in green and blue, hatched or dotted in black and identified as Areas 1 and 2 on the plan annexed to this decision and planning permission is granted on the application deemed to have been made under s177(5) of the 1990 Act as amended, for the making of a material change of use of land from an agricultural use to use for the siting of caravans in residential use, subject to the conditions set out in Annex B.
96. The appeal is dismissed and the enforcement notice is upheld as corrected insofar as it relates to the land shown cross-hatched and identified as Area 3 on the plan annexed to this decision and planning permission is refused in respect of the making of a material change of use of land from an agricultural use to use for the siting of caravans in residential use on the application deemed to have been made under s177(5) of the 1990 Act as amended.

Jean Russell

INSPECTOR

ANNEX A: LISTS

APPEARANCES

FOR THE APPELLANT:

Mr Philip Brown BA(Hons) MRTPI	The appellant's agent
Mr Edward Doherty	The appellant

FOR THE LOCAL PLANNING AUTHORITY:

Mr Philip Dales BA(Hons) MRTPI	Enforcement Team Leader, AVDC
Miss Jane Law	Enforcement Officer, AVDC

DOCUMENTS

- 1 The Council's letter of notification regarding the hearing arrangements and list of those notified
- 2 Planning application ref: 13/01314
- 3 Planning application ref: 06/00659/APP
- 4 The Council's list of gypsy/traveller sites in the District – updated July 2013

PLANS

- A Blank OS plan of the land subject to the notices (scale not given)
- B Plan A as annotated by the Council and appellant to identify Areas 1 and 2
- C Plans submitted with application ref: 13/0314

ANNEX B: SCHEDULES OF CONDITIONS

APPEAL A: APP/J0405/C/13/2193582

- 1) The land shall not be occupied by any persons other than gypsies and travellers as defined in Annex 1 of *Planning Policy for Traveller Sites* (Department for Communities and Local Government, March 2012) or any replacement guidance.
- 2) Notwithstanding the description of the development hereby permitted, there shall be no more than 5 pitches on the site, and on each of the 5 pitches 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.
- 3) The use hereby permitted shall cease and the caravans, hardcore and any structures, materials and equipment brought on to or erected on the land shall be removed within 3 months of the date of failure to meet any of the requirements set out in (i) to (iv) below:
 - i. within 3 months of the date of this decision, details of: a) the internal layout of the site, including the siting of the approved caravans; and b) a timetable for implementation shall have been submitted for the written approval of the local planning authority.
 - ii. within 11 months of the date of this decision, the details and schemes submitted in pursuance of (i) above shall have been approved by the local planning authority or, if 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 site development 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.

APPEAL B: APP/J0405/C/13/2193601

- 1) The land shall not be occupied by any persons other than gypsies and travellers as defined in Annex 1 of *Planning Policy for Traveller Sites* (Department for Communities and Local Government, March 2012) or any replacement guidance.
- 2) There shall be no more than 2 pitches on the land identified as Area 1 and no more than 3 pitches on the land identified as Area 2, and on each of the 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.
- 3) The use hereby permitted shall cease and the caravans, hardcore and any structures, materials and equipment brought on to or erected on the land shall be removed within 3 months of the date of failure to meet any of the requirements set out in (i) to (iv) below:
 - i. within 3 months of the date of this decision, details of: a) the internal layout of the site, including the siting of the approved caravans and any proposed vehicular parking or manoeuvring areas; b) any means of enclosure; c) tree, hedge and shrub planting including details of species, plant sizes and proposed numbers and densities; d) any external lighting on the boundaries of and within the site; e) the means of foul and surface water drainage; and f) timetables for implementation shall have been submitted for the written approval of the local planning authority.

- ii. within 11 months of the date of this decision, the details and schemes submitted in pursuance of (i) above shall have been approved by the local planning authority or, if 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 site development 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.
- 4) If within a period of five years from the date of the planting of any tree or hedgerow shrub, that tree or shrub, or any planted in replacement, is removed, uprooted or destroyed or dies, or becomes, in the opinion of the local planning authority, seriously damaged or defective, another tree or shrub of the same species and size as that originally planted shall be planted at the same place.
 - 5) No means of external illumination other than as approved in accordance with condition no. 3 above shall be installed or constructed on the site.
 - 6) No commercial activities shall take place on the land, including the storage of materials.
 - 7) No vehicle over 3.5 tonnes shall be stationed, parked or stored on this site.



Plan

This is the plan referred to in my decision dated: 06.09.2013

by Jean Russell MA MRTPI

Land adjacent to Willows Park, Horton Road, Slapton, Buckinghamshire, LU7 9DD

Appeal B: APP/J0405/C/13/2193601

Scale: NTS

