

RUSTON PLANNING

Second proof of Simon Ruston

Appeal by Ms Gumble

Appeal against the refusal of West Berkshire Council of an application for Change of use to 7 no. Gypsy/Traveller pitches comprising 7 no. static caravans, 7 no. day rooms, 7 no. touring caravans and associated works

Land at, Lawrences Lane, Thatcham, West Berkshire

Town and Country Planning Act 1990 (as amended)

**Dr Simon Ruston BSc (Hons) MA MA PhD MRTPI
Ruston Planning Limited**

January 2023

Introduction

1. I am a chartered town planner and I have specialised in Gypsy and Traveller planning matters for the last 12 years. I hold a PhD in Gypsy and Traveller planning law from Bristol UWE.
2. This is an appeal by Ms Gumble against the decision of West Berkshire Council to refuse an application for Change of use to 7 no. Gypsy/Traveller pitches comprising 7 no. static caravans, 7 no. dayrooms, 7 no. touring caravans and associated works by decision notice dated 19th November 2021.
3. The evidence which I have prepared and provide for this appeal (reference APP/W0340/W/22/3292211) in this second proof of evidence is true and has been prepared and is given in accordance with the guidance of my professional institution and I confirm that the opinions expressed are my true and professional opinions.
4. This proof will cover the following issues that have arisen either at the inquiry or since:
 - The provision of a pedestrian access
 - The emerging local plan
 - Approach to Green Infrastructure (GI) having regard to the LPA's emerging plan
 - The Irish Hill Decision Letter
 - Recent appeals that deal with 'post Lisa Smith need'.

The provision of a pedestrian access

5. Following the adjournment, the decision has been taken to remove the proposed pedestrian access. This is because in the view of the appellant it is not necessary. This will not prejudice the LPA's case as they found fault with its provision in any event. Mr Crandon has amended the plan along with some minor alterations to the shape of the Swale and this is provided alongside this proof.

The emerging local plan

6. I will address the draft criteria based Gypsy and Traveller policy DM20 first. On behalf of the site residents, comments will be submitted to the consultation in

due course and a draft version of policy DM20 which is endorsed with my track changed amendments and comments can be found at appendix 1.

7. The draft criteria based policy is broadly in compliance with PPTS (subject to my comments in the consultation response). Turning to an assessment of the appeal site against DM20, I would make the following brief comments:
 - The site in my view is well related to the settlement of Thatcham and notwithstanding the change in position from the Council, is situated on PDL.
 - The criteria have already been addressed in previously provided evidence or are matters of common ground.
8. Notably and in contrast to existing policy TS3 (which will be superseded) there is no specific mention of GI in draft policy DM20.

Approach to Green Infrastructure having regard to the emerging plan

9. There are two ways in which GI is dealt with in both extant and emerging policy namely provision and loss.
10. Dealing first with provision, GI is a component of a considerable number of the draft allocating policies, for instance see SP16, SP17, RSA18, which are all strategic allocations. RSA20 and RSA21 are both of a smaller scale, namely (approx.) 15 and 10 dwellings respectively and include reference to a GI requirement.
11. In contrast, as noted above, GI is not mentioned in the specific draft Gypsy and Traveller policy DM20 and I also note that it is not addressed in RSA24, which deals with the loss of 8 transit pitches in favour of 8 permanent pitches.
12. Turning to the specific draft GI policy SP10, it is notable that it states:

*Depending on their location, **nature and scale**, development proposals should..*
13. Whilst the draft policy is awaiting specific national standards, it is useful to note that: both RSA20 and RSA21 which relate to development of 10 and above dwellings explicitly require GI; whereas the sole draft Gypsy and Traveller allocation policy, RSA24 and the specific criteria based draft Gypsy and Traveller policy DM20 do not. This reflects the position in existing policy TS3, which expects that proposals for Gypsy and Traveller sites will:

Identify appropriate green space/green infrastructure in line with the Council's adopted standards as set out in Policy RL1 of the Local Plan 1991 – 2006 (Saved Policies 2007).

14. Policy RL1 (appendix 2) sets a threshold of 10 or more dwellings.
15. The key point is that the application of the provision aspect of the GI policy is dependent on the scale of the development and the approach in the emerging plan is helpful in giving an indication of how the LPA have approached GI when addressing the allocation of Gypsy and Traveller pitches and its criteria based policy for their provision.
16. With regard to extant policy TS3, by reference to policy RL1, it sets a threshold of 10 or more dwellings for the provision of GI.
17. Turning to the loss of GI, it is useful to set out the relevant parts of CS18 and SP10:

CS18: Developments resulting in the loss of green infrastructure or harm to its use or enjoyment by the public will not be permitted. Where exceptionally it is agreed that an area of green infrastructure can be lost a new one of equal or greater size and standard will be required to be provided in an accessible location close by.

And:

SP10: Proposals involving the loss of green or blue spaces and other natural features will not be supported unless there is no longer a need for the existing infrastructure or an alternative is provided to meet the local needs that is both accessible and of equal or greater quality and benefit to the community.

18. It is notable that there is an importance placed in the public enjoyment and community benefits of GI. The appeal site is not a publicly accessible location, and it not required to meet any local need.
19. If the approach is taken that the appeal site is GI, then its loss needs to be seen in this context, ie not publicly available space.
20. However, there is some doubt on this point as Mr Willers noted on the first day of the inquiry, and an appeal DL in West Berkshire with regard to a similar site is notable for the following extract (appendix 3):

15. The Council has also referred to Policy CS18 of the DPD, suggesting that the proposal would result in the loss of green infrastructure. The proposal would see the development of an undeveloped field, currently in equine use. However, this would not clearly fall into one of the categories of green infrastructure set out in the supporting text to the Policy. I am therefore not satisfied that this Policy is relevant to the appeal proposal.

21. There is clearly no difference between this appeal and our case, and I would invite the Inspector to take the same approach here.
22. However, it is worth pointing out that the appeal proposal will have some positive benefits for GI. The wording of SP10 is considerably more detailed than that within existing policy CS18, and provides specific examples of how GI might be implemented. Those that are of relevance to the appeal proposal are as follows:

d. Help to mitigate and adapt to the impacts of climate change and boost resilience through sustainable drainage measures which minimise urban heating, flood risk and maximising GI habitats to sequester carbon and provide environmental cooling and insulation functions;

23. Mr Walton's evidence notes that:

As noted in Section 5.16, the proposed cut off drain will reduce uncontrolled surface water runoff onto Lawrences Lane.

*The 0.31ha of development will in effect be removed from the drainage catchment with runoff significantly attenuated and discharged to the Thames Water Sewer. **This will reduce the flood risk to downslope properties.***

24. This is a significant benefit for GI. Furthermore, the proposed tree and scrub and hedgerow planting and enhanced grassland should increase the ability of the site to sequester carbon.

g. Enhance the natural environment and natural processes to improve biodiversity and increase natural capital whilst seeking opportunities to use green infrastructure to extend wildlife corridors and provide habitat connectivity, particularly in urban areas and where it contributes to nature recovery networks;

25. The layout retains and enhances a green corridor that comprises the whole of the southern section of the site and provides a net biodiversity gain for on-site habitats and hedgerows. The enhanced tree line to the southern boundary improves connectivity for several species groups including bats which can use the new feature as a navigational and foraging resource.
26. Finally, Natural England are due to launch the Green Infrastructure Framework on the 31st January 2023. If need be, I will provide some additional comments on this within the two weeks following its publication.

Comment on the Irish Hill DL

27. The LPA have submitted a DL concerned with appeals for 32 and 75 dwellings respectively. The relevant part of the DL states:

The effect of the proposed development on local green infrastructure

61. It is the case that hedges are not recorded amongst the list of what is defined as green infrastructure in paragraph 5.123 of the supporting text of Policy CS18 of the WBCS. It is also the case that although there is no definition of the term offered, the predominant focus of such infrastructure relates to open spaces. However, the list is not defined as a closed one, and includes such provision as green roofs and walls, which cannot be held to have an open functional purpose. Moreover, the supporting text refers to such infrastructure as that which 'supports the natural and ecological processes, and is integral to the health and quality of life of sustainable communities'. Paragraph 5.125 goes on to stress that 'the multi-functional nature of GI... is important for many reasons', noting that 'it contributes significantly to the conservation and enhancement of biodiversity...'.

62. It is accepted that the bank and hedge forming the southern boundary of the site is an important boundary feature. That it is of some considerable age, either judged by the extensive map evidence presented, or by the essentially unchallenged methodology of Dr Hooper applied to its species-related dating, is clear. Moreover, its physical extent, form and ecological diversity do make it a conduit that 'supports natural and ecological processes'. On this basis, and given the scope of the definition of 'GI' in the WBCS, I conclude the hedge may properly be considered green infrastructure and therefore within the ambit of policy CS18.

63. The precise extent of hedgerow loss is not defined, though considered to be between 20m – 30m in extent. On the other hand, the banks adjacent to the new access would be re-profiled and planted, and indeed additional biodiversity would be provided across the wider sites. Nevertheless, a considerable section of venerable bank and hedge would be lost and the linear continuity of the corridor broken by the access and splays. Such an outcome would, I conclude, result in the loss of a limited though significant piece of local green infrastructure, thus conflicting with policy CS18 of the WBSC.

28. The planning balance goes onto state:

*75. However, these benefits (which again may be understood as public benefits for the purposes of paragraph 134 of the Framework) are very substantially outweighed by the significant harm to the NWDAONB in both the wider and local landscape context, to the setting of the Kintbury Conservation Area and to a **lesser degree the harm to local green infrastructure**. Finally, in the context of these conclusions, the demonstration by the Council of a five years supply of housing land and the absence of other compelling evidence, I find no exceptional circumstances that would justify the grant of planning permission for the proposal presented in Appeal No. 2 in the NWDAONB, in accordance with paragraph 116 of the Framework. [my emphasis]*

29. It is notable that the hedge is of some considerable age and one would assume is a feature that would be seen from public view points. It is described as a *significant piece of local green infrastructure*.

30. Furthermore, it is clear that the appeal was dismissed primarily on other grounds relating to the impact on AONB and a conservation area.

Recent appeals that deal with post Lisa Smith need

31. The ruling of the Court of Appeal in Smith v SSLUHC & Ors [2022] EWCA Civ 1391 has already been addressed in evidence for both the main parties. It would appear from the emerging plan and Dr Bullock's rebuttal that the LPA accept that they will need to provide for all Gypsies and Travellers, cultural or PPTS. As such, they are invited to agree that it is the cultural need figure that the Inspector in this appeal should consider, and as per Dr Bullock's proof at 2.6 this should be taken as a minimum.

32. It is helpful at this point to highlight the approach taken to the Smith case in an appeal decision letter issued since the adjournment:

33. In an appeal in Spelthorne¹ (appendix 4) the Inspector found that:

26. Meeting the total need would be a reasonable objective having regard to paragraph 62 of the Framework and the housing needs of different groups. In addition the CoA judgement suggests that it is not lawful to distinguish between those who have temporarily or permanently ceased travelling. Moreover, the Housing Acts place a duty on local authorities to consider the needs of people residing or resorting to their District in caravans.

Conclusion

34. On the basis of the analysis of the existing and emerging GI policy in this proof, the LPA are invited to withdraw the objection on GI grounds.

35. In addition, the LPA are also invited to confirm that the 'cultural need' is the figure that should be considered post Lisa Smith.

Dr Simon Ruston MRTPI January 2023

Appendices

Appendix 1 – Draft consultation response to the emerging local plan

Appendix 2 – Policy RL1

Appendix 3 - Appeal Ref: APP/W0340/W/20/3257803, McVeigh Parker Ltd, Southend Road, Bradfield Southend, Reading RG7 6HA

Appendix 4 – Appeal Ref: APP/Z3635/W/22/3292634 , 1 Minerva Close, Horton Road, Stanwell Moor, Staines-upon-Thames TW19 6DA

¹ APP/Z3635/W/22/3292634

Policy DM20

Gypsies, Travellers and Travelling Showpeople

The Council will meet the identified permanent and transit need for Gypsies, Travellers and Travelling Showpeople by allocating land for pitches and/or plots.

Existing authorised sites for Gypsy, Traveller and Travelling Showpeople will be safeguarded for use by Gypsy and Travellers and Travelling Showpeople, unless acceptable replacement pitches/plots can be provided. This is ensure that there remains a good supply of pitches and plots in the District.

Commented [ss1]: Replacement to any Gypsy and Traveller pitches should be pitch based

Deleted: accommodation/

Permanent Gypsy and Traveller sites and sites for Travelling Showpeople will be developed:

- a. On sites allocated in Policies RSA24 and RSA25;
- b. As expansions to existing authorised Gypsy and Traveller and Travelling Showpeople sites, unless in conflict with criterion d;
- c. On sites located in, or well related to, existing settlements; or
- d. When in rural settings, the scale of the site(s) do not dominate the nearest settled community,

Deleted: ensuring

Deleted: ,

Deleted: whether singly or cumulatively with any other Gypsy and Traveller, and Travelling Showpeople sites. ¶

Isolated locations in the countryside should be avoided.

Where possible sites will be on previously developed land. The Council will seek compatibility of use with that of the surrounding land use and promote the integrated co-existence between the site and the settled community, including adequate levels of privacy and residential amenity both within the site and with neighbouring occupiers.

Proposals for development ~~be considered against~~ the following criteria:

Deleted: should satisfy

- i. Site planning will be landscape-led and development will be in accordance with Policies SP7 and SP8;
- ii. Ensure each pitch can accommodate space for a mobile home and touring caravan, parking, and if to be provided, a day room/amenity building. Provision will be made for play and residential amenity space.
- iii. Provide safe access with appropriate turning space(s);
- iv. The development would not generate traffic of a type or amount that would result in substantial harm to local roads, and/or would require improvements that would adversely affect the character and nature of such roads. ~~Where necessary and proportionate, a~~ Transport Assessment or Transport Statement should accompany a planning application, ~~which would also detail appropriate mitigation;~~
- v. The site has ~~reasonable~~ access to local services including public transport, shops, schools and health services;
- vi. Measures to improve accessibility by, and encourage use of, non-car transport modes including internal walking routes linked to any existing Public Rights of Way network are provided.
- vii. Development avoids areas of high flood risk and if required provide a Flood Risk Assessment, in accordance with Policy SP6:
- viii. It is demonstrated that surface water will be managed in a sustainable manner ~~through the~~ implementation of Sustainable Urban Drainage Methods (SuDS), in accordance with Policy SP6;
- ix. Adequate and appropriate infrastructure is provided for the supply of electricity and water, facilities for drainage and waste disposal;
- x. Development will be informed by an Ecological Impact Assessment (EclA). Appropriate avoidance and mitigation measures will need to be implemented to ensure any designated sites and/or protected habitats and or species are not adversely affected; and
- xi. Development will not harm the value of any heritage assets and their setting and proposals will be in accordance with Policy SP9.

Deleted: A ¶ layout plan shall be submitted with a planning application to demonstrate how the site and each pitch is ¶ laid out;

Deleted: A

Deleted: ¶

Deleted: easy

Deleted: These measures should ¶ be set out in a Travel Plan for the site;

Deleted:

Deleted: ¶

Proposals for Travelling Showperson sites will be required to satisfy the above criteria and additionally demonstrate ~~that the site is appropriately designed to accommodate the storage and maintenance of show equipment and~~ associated vehicles.

Deleted: ¶

Deleted: ¶

This policy supplements the detailed provisions for each of the sites set out in Policies RSA24 and RSA25.

7.5 PUBLIC OPEN SPACE PROVISION IN RESIDENTIAL DEVELOPMENT SCHEMES (RL. 1)

7.5.1 Public open space is land available to satisfy the recreation and leisure needs of the community. It can fulfil a number of functions including:

- (i) areas for formal sporting activity;
- (ii) areas for informal recreation and leisure purposes;
- (iii) play areas; and
- (iv) amenity land.

There are no statutory national standards with respect to how much public open space should be provided. Each location will vary and PPG17 states that it is for local planning authorities to justify the amount and location of new provision. In coming forward with a local standard the PPG advises that it may be helpful to consider the National Playing Field Association (NPFA) recommended standard.

7.5.2 The NPFA recommends a minimum standard for outdoor playing space of 2.43 hectares (6 acres) per 1,000 population but PPG17 also states that in addition open space is important in amenity terms and to the overall quality of the built environment.

7.5.3 Proposals for new housing will be acceptable only where they include appropriate public open space and recreational provision. Informal open space should normally be within the site and accessible safely by foot. This may not be possible for formal sports provision, in which case alternative arrangements such as contributions elsewhere may be appropriate. New rights of way should be provided to afford safe access to and between new and existing open spaces.

7.5.4 The former Newbury District Local Plan (1993) policy REC 1 had a public open space standard of between 3 and 4.3 hectares per 1,000 population in new residential development. The then Local Plan Inspector concluded that there was sufficient flexibility in the wording of this policy as well as the range itself to allow for local variation and generally that the policy was not unreasonable. He also considered the Council had sought to achieve a standard suitable for present day needs within new housing areas rather than trying to remedy overall deficiencies by requiring developers to provide for existing residents.

7.5.5 The standard of 4.3 hectares per 1,000 population has generally been adopted by the other Councils in Berkshire. The exceptions are Reading and Slough where to achieve such a standard would be unrealistic given their built up and urban natures. The adjoining local planning authorities outside Berkshire appear to be applying a public open space standard of 2.8 hectares per 1,000 population. It is against this background that a standard of between 3 and 4.3 hectares per 1,000 population remains reasonable and justified in the context of West Berkshire.

In respect of sheltered and other special needs housing, however, there may be greater flexibility applied in the application of this standard. The second part of Policy RL.1 explains the context.

7.5.6 The threshold of 10 or more dwellings was selected following a comprehensive audit of all open space and outdoor sports provision in West Berkshire, which concluded that, though there was a shortfall of over 50 hectares of such space across the district, no open space was required for developments of less than 10 dwellings.

POLICY RL.1 The Council will require, in new residential development of ten or more dwellings, the provision of between 3 and 4.3 hectares of public open space per thousand population in such form, scale and distribution as may be considered appropriate depending on local circumstances, together with associated facilities/equipment. The Council will seek the

transfer of public open space to local authority ownership control in a condition appropriate for such use together with any appropriate sum for ongoing maintenance.
In the case of sheltered and special needs housing the provision of public open space will be negotiated on the particular type of accommodation and facilities, size of site, the balance of private/public open space needs, local circumstances and the provision and enhancement of nearby accessible and appropriate open spaces.



Appeal Decision

Site Visit made on 17 February 2021

by **A Tucker BA (Hons) IHBC**

an Inspector appointed by the Secretary of State

Decision date: 12 March 2021

Appeal Ref: APP/W0340/W/20/3257803

McVeigh Parker Ltd, Southend Road, Bradfield Southend, Reading RG7 6HA

- 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 Michael McVeigh of McVeigh Parker against the decision of West Berkshire District Council.
 - The application Ref 19/03193/FUL, dated 27 December 2019, was refused by notice dated 25 March 2020.
 - The development proposed is change of use of land and extension to existing storage and distribution yard for agricultural and fencing equipment (part retrospective).
-

Decision

1. The appeal is allowed, and planning permission is granted for change of use of land and extension to existing storage and distribution yard for agricultural and fencing equipment (part retrospective) at McVeigh Parker Ltd, Southend Road, Bradfield Southend, Reading RG7 6HA in accordance with the terms of the application Ref 19/03193/FUL, dated 27 December 2019, subject to the conditions set out in the attached Schedule.

Preliminary Matter

2. The proposal is described as part retrospective. A small area of the application site adjacent to South End Road received a lawful development certificate (LDC) in 2016, Council Ref 15/03464/CERTE. At my visit to the site I saw that an area to the east of the LDC area has been developed. This area of the proposal is therefore retrospective. The application seeks to extend this area further to the east, to align with the rear boundary of the main site.

Main Issue

3. The effect of the proposal on the character and appearance of the area, including the North Wessex Downs Area of Outstanding Natural Beauty (AONB).

Reasons

4. The appeal site is located just beyond the edge of the settlement of Bradfield Southend in a largely rural and agricultural context within the AONB. The National Planning Policy Framework (the Framework) establishes that great weight should be given to conserving and enhancing the landscape and scenic beauty of AONBs, which carry the highest status of protection.
5. The site lies within Landscape Character Area WH4 of the West Berkshire Landscape Character Assessment 2019 (WBLCA), which is described as an area

- dominated by an east-west orientated, heathland ridge and characterised by varied topography, from flat plateau areas to steeply undulating slopes.
6. Indeed, land surrounding the site is part of a fairly level plateau that forms a broad ridge, with adjoining fields at a similar level to the site before they fall away to the southeast. Although fields beyond are open and fairly expansive, the field adjacent to the site is divided up into small paddocks for horses with numerous post and rail fences and associated equine structures and paraphernalia. The WBLCA recognises horse paddocks with weak boundary features as having a localised detrimental impact on landscape character. These horse paddocks and the well established hedgerows beyond are at the same level as the site. These limit views of the site from the surrounding fields.
 7. The appeal site sits alongside the existing developed site of Mcveigh Parker Ltd. The existing business area comprises a substantial range of buildings in a utilitarian agricultural style, with open storage areas for materials. Existing landscaping around the site perimeter is limited to a few large trees as a remnant hedgerow. The high solid metal fence to the northeast boundary has a somewhat alien appearance as a form of boundary treatment in the context of simpler post and rail fences and hedges.
 8. The proposal would see a portion of land brought into the same use as the existing business, arranged largely behind the area that received the LDC. I accept that this area was not subject to the same level of scrutiny as a full planning application, however the LDC established that this use is lawful. I am not satisfied that the weight I give to the lawful use of this land should be lessened because it was not subject to a full planning application. The LDC area has resulted in an increase in developed road frontage. The proposal would see the road frontage extended slightly further to the northeast. However, this would be modest in the context of the existing road frontage. It would not constitute an extension to a linear settlement as referred to in the AONB Management Plan 2019, as the developed area of the business would remain detached from development to either side owing to intervening fields and paddocks.
 9. Alongside the adjacent field the visual impact of further fencing would be mitigated by enclosing it with a native hedgerow planted outside the fence. Once established, this native hedgerow will form an appropriate boundary between the site and the surrounding countryside, taking on a similar appearance to the existing parallel hedgerow to the northeast. A more substantial screen of trees is proposed along the narrower southeast facing boundary. Both would serve as natural landscape features that would dominate the new site boundaries and form a more appropriate enclosure to the site than the existing metal fence. Despite the increase in the area of development as a result of the proposal, this significant improvement to the form of the boundaries would offer an enhancement to the appearance and character of the area.
 10. I accept that some stacked materials within the new site area would be visible from outside the site. From the road, views of such material would be limited as it would be stored beyond the parking area. From the adjacent fields and wider landscape, views of stacked materials would be restricted by the proposed boundary treatment. The new verdant site boundaries would surround the site and would become substantial, particularly where trees are

proposed. In terms of the maximum height of stored material, I note the appellants willingness to limit the stacking of materials within the site to 3 metres. Although this is more than the maximum 2 metre height suggested by the Council, owing to the varied nature of the materials to be stored, the proposed boundary planting and existing intervening hedgerows, I am satisfied that the stacking of materials to this height would not be harmful to the character or appearance of the area.

11. Within the site the ground would receive a hardstanding surface, which would be similar to the hard surfacing of the existing yard. There would be some visibility of this area from the existing site entrance, but views would be restricted by the presence of retained trees within the site. Owing to the level topography around the site the hardstanding would not be prominent to view beyond the site boundaries. For these reasons I am satisfied that this element of the proposal would not harm the character or appearance of the area.
12. The Council suggests that the proposal would not accord with Policy ADDP1 of the West Berkshire Core Strategy (2006 – 2026) Development Plan Document (DPD). This Policy appears to be focused largely on housing delivery across the District. Notwithstanding this, the appeal site is located close to the service village of Bradfield Southend where there is some limited development potential. Furthermore, the proposal would hold a tight relationship with the developed area of the existing business, which is close to the developed edge of the settlement; and the effect of the proposal on the character and appearance of the landscape would be appropriately managed to avoid harmful visual incursion into the countryside. I am therefore satisfied that the proposal would not be contrary to this Policy.
13. Policy CS9 of the DPD seeks to ensure that business development is directed to existing suitably located employment sites. The proposal is to expand an existing employment site, and part of the appeal site is already in such a use. Although the site is not in a defined employment area, the business is well established and it is close to and accessible from an existing settlement, which is recognised as a service village. The Policy does not clearly refer to the expansion of existing employment sites but does say that the Council will promote the intensification of such sites. I am satisfied that the proposal would not be contrary to this Policy.
14. In summary, the proposal would not harm the character or appearance of the area, including the AONB. It would accord with Policies CS9, CS14, CS19 ADDP1 and ADPP5 of the DPD, which together seek to ensure that development proposals are appropriately located, respect and enhance the character and appearance of the area including the landscape character of the AONB.
15. The Council has also referred to Policy CS18 of the DPD, suggesting that the proposal would result in the loss of green infrastructure. The proposal would see the development of an undeveloped field, currently in equine use. However, this would not clearly fall into one of the categories of green infrastructure set out in the supporting text to the Policy. I am therefore not satisfied that this Policy is relevant to the appeal proposal.

Other Matters

16. The Council has stated that there is nothing to demonstrate that the extension to the business is justified. The appellant has provided information to explain

the business need for the expansion. However, providing justification for the proposal does not appear to be a Policy requirement. Furthermore, paragraph 84 of the Framework recognises that sites to meet local business needs in rural areas may have to be found adjacent to or beyond existing settlements. This matter does not therefore alter my findings on the main issue of the appeal.

17. I have considered various other matters raised in the submissions before me. Additional lighting can be controlled through the imposition of a condition, to ensure that it would not harm the dark skies of the AONB. A condition could also manage operating hours to ensure there is no additional impact in terms of noise, and I have no reason to believe that the additional site area would result in an increase in odours emitted from the site. Furthermore, the submissions explain that the additional site area would make it easier for lorries to park and manoeuvre within the site, reducing the need to wait on the road or on the layby. As such these matters do not cause me to come to a different conclusion on the main issue of the appeal.

Conditions

18. I have had regard to the planning conditions suggested by the Council. I have considered them against the tests in the Framework and the advice in the Planning Practice Guidance. I have imposed a condition specifying the approved plans as this provides certainty.
19. I have imposed a condition to ensure that adequate vehicle parking and turning facilities are provided within the site in the interests of highway safety.
20. I have imposed conditions relating to the protection of existing trees and new landscaping work to ensure that existing trees worthy of retention are retained and ensure that a satisfactory landscaping scheme is implemented to safeguard the character and appearance of the area. One of these conditions is a pre-commencement condition, to ensure that protective measures are agreed before work at the site commences. This has been agreed with the appellant.
21. I have imposed a condition relating to hours of operation at the site, to safeguard the living conditions of neighbouring occupiers. I have amended the hours suggested by the Council to accord with the current operating hours of the business.
22. I have imposed conditions to limit the height of stacked goods and to control external lighting to safeguard the character and appearance of the area.
23. I have not imposed the condition suggested by the Council to seek further details of the hard surfaced areas of the site in the interests of visual amenity. These details are set out on the approved plans. Furthermore, I have established that the proposed boundary treatments and level topography surrounding the site will ensure that hard surfacing within the site will not be harmful to the character or appearance of the area.

Conclusion

24. For the reasons above, the appeal should be allowed.

A Tucker

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development shall be carried out in strict accordance with the following submitted plans: DTS190919-96A, P1-01 Rev B, E1-01, 8190837/6201 Rev D, P1-03 Rev A and P1-02 Rev A.
- 3) The development shall not be brought into use until the HGV / delivery vehicle parking and turning space has been surfaced and provided in accordance with the approved plan(s). The parking and/or turning space shall thereafter be kept available for parking of HGV's / delivery vehicles within the yard area at all times.
- 4) All landscape works shall be completed in accordance with the submitted plans, schedule of planting and retention, programme of works and other supporting information including Extended Phase 1 Ecological Assessment 2019, drawing numbers Appendix E – Indicative Landscaping Strategy by Draffin Associates dated December 2019; supplemented with additional details to be submitted to and approved in writing by the Local Planning Authority. Such works shall be carried out in the first planting seasons after the site has been brought into use or the completion of the development, whichever is sooner. Any trees, shrubs or hedges planted in accordance with the approved scheme which are removed, die, or become diseased within five years from completion of this development shall be replaced within the next planting season by trees, shrubs or hedges of a similar size and species to that originally approved.
- 5) Protective fencing shall be implemented and retained intact for the duration of the development in accordance with the tree and landscape protection scheme identified on approved drawing numbered plan 1427-02 by SJ Stephens Associates dated December 2019. Within the fenced area(s), there shall be no excavations, storage of materials or machinery, parking of vehicles or fires.
- 6) No development shall take place (including site clearance and any other preparatory works) until the applicant has secured the implementation of an arboricultural watching brief in accordance with a written scheme of site monitoring, which has been submitted to and approved in writing by the Local Planning Authority.
- 7) The use hereby permitted is to be restricted to the following hours: 07:30 – 17:00 Mondays to Fridays; 09:00 – 12:00 Saturdays; Closed Sundays and Bank Holidays. No machinery shall be operated, and no processes shall be carried out at the site outside of these hours.
- 8) No materials/goods/equipment/containers shall be stacked or deposited on any open area of the site to a height exceeding 3 metres.

- 9) No external lighting shall be installed on the site without the prior approval in writing of the Local Planning Authority by way of a formal planning application made for that purpose.



Appeal Decision

Hearing Held on 29 November 2022

Site visit made on 29 November 2022

by Mark Dakeyne BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 December 2022

Appeal Ref: APP/Z3635/W/22/3292634

**1 Minerva Close, Horton Road, Stanwell Moor, Staines-upon-Thames
TW19 6DA**

- 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 D Paul against the decision of Spelthorne Borough Council.
 - The application Ref 21/01163/FUL, dated 8 July 2021, was refused by notice dated 6 September 2021.
 - The development proposed is use of land as a travellers caravan site consisting of 1 no mobile home, 1 no touring caravan, 1 no utility dayroom and associated works.
-

Decision

1. The appeal is dismissed.

Background and main issues

2. A Statement of Common Ground (SOCG) between the appellant and the Council sets out the matters that are agreed and those that are disputed. The site lies in the Green Belt. The main parties agree that the proposal is inappropriate development in the Green Belt, as set out in paragraph 16 of 'Planning policy for traveller sites' (PPTS).
3. The application was promoted on the basis that it is a pitch for the daughter of the appellant. She is already living on the site in a touring caravan to the rear of the house, 1 Minerva Close, which is occupied by the appellant and his wife. She intends to marry and start a family of her own. She has travelled with both her father and partner for work purposes. The appellant claims that the new household would meet the definition of gypsies and travellers in Annex 1 to the PPTS and this was not disputed by the Council. Based on the information before me I see no reason to take a different view.
4. Before the hearing, the Court of Appeal¹ (CoA) found that the above PPTS definition was unlawfully discriminatory. The main parties were given the opportunity to comment on the implications of the judgement before and during the hearing. The PPTS, which sets out the Government's policy for traveller sites, remains extant, albeit some parts of it are affected by the judgement. I address the implications of the CoA judgement later in this decision.

¹ Smith v SSLUHC & Ors [2022] EWCA Civ 1391

5. Having regard to the SOCG and the above background, the main issues are:
 - (1) the effect on Green Belt openness and purposes;
 - (2) whether the proposal would result in a suitable living environment for future occupiers, with particular reference to noise levels; and,
 - (3) whether the harm to the Green Belt and any other harm is clearly outweighed by other considerations, so as to constitute very special circumstances.

Reasons

Green Belt openness and purposes

6. The site forms part of a large, enclosed garden to the rear of No 1 Minerva Close. The Green Belt boundary cuts across the garden such that the house and the land immediately behind and alongside it is beyond the Green Belt whereas the bottom part of the garden where the pitch would be formed would be in the Green Belt. The formation of the hardstanding, the stationing of a mobile home and touring caravan and the erection of the day room would result in development on an area of open garden land where there was none before. Occupation of the plot by an additional family would bring with it further vehicles, more activity, and the other accoutrements of day-to-day living.
7. The daughter is already occupying a touring caravan on the site so, in that respect, the touring caravan is already there. Moreover, the tourer would be off-site during periods when members of the family are travelling. However, the tourer would move from beyond to within the Green Belt.
8. The development would lead to a modest increase in the quantum of development in the Green Belt through the additional area of hardstanding, the stationing of the mobile home and touring caravan, and the erection of the day room building.
9. Openness has a visual as well as a spatial dimension. The pitch would be contained within the enclosed garden with a fence and trees immediately behind and houses forming a backdrop. That said, although well-enclosed and not prominent, the structures and building on the pitch would still be visible from the road in glimpsed views through and over the gates and would be seen from neighbouring properties.
10. The mobile home and day room would be alongside an existing small stable block/workshop building. There are already other structures and vehicles in the garden. As such the development would physically and functionally relate to the house and other nearby built development on Horton Road and Vine Close outside the Green Belt rather than to the open Green Belt land to the west and north-west. In this respect the Green Belt boundary is somewhat arbitrary hereabouts, not following clear physical features that are readily recognisable.
11. Because the development would be within the enclosed garden and not extend into the open land to the west, there would be no encroachment into the countryside. There would be no effect on the other four Green Belt purposes.
12. All in all, the development would lead to a modest loss of openness but no adverse impact on Green Belt purposes.

Noise

13. The appeal site lies not far to the west of the southern runway of Heathrow Airport. Based on information supplied by the airport, the site lies within the 69-72 dB L_{Aeq} contour line with daytime noise levels around 70 dB L_{Aeq} 16 hour and night time noise levels below 65 dB L_{Aeq} 8 hour. These most recently published contours are from 2018 when activity was at its pre-Covid 19 pandemic peak level and is likely to represent a worst case scenario. The noise levels are towards the top of the scale set out in guidance². It is predicted that full operations may return by around 2025-2026, but for the reasons referred to below, noise levels experienced at Stanwell Moor would be unlikely to reach the 2018 levels again.
14. The appellant's noise assessment of November 2021 shows noise levels from aircraft departing from the southern runway for a little under a 2 hour period on the morning of Friday 22 January 2021 of between about 74 and 90 dB $L_{Amax F}$. These represent single noise events. Whilst this monitoring was undertaken during a period when operations were affected by the Covid 19 pandemic, it includes a range of aircraft types. I noted noisy take offs at regular intervals when I visited the site and surroundings.
15. The two runways are generally rotated during the day such that take offs and landings are switched midway through the day to provide relief. There are other noise measures that are being implemented by the airport, including a voluntary Quiet Night Charter whereby the operation of quieter aircraft is promoted between 2300 and 0700 hours. There is also a trend towards quieter aircraft as older models are phased out. Should a third runway go ahead there would be reduced flights from the southern runway.
16. Notwithstanding the above measures and overall trends, the figures are reflective of an area which suffers high levels of noise. The Spelthorne Core Strategy³ (SCS) recognises that Stanwell Moor is one of the areas within the Borough which is worst affected by aircraft noise.
17. In terms of mitigation, British Standard (BS) 8233:2014 recommends noise levels to be achieved within new buildings. For residential properties these equate to 35 dB $L_{Aeq T}$ for living rooms and bedrooms for the daytime period (0700 to 2300 hours) and 30 dB $L_{Aeq T}$ for bedrooms at night (2300 to 0700 hours). However, the guidance referred to in Footnote 2 indicates that, where development is considered necessary or desirable, the internal levels referred to above may be relaxed by up to 5 dB. BS 3632:2015 for residential park homes provides a specification such that they are designed to achieve a minimum sound insulation for external walls and roof of 35 dB R_w .
18. The appellant's calculations indicate that noise levels of 42 dB L_{Aeq} 16 hour for the daytime and 36 dB L_{Aeq} 8 hour for night time would occur in a mobile home. Thus a standard construction mobile home would result in internal noise levels above the relaxed criteria. However, measures could be implemented by the introduction of additional higher density plasterboard and thicker glazing. Alternative forms of ventilation than the standard could also be deployed such as passive attenuated in-wall vents. Calculations indicate that such additional mitigation could achieve 35 dB L_{Aeq} 16 hour for the daytime and 29 dB L_{Aeq} 8 hour

² Professional Practice Guidance on Planning and Noise: New Residential Development May 2017

³ Spelthorne Core Strategy and Policies Development Plan Document adopted February 2009

for night time which would meet the BS 8233 requirements. This would depend on windows and doors being kept shut.

19. In terms of maximum noise levels from departures overnight, as quieter aircraft are likely to be used, an upper limit of 80 dB $L_{Amax, F}$ would be a reasonable basis. The construction of the mobile home would seek to reduce maximum noise levels internally to 45 dB $L_{Amax, F}$. But occupiers could be subject to a number of individual noise events at night over this figure whereby risks to health and well-being are not negligible, based on the guidance referred to in Footnote 2.
20. Moreover, the external noise environment could not be mitigated significantly. The possibility of providing a covered structure within the garden was discussed at the hearing. However, such mitigation, whilst providing some relief, would not prevent residents of the pitch experiencing daytime noise levels well in excess of the World Health Organisation Guidelines for gardens and outdoor living areas.
21. As the appellant's daughter is living on the site in a touring caravan she is already experiencing the high noise levels referred to above. Indeed the touring caravan will not achieve the sound reduction which would be provided by a mobile home. The appellant argues that the development would provide a clear benefit in noise terms for the daughter. However, the pitch would be likely to be occupied, in due course, by a family so more people, including probably children, would be subject to the high external noise levels.
22. All in all the proposal would result in an unsuitable living environment for future occupiers, with particular reference to noise levels. Whilst mitigation would be likely to reduce most internal noise levels to an acceptable level, the external noise environment would lead to the potential for adverse impacts on health and the quality of life. There would be conflict with Policy EN11 of the SCS as aircraft noise levels exceed 66 L_{EQ} . I do not regard the case to represent a one-to-one replacement dwelling as the touring caravan comprises ancillary living accommodation to the house whilst the proposal would result in a new separate household unit.
23. The proposal would not follow policy in the National Planning Policy Framework (the Framework) in that it would result in new development being adversely affected by unacceptable levels of noise pollution. Whilst part of the Plan-making section of PPTS, paragraph 13 refers to local environmental quality, such as noise, being a consideration in planning for traveller sites.
24. In arriving at my conclusions on the issue of noise I have had regard to the 2010 appeal decision at Little Hallingbury, Uttlesford. The circumstances are not directly comparable as the principal source of noise was from the M11 motorway not a major international airport, the policy context has changed and the decision was made on the basis of a temporary permission.

Other considerations

The need for and provision of sites

25. The Council's Gypsy and Traveller Accommodation Assessment (GTAA) of 2018 found a need for 3 pitches for those gypsies and travellers who met the PPTS definition; 7 pitches for households whose status was unknown; and 17 pitches for those households who did not meet the PPTS definition. The need

for all ethnic gypsies and travellers is likely to have been no less than 27 pitches in January 2017, the base date of the GTAA.

26. Meeting the total need would be a reasonable objective having regard to paragraph 62 of the Framework and the housing needs of different groups. In addition the CoA judgement suggests that it is not lawful to distinguish between those who have temporarily or permanently ceased travelling. Moreover, the Housing Acts place a duty on local authorities to consider the needs of people residing or resorting to their District in caravans.
27. No pitch provision has been made since the base date of the GTAA so none of the needs have been met. The emerging Spelthorne Local Plan (eSLP) proposes the allocation of a site for 3 gypsy and traveller pitches on London Road, Staines. The eSLP has very recently been submitted for examination. At this stage it is not clear whether the site would be considered deliverable or developable. There is no 5 year supply of deliverable traveller sites or longer term supply. The appeal proposal would make a small but important contribution to the above unmet need.

Alternative sites

28. I was not made aware of any alternative suitable sites that are currently available to the new household either within the Borough or further afield. For example, there are no vacancies on the public site in Shepperton. Although not supported by any documentary evidence, it was stated that there is no pitch available to the daughter's partner whose family are on a site in Mill Lane, Datchet in the Borough of Windsor and Maidenhead.

Failure of policy

29. The requirement to plan for pitches for gypsies and travellers has been around since Circular 1/94⁴. Other than the potential site in the eSLP, it does not appear that any allocations have been made in Spelthorne over the 28 year period since 1994. Based on the evidence before me, there has been a persistent failure of the Council to put policies in place to meet the accommodation needs of travellers and a corresponding long-standing unmet need for sites.

Sustainability in the round

30. Although the household has not yet formed, when it does so the provision of the pitch would realise the well-documented benefits of a settled base in terms of education and access to health care. There would also be advantages for the general well-being of the family in being settled, and having continual access to basic amenities and a secure living environment. In particular a settled base would be in the best interests of any children and their education, health, safety, and welfare, albeit that the noise environment could have some adverse impacts on the health and well-being of any children who occupy the pitch.
31. A settled base would also achieve the other sustainability benefits set out in paragraph 13 of PPTS, in particular reducing the need for long-term travelling and environmental damage caused by unauthorised encampment, and reflect the traditional lifestyles of living and working from the same location. The

⁴ Department of Environment Circular 1/94: Gypsy Sites and Planning

single pitch development would not result in the site dominating the local community or putting undue pressure on local infrastructure and services. Peaceful and integrated co-existence between the site and local community would be maintained.

Personal circumstances

32. No specific personal circumstances were put forward by the appellant. That said, allowing a pitch very close to her parents would facilitate mutual support between the extended family which is part of the gypsy tradition.

Other matters

33. It was confirmed that the site lies outside the Heathrow Airport Public Safety Zone. As the pitch would be within an enclosed garden there would be no material impact on the character and appearance of the area. A single household occupying the site would not give rise to undue noise and disturbance for adjoining residents. There is no evidence of any nature conservation interest on the site or that the development would lead to drainage or flood risk issues.

Planning balance and conclusions

34. 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.
35. The proposal would represent inappropriate development in the Green Belt. There would also be modest harm caused to Green Belt openness. In accordance with the Framework, substantial weight should be given to the harm to the Green Belt. I have also found harm in relation to the provision of an unsuitable living environment for future occupiers because of noise to which I attribute considerable weight.
36. In terms of factors in favour, significant weight should be afforded to each of the following - the unmet need for traveller sites in the Borough, the lack of alternative sites, and the failure of policy. The Council has taken some small steps to meeting the needs by making some progress with the eSLP. But it has taken a long time to make such progress. In relation to failure of policy, the Council has not complied with its duties under the Housing Acts. Questions about whether equality of opportunity have been advanced, as required by the Equality Act 2010, also arise as a result of failure of policy.
37. Meeting the sustainability considerations set out in PPTS is also a factor in favour to which moderate weight should be attached. Putting to one side the particular circumstances of the gypsy household who would occupy the site, there are positive implications for the human rights of travellers and best interests of traveller children in general from increasing the supply of traveller pitches.
38. The personal circumstances of the household, and in particular their need for a settled base, is a consideration in favour. There are close family ties to the occupiers of 1 Minerva Close. However, meeting the health and education needs of the prospective occupants is not dependent on this particular location. There are currently no children so education would not be disrupted. Although the household has a preference to live close to parents, the priority

is to find a settled base. Nevertheless, the personal circumstances should still be afforded moderate weight in the planning balance. A settled base would meet the Article 8 Human Rights Act requirements of the family's right to a home and a private and family life and allow the household to live close to family as part of their traditional way of life.

39. Overall, my conclusions are that the Green Belt harm by reason of inappropriate development and loss of openness, together with the harm caused by an unsuitable living environment, are not clearly outweighed by other considerations - the unmet need for traveller sites in the Borough, the lack of alternative sites, the failure of policy in providing sites and a 5 year supply, the sustainability benefits, and the personal circumstances of the prospective site occupants. These considerations, taken together with the equality, human rights and best interests of the children benefits which flow from additional provision, are not sufficient to constitute the very special circumstances necessary to justify permission. My conclusions have taken into account 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.
40. Although substantial weight should be afforded to Green Belt harm, this in itself would be clearly outweighed by other considerations because the level of harm is towards the bottom of the scale. However, in this case there is a clear policy imperative to preventing additional residential development, however modest, where noise levels from Heathrow are excessive, notwithstanding that one of the future household has lived on the site for 6-7 years. In respect of noise, Stanwell Moor is singled out as being particularly badly affected. Whilst trends are likely to see an overall reduction in aircraft noise, levels will still remain high.
41. The proposal would conflict with Policy HO6 of the SCS as very special circumstances have not been demonstrated and the location would not be environmentally acceptable. There would also be conflict with Policy GB1 of the Spelthorne Borough Local Plan⁵ as openness would not be maintained. I have also found conflict with Policy EN11 of the SCS.
42. The above policies relate to travellers, the Green Belt, and noise. They are the most important policies for determining the application. The proposal would conflict with the development plan overall. However, Policy HO6 is not consistent with national policy as it does not set pitch targets for gypsies and travellers or identify deliverable and developable sites. Policy GB1 was formulated over 20 years ago and is not consistent with Green Belt policy in the Framework. These policies should be afforded only limited weight. That said, the policies of the Framework relating to Green Belt provide a clear reason for refusing the development. Material considerations do not indicate that the proposal should be determined other than in accordance with the development plan.
43. In reaching the above conclusions, I have considered whether conditions could make the development acceptable. However, although internal noise could be combated to an extent, conditions could not mitigate the harm caused by the external noise environment to make the development acceptable overall.

⁵ Adopted April 2001

44. I have also considered whether a temporary permission would be appropriate as an alternative to dismissing the appeal on the basis that planning circumstances may change at the end of such a period. A temporary permission would time-limit the Green Belt harm and that caused by the noise climate.
45. The eSLP, thus far, has only proposed to allocate one small site. However, the examination of the eSLP may result in a change in approach, such as the introduction of further site allocations, taking into account the CoA judgement and updated evidence or representations. Therefore, planning circumstances might change in the next year or so.
46. However, I am mindful of paragraph 27 of the PPTS in relation to temporary planning permissions in the Green Belt. A period of occupation of the site would still lead to harm to the Green Belt and other significant harm which would not be outweighed by other material considerations.
47. Dismissal of the appeal would be unlikely to lead to the household forming and resorting to a roadside existence. Nonetheless there would still be interference with the Human Rights of the household. I have carefully considered whether such a result would be proportionate in the circumstances having regard to Human Rights provisions, including the right to a home and family life and the positive obligation to facilitate a gypsy way of life. However, the environmental harm which would continue to be caused by the development would be considerable. Taking into account all material considerations I am satisfied that these legitimate objectives can only be adequately safeguarded by dismissal of the appeal.
48. I have also had due regard to the public sector equality duty at Section 149 of the Equality Act 2010. However, the Green Belt and other objections are strong countervailing arguments.
49. I have carefully considered all matters raised. Based on the evidence before me, I conclude that the appeal should be dismissed.

Mark Dakeyne

INSPECTOR

