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## Appeal Decisions

Hearing held and site visit made on 19 November 2019

by John Felgate BA(Hons) MA MRTPI

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

Decision date: 7<sup>th</sup> January 2020

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Appeal A: Ref. APP/K0425/W/18/3212259

Plots 2 & 3, Askett Village Lane, Askett, Buckinghamshire HP27 9LF

- 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 Mrs Emily Doe against the decision of Wycombe District Council.
  - The application Ref 17/06262, dated 8 May 2017, was refused by notice dated 19 July 2018.
  - The development proposed is described as: **"Material change of use of land for stationing of caravans for residential occupation for Gypsy-Traveller site, with associated development (creation/alteration of access from highway, hard standing for access track and yard area, septic tank, gas tank, utility building), - part retrospective"**.
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Appeal B: Ref. APP/K0425/W/18/3212260

Plots 4 & 5, Askett Village Lane, Askett, Buckinghamshire HP27 9LF

- 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 Jason Doe against the decision of Wycombe District Council.
  - The application Ref 17/06263, dated 8 May 2017, was refused by notice dated 19 July 2018.
  - The development proposed is described as: **"Material change of use of land for stationing of caravans for residential occupation for Gypsy-Traveller site, with associated development (creation/alteration of access from highway, hard standing for access track and yard area, septic tank, gas tank, utility building), - part retrospective"**.
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### Decisions

1. The appeals are dismissed.

### Preliminary Matters

2. During the period when the applications were under consideration by the Council, amended descriptions of the proposed developments were agreed between the Council and the appellants, as set out above. At the same time, various new or amended plans were submitted, including a 1:2500 location plan, a layout plan, and utility building plans, for each site. These additional plans are not in dispute. I have dealt with the appeals on this agreed basis.
3. As originally submitted, the descriptions of the two developments included reference to the proposed numbers of caravans on each site. In the revised descriptions, these numbers are now omitted, but it is agreed that, if permission is granted, the numbers of caravans can be controlled by conditions. For the avoidance of doubt, the numbers now sought by the appellants, on Plots 2 and 3 (the Appeal A site), are one static mobile home and two touring caravans; and on Plots 4 and 5 (Appeal B), three static units and three tourers. I have again dealt with the appeals on this basis.

4. In both cases, the Council refused planning permission for four reasons. Subsequently, in response to further information submitted by the appellants, the Council has withdrawn its refusal reasons relating to surface water drainage and biodiversity, subject to these matters being dealt with by conditions.
5. Both developments have been partly implemented, with some of the proposed caravans, hardcore surfacing and fencing in place, and occupied by the appellants and their families. I understand that these works were carried out, and the use of the land commenced, in March 2017. I have dealt with the appeals on the basis that permission is sought retrospectively for the use of the land and the works already carried out, subject to any modifications which might be required by conditions.
6. In 2002, a High Court injunction was issued against the stationing of caravans or laying of hardcore on a larger area of land which includes the appeal sites. For the avoidance of doubt, the injunction is not a planning consideration, and I have given no weight to it in reaching my decision on the merits of these appeals.

#### Relevant Planning Policies

7. The development plan policies most relevant to the appeals are contained in the Wycombe District Local Plan adopted in August 2019 (the WDLP), and the Longwick-cum-Ilmer Parish Neighbourhood Plan, made in March 2018 (the LIPNP). The policies of the Wycombe Core Strategy adopted in 2008 have now been superseded by the WDLP.
8. In the WDLP, the appeal sites lie within the countryside beyond the Green Belt, where development is restricted to certain categories by Policy DM44. These categories include traveller sites, provided they comply with the criteria set out in Policy DM26. In the present appeals, the disputed criteria from Policy DM26 are Nos 2(a), which requires sites to relate well to an existing settlement, with access to services, and 2(f), relating to visual impact.
9. Also in the WDLP, the appeal sites fall within the Princes Risborough Strategic Buffer, which surrounds the **town's** planned major expansion area. Policy PR5 requires developments within the Strategic Buffer, apart from open space uses and essential infrastructure, to be small in scale, to protect rural character.
10. Throughout the District, WDLP Policy DM32 requires development to protect and reinforce landscape character and settlement patterns. Policy DM33 seeks to ensure that all developments have safe and convenient access to jobs, services and facilities, avoiding reliance on single occupancy car trips.
11. In the LIPNP, the appeal sites are within the Longwick Rural Identity Buffer, where Policy A3 seeks to retain the current rural green gap between settlements. Within this area, the policy provides for transport and other community infrastructure, associated with the growth of the nearby settlements, but only where such facilities **are designed to reflect the area's** rural character and amenity.
12. These development plan documents are to be read alongside the relevant national policies in the National Planning Policy Framework (the NPPF) and the Planning Policy for Traveller Sites (the PPTS).

## Main Issues

13. In the light of all the submissions before me, the main issues in both appeals are as follows:

- the proposed **developments' effects on the character and appearance of the area and its landscape;**
- the **developments'** effects on the buffer areas identified in relevant policies, and on the separation between settlements;
- whether the appeal sites are well related to existing settlements and local facilities;
- whether there is an unmet general need for gypsy and traveller sites in the area;
- and the weight to be given to the housing needs and other personal circumstances of the appellants and their respective families.

## Reasons for the Decisions

### *Effects on the character and appearance of the area and its landscape*

14. The two appeal sites form part of a large field, lying within a broad tract of flat, **open farmland to the north and west of Prince's Risborough**. The surrounding landscape is characterised mainly by large arable fields, with well-maintained hedgerow boundaries. From many of the local roads and footpaths, extensive views are available, extending into the far distance. To the southeast, the Chiltern escarpment forms a striking backdrop, with Whiteleaf Hill a notable landmark. Although punctuated by occasional dwellings and farm buildings, the **area's** predominant characteristic is a strong sense of space, openness and tranquillity. Although not subject to any special designation, the landscape seems to me to be one of moderately high visual quality.
15. The appeal sites lie apart from any other built development. The sites themselves have no special features, and are not unduly prominent, but nonetheless, they form an integral part of the surrounding landscape. Other than the fencing that has already been erected in connection with the appeal proposals, there is nothing separating the appeal sites from the remainder of the larger field of which they form part. Likewise, apart from the unauthorised development that has taken place on them, nothing else of note distinguishes the appeal sites from any other part of the local rural surroundings.
16. From Askett Village Lane, the views into each of the appeal sites are now of mobile homes, high fences, hard surfacing, vehicles and domestic paraphernalia. Although some new planting has taken place, this is primarily domestic or ornamental in nature. All of these features are visibly at odds with the surrounding landscape. If the appeals were allowed, the existing development would be accompanied by the two proposed utility buildings, plus the addition of further caravans and vehicles. This would exacerbate the **site's** current incongruous appearance in relation to its otherwise rural setting.
17. Granting permission could potentially secure a more sympathetic style of fencing and planting, through conditions, but the inward views **at the site's two** entrances could only be screened by the use of solid gates, which themselves would be an alien and urbanising feature. Furthermore, whilst the existing

close-boarded fencing is an unacceptably harsh feature, any change to a more open style would increase the visibility of the caravans and vehicles. To my mind, none of the conditions proposed would be likely to be effective in mitigating **the development's adverse visual impact**.

18. I therefore conclude that, in these surroundings, the appeal proposals would result in an intrusive and unsightly development, **at odds with the area's rural character and landscape quality**. Their effect would thus be harmful to the **area's character and appearance**.
19. Having regard to Policy DM32 of the WDLP, the developments would fail to reinforce or respond positively to the **landscape's** character or attributes. I can see nothing in either the PPTS or the NPPF to support the proposition that landscape policies such as this should be applied with less rigour to gypsy or traveller developments. And in any event, the schemes would also be unable to successfully address matters of visual impact, as required by WDLP Policy DM26(2f), which is itself directed specifically at gypsy and traveller sites. The proposed developments therefore conflict with these up-to-date development plan policies.

*Effects on buffer areas and separation between settlements*

20. The Princes Risborough Strategic Buffer is intended to help maintain the physical separation of the town, and its planned new expansion area, from the surrounding villages. The aim of the Longwick Rural Identity Buffer is to preserve **Longwick's distinct rural identity**.
21. The appeal sites lie within these two buffer areas, at a point where the separation between nearby settlements is at its narrowest. The Princes Risborough expansion area is a short distance to the southwest. To the southeast lies Askett village. The hamlet of Meadle is to the northwest. All of these existing or planned settlements are within two fields of the appeal sites. The village of Smoky Row lies just over half a mile to the northeast. The appeal sites therefore occupy a highly sensitive location.
22. The appeal developments would be located centrally within this narrow gap, dividing the spaces between the surrounding settlements, and fragmenting the countryside within the two buffer areas. The developments would thus fail to preserve the impression of a green gap, or to **protect the buffers' rural character**, as required by WDLP Policy PR5 and LIPNP Policy A3.
23. Although Policy PR5 allows for small-scale developments in the Strategic Buffer area, there is no evidence that this is intended to allow developments of the size proposed in this case. In any event, in the case of the Longwick Buffer, Policy A3 contains no similar concession. I can see nothing in either local or national policy to suggest that gypsy and traveller sites should be treated as an exception to these recently-adopted development plan policies.
24. To my mind, the developments now proposed, either together or singly, would make a significant incursion into both the Strategic and Longwick Buffers, reducing their effectiveness and undermining the aims of the relevant policies. As such, the developments would conflict with Policies PR5 and A3.

*Relationship to existing settlements and local facilities*

25. The appeal sites are within walking distance of two public houses, at Askett and Smoky Row, which are about 700m and 1 km away respectively, and also within about 1.2 km from the railway station at Monks Risborough. The potential to walk to these facilities counts modestly in favour of the appeal sites. But nevertheless, the range of facilities within walking distance is small, and would clearly not meet most **occupiers'** everyday needs.
26. Furthermore, the routes to these walkable facilities are along unlit rural roads, without footways. In the case of the station, there is also the possible option of using an off-road public footpath, but this is largely an unmarked route through cropped fields. There is anecdotal evidence that one of the present occupants walks daily to access public transport services for work and education, but realistically this seems likely to be the exception rather than the norm. To my mind, none of the available walking routes offers a safe or convenient prospect for regular use, other than by the most able and the most determined. None is suitable for all users, or all weathers.
27. Beyond these immediate facilities, the nearest primary schools, at Monks Risborough and Great Kimble, are both about 2km from the site. The nearest convenience shops are at the Longwick petrol station, the farm shop at Meadle, and the Place Farm Way parade in Monks Risborough, all of which are between 1.75km to 2km away. None of these facilities are particularly distant, in the context of a rural area, but realistically none is likely to be walkable by most occupants on anything more than an occasional basis. And although the distances are within cycling range for an able-bodied adult, this is unlikely to be seen as a practical option for shopping trips, or suitable for children of primary school age. For most day-to-day trips therefore, there would be no practical alternative to the car.
28. I fully accept that, in a rural area such as this, the opportunities for sustainable transport can rarely be expected to match those available in towns. It is also true that the PPTS contains no specific requirements in this respect. But this does not mean that transport considerations are irrelevant. The NPPF advises that patterns of growth should be managed to support national transport policy objectives, which include promoting more sustainable choices, and minimising environmental impacts. The PPTS also makes it clear that decisions on gypsy and traveller applications, like any other, must have full regard to relevant policies of the development plan.
29. In addition, having regard to **Policy DM26's criterion 2(a)**, it also seems to me that the aim behind this element of **the WDLP's traveller sites policy is not only** to support sustainability objectives, but also to foster social integration, rather than isolation from the settled community. This aim is in line with paragraph 13(a) of the PPTS, which seeks to promote peaceful and integrated co-existence. The location of the appeal sites, some 500m or so away from the edge of Askett village, would fail to accord with this objective.
30. I conclude that the proposed developments would not be well related to any existing settlement, nor would they have good access to local services and facilities. In these respects, the developments would conflict with the relevant provisions of WDLP Policies DM26 and DM33.

*General need for gypsy and traveller sites*

31. The most recent assessment of the need for gypsy and traveller sites in the area is the county-wide GTAA<sup>1</sup> dated February 2017. The period covered by the assessment is 2016-33. For Wycombe District, the GTAA found no identified current or future needs relating to households meeting the nationally-recognised '**planning definition**' of gypsies or travellers<sup>2</sup>. A potential need for up to 7 new pitches was identified, arising from households whose status in relation to the PPTS definition was unknown. Based on data gathered at national level, the **GTAA's authors suggested this potential need was likely to** translate into an actual need for one pitch.
32. Between the base date of the GTAA in February 2016 and the adoption of the WDLP in August 2019, planning permissions were granted for 6 additional gypsy and traveller pitches. Taking account of the needs identified in the GTAA, and the subsequent permissions, plus **the District's other existing** provisions, the WDLP identifies no further needs arising up to 2028, and then a need for only 2 further pitches during 2028-33. This relatively small level of remaining identified need, and any other needs arising during the plan period, are envisaged to be capable of being met through the operation of the criteria-based Policy DM26, without the need for any new site allocations.
33. I **note the appellants' criticisms of the GTAA methodology**, including incomplete survey coverage, the low success rate in conducting interviews, the lack of a specific allowance for inward migration, a disputed interpretation of the PPTS definition, and a certain scepticism over the notional 10% conversion rate for '**unknown**' households. However, most of these issues were raised in representations made to the WDLP Examination, following which the Examining Inspector found that **plan's** approach to gypsy and traveller provision was based on clear and robust evidence, and was consistent with national policies.
34. I share that view. I accept that some needs may emerge within the area which are not reflected in the GTAA, whether due to migration or travelling patterns, or simply the inherent difficulties of collecting all the necessary information. But the WDLP allows for such eventualities through Policy DM26. The fact that some permissions have subsequently been granted under that policy (or its predecessor in the previous Core Strategy) seems to me to demonstrate that the criteria-based approach need not be an obstacle to increasing local provision in appropriate cases.
35. I therefore conclude that there is no evidence of any underlying level of unmet general need in the area. Nor is there any reason to think that the Local Plan fails to make adequate provision for gypsy and traveller needs.

*The needs and circumstances of the appellants and their families*

36. The circumstances **of the appeal sites' occupiers**, both existing and proposed, are undisputed. On Plots 2 and 3, the appellant Emily Doe and her husband Henry, have lived on the site since March 2017. At one time, they say they had a pitch on a site in southern Bedfordshire, but after a fire they felt unsafe there, and left. After that, they shared with various family and friends, or lived on the roadside, until moving onto the appeal site. They now have nowhere

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<sup>1</sup> The Aylesbury Vale, Chiltern, South Bucks and Wycombe District Councils' Gypsy, Traveller and Travelling Showpeople Accommodation Assessment, February 2017

<sup>2</sup> Annex 1 of the PPTS.

else to live. Emily suffers multiple health problems, some of which are potentially serious. Their eldest daughter Marie, who wishes to join them, with a young child of her own, has a house, also in Bedfordshire, but suffers from depression there, due to a cultural aversion to bricks-and-mortar housing. The same aversion is said to affect the whole family. This has prevented Emily and Henry from applying to any local authority for rehousing. **The couple's** other two adult offspring, who are not currently proposing to move the appeal site, live on caravan sites elsewhere, and are unable to help. In Emily and **Henry's** submission, for them and for Marie, the only alternative to living on the appeal site would be a return to the roadside.

37. As regards Plots 4 and 5, the appellant Jason Doe comes from Oxfordshire. He and his wife Jane also moved onto the appeal site in 2017, together with **Jane's** mother Jean Bull, and their five adult children, one younger child aged 11, and two pre-school aged grand-children. Prior to this, Jason and Jane say they lived temporarily on a site in Hertfordshire, but otherwise never had a pitch of their own, and lived mainly on roadsides. Jason and Mrs Bull both have some health issues, including at least one which is potentially serious. One of Jason **and Jane's adult children is in full-time** education, and also in part-time employment locally, but otherwise the adult male members of the family depend on itinerant work. None has ever lived in a house. None appears to have anywhere to live apart from the appeal site, and again they argue that their only other option is a roadside existence.
38. I fully acknowledge the hardships that must have been involved for the appellants and their families, due to having no lawful settled base prior to taking up occupation at the appeal sites. And as long as that occupation remains unlawful, a good deal of the uncertainty and worry is likely to continue. Making the appeal site into a permanent home would relieve that stress, and would also benefit **the children's education**, and the health and well-being of all family members. National policy in the PPTS seeks to increase provision in suitable locations, for just these kinds of reasons. These potential **benefits to the site's occupiers, and to the PPTS's aims, carry some weight.**
39. On the other hand however, it is also clear that **the appellants'** occupation of the appeal sites has been brought about by deliberate unauthorised development. When they moved onto the sites in March 2017, and installed hard surfacing, fencing, drainage and the like, the appellants themselves and the other adult members of their families were fully aware that their actions were unlawful. There is no suggestion that these actions were triggered by any kind of sudden emergency. By then, the land had already been in their ownership since 2006, with the intention throughout of eventually moving onto it, and yet no attempt was made to seek planning permission in advance of undertaking the development. These decisions made by the appellants and their families were not forced upon them, but were theirs alone. It is difficult to escape the conclusion that this was a calculated strategy, designed to influence the outcome of a subsequent planning application. The Written Ministerial Statement issued in December 2015<sup>3</sup> makes it clear that where intentional unauthorised development is carried out in this way, this should be a material consideration, to be weighed in the planning balance. To my mind, this approach is justified in the present case, because to do otherwise would be

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<sup>3</sup>Statement by the Minister of State for Housing and Planning, dated 17 December 2015: 'Green Belt Protection and Intentional Unauthorised Development'

to appear to reward abuses of the system, and thus to undermine public confidence in planning.

40. Viewed in this light, the **appellants' contention that the appeal sites** are the only ones available to them is significantly weakened. Having decided in 2006 that these sites were their only preferred option, and committed themselves financially at that time, it is not credible to think that they have ever looked for or seriously considered any other options since then. The appeal sites suited the appellants because they were available on terms acceptable to them, but there seems no other reason why their needs could not equally have been met on any other site available on similar terms, nor any reason why such a site should have to be located in Wycombe District. Their occupation of the appeal sites was therefore not in any sense a last resort, but was a conscious choice, in order to gain an advantage in the planning process. In these circumstances, **the weight that attaches to the families' personal needs** is somewhat reduced.
41. The best interests of the children must be a primary consideration, and I accept that the two school-aged and two younger children would benefit from having a settled home base, with the ability to attend school regularly and form friendships outside their own community. But that does not necessarily mean that their best interests require them to live at the present appeal sites, **particularly given the sites' physical separation from the area's settled communities**. There is a risk that living in this location would increase and perpetuate feelings of social isolation. No other single consideration may be given more weight than **that given to the children's interests, but** in this case those interests are not clear-cut. In any event, for the reasons already set out, this is one consideration among several. In the circumstances, the interests of the children add some weight to the appeals, but are not determinative.
42. Overall, I acknowledge that the opportunity to remain at the appeal sites would have significant benefits for the occupiers. But that benefit is a private one accruing to them, whereas the factors weighing against the appeal are matters of general public interest. In the context of all the other considerations that I have identified, I consider that the benefits to the occupiers carry no more than moderate weight.

#### Overall Planning Balance and Conclusions

43. The appeal proposals conflict with **the WDLP's Policy DM26 criterion 2(f) and Policy DM32, due to its adverse impact on the landscape and the area's character and appearance. The developments also conflict with Policy DM26's criterion 2(a) and Policy DM33** due to their poor relationship to existing settlements and facilities. The failure to accord with Policy DM26 on these two criteria also results in a conflict with the **WDLP's general countryside policy, DM44**. In addition, the appeal schemes conflict with WDLP Policy PR5 and LIPNP Policy A3, because of their incursion into the two Buffer policy areas, and their impacts on the separation between settlements. The proposals are therefore in clear conflict with the development plan as a whole.
44. On the other side of the planning balance, the needs of the appellants, and the benefits to the occupiers, are a material consideration which counts in favour of the appeals. But the weight that this **carries is offset by the appellants' own actions in carrying out intentional unauthorised development, and occupying the appeal sites unlawfully, without due regard for the planning consequences. The PPTS seeks to facilitate travellers' traditional way of life, and allowing the**



appeals would help towards that aim. But the PPTS also makes it clear that this should be done in a way that protects amenity and the local environment, and accords with relevant development plan policies. For the reasons identified, the appeal proposals would not do so. No other significant material considerations in favour of the appeals have been substantiated. In my judgement, the conflict with the development plan is not outweighed.

45. I have considered whether the harm could be overcome by conditions. A temporary permission would limit the duration of the harm, but there is no indication that either the **planning circumstances or the appellants' situation** are likely to change within any definable timescale. A personal permission in favour of the named occupiers would not change the planning balance as set out above, and would not lead me to any different conclusion.
46. A refusal of planning permission would infringe the rights of site occupiers under Article 8 of the Human Rights Act 1998, with regard to their private and family lives. Such an infringement is not to be taken lightly, especially as the consequences might well involve further hardship, including for the four minors. However, Article 8 rights are qualified. The infringement of those rights must be weighed against the public interest in upholding the aims of statutory planning policies, and maintaining public confidence in the planning system. In this case the harm that would be caused to the local environment, and to the policies that I have identified, would be significant. These are proper planning objections that cannot be overcome in any other way than by refusing planning permission. In the circumstances, such a refusal represents a proportionate response.
47. In coming to this decision, I have also had regard to the requirements of Section 149 of the Equality Act 2010. I recognise that a refusal of planning permission would not achieve any positive benefits for the appellants, either in terms of minimising the disadvantages that they suffer, or meeting their distinct needs, or advancing their equality of opportunity in any other way. But neither would such a decision leave them worse off in any of these respects. For similar reasons to those set out above, I consider that the refusal of permission is proportionate.
48. I have considered all the other matters raised, but none changes these conclusions. For these reasons, the appeals fail and are dismissed.

*J Felgate*

INSPECTOR

## APPEARANCES

### FOR THE APPELLANT:

Alison Heine BSc MSC MRTPI	Planning Consultant
Emily Doe	Appellant (appeal A)
Henry Doe	Partner of Emily
Jason Doe	Appellant (appeal B)
Jane Doe	Partner of Jason
Jean Bull	Mother of Jane
John Doe	Son of Jason & Jane
Lisa Doe	Partner of John
Jimmy Doe	Son of Jason & Jane
Garry Doe	Son of Jason & Jane

### FOR THE LOCAL PLANNING AUTHORITY:

Philippa Jarvis BSc DipTP MRTPI	Planning Consultant
Stephanie Penney BA(Hons) MA MRTPI	Principal Planning Officer

### OTHER INTERESTED PERSONS:

Cllr Alan Turner	Ward member for The Risboroughs
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### DOCUMENTS

- 1 Agreed statement of common ground, dated 14 November 2019
- 2 Emily Doe – hospital appointment letter, 31 July 2019
- 3 Emily Doe – hospital appointment letter, 19 September 2019
- 4 Emily Doe – hospital appointment letter, 10 July 2019