The Planning Inspectorate

Appeal Decisions

Inquiry Held on 26 & 27 July 2017 and 5-7 June 2018

Site visits made on 27 July 2017 and 6 June 2018

by Simon N Hand MA

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

Decision date: 28 June 2018

Appeal A: APP/X0360/W/16/3150332
Land to the north west of Nelsons Lane, Hurst, Wokingham, RG10 0RR

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Mr George Cauldwell against the decision of Wokingham Borough Council.
- The application Reference 152605, dated 14 August 2015, was refused by notice dated 20 January 2016.
- The application sought planning permission for use of the land for the stationing of caravans for residential purposes for 2No gypsy pitches together with the formation of additional hardstanding and utility/dayrooms ancillary to that use without complying with conditions attached to planning permission granted on appeal Ref APP/X0360/A/13/2190825, dated 9 January 2014.
- The conditions in dispute are Nos 1, 2, 3 and 5 which state that: (1) The use hereby permitted shall be carried on only by the following: Mr Andrew Loveridge, Miss Amy Danbury and Mr George Cauldwell and their resident dependants, and shall be for a limited period being the period of 2 years from the date of this decision, or the period during which the premises are occupied by them, whichever is the shorter. (2) When the land ceases to be occupied by Mr Andrew Loveridge, Miss Amy Danbury and Mr George Cauldwell and their resident dependents or at the end of the specified temporary period, whichever shall first occur, the use hereby permitted shall cease and all caravans, buildings, structures, materials and equipment brought on to the land, or works undertaken in connection with the use shall be removed and the land restored to its former condition before the development took place. (3) No development shall take place until details of a scheme to restore the land to its condition before the development took place (or as otherwise agreed in writing by the local planning authority) at the end of the period for which planning permission is granted for the use and a timetable for its implementation have been submitted to and approved in writing by the local planning authority. The restoration works shall be carried out in accordance with the approved details and within any such timescale as specified. (5) The development hereby permitted shall be carried out in accordance with the following approved plans: 11_469_003 & 11_469_004.

Appeal B: APP/X0360/C/16/3150373
Land to the north west of Nelsons Lane, Hurst, Wokingham, RG10 0RR

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr George Cauldwell against an enforcement notice issued by Wokingham Borough Council.
- The enforcement notice was issued on 19 April 2016.
- The breach of planning control as alleged in the notice is without planning permission

the material change of use of land to a mixed use including: Parking of motor vehicles and storage.
- The requirements of the notice are (1) Cease the use of the land for parking of motor vehicles and storage purposes (2) Remove from the Land all motor vehicles and all stored items including (but not exclusively) mobile homes, caravans, building materials, rubble, domestic appliances, metal sinks, gas bottles, bicycles, plastic piping, cladding and timber.
- The period for compliance with the requirements is 28 days.
- The appeal is proceeding on the grounds set out in section 174(2) (b), (c) and (f) of the Town and Country Planning Act 1990 as amended.

Decisions

Appeal A - 3150332

1. The appeal is allowed and planning permission is granted for use of the land for the stationing of caravans for residential purposes for 2No gypsy pitches together with the formation of additional hardstanding and utility/dayrooms ancillary to that use at land to the north west of Nelsons Lane, Hurst, Wokingham, RG10 0RR in accordance with the application Reference 152605, dated 14 August 2015 without compliance with condition numbers 1, 2 ,3 and 5 previously imposed on planning permission Ref APP/X0360/A/13/2190825, dated 9 January 2014 but subject to the conditions attached to this decision in the Annex – Schedule of Conditions below.

Appeal B - 3150373

2. The appeal is allowed and the enforcement notice is quashed.

Background to the Appeal

3. In January 2014 an appeal decision[1] was issued which granted planning permission for the stationing of two caravans for residential purposes on the site, limited by conditions to a maximum of two years and to three named persons who were all gypsies.

4. The planning permission was implemented as the two mobile homes were brought onto the site and works began on the two dayrooms that were also permitted. However, the mobile homes were never used for residential purposes and work on the dayrooms ceased after the first few course of breezeblocks had been laid.

5. In August 2015 an application was submitted to the Council for the variation and removal of various conditions with the objective of making the permission permanent. The reason given was the potential occupiers could not afford to develop the site unless it was for permanent occupation. This was refused by the Council in January 2016 and subsequently appealed. In April 2016, after the appeal process had begun, the Council issued an enforcement notice alleging a material change of use to storage, this too was appealed and both appeals were heard at this inquiry. A breach of condition notice was also issued, against which there is no appeal, and this has not yet been complied with.

[1] APP/X0360/A/13/2190825

6. During the course of the appeal the appellants made it clear they wished to change the names on the personal condition. They wished to retain one of the original occupants but remove two others and replace them with one new individual.

Preliminary Matters

7. At the opening of the inquiry the Council applied for Appeal A to be struck out and for the Inquiry to proceed to hear only the enforcement appeal. The Council argued the conditions appeal offended the Wheatcroft[2] principle as the change in names had come only after the original application had been advertised. Since then nothing in the advertising of the appeal would have alerted third parties or other statutory consultees to the name change, which in effect had changed the whole substance of the appeal from one where the appellants pleaded lack of resources to new appellants with differing circumstances from the original ones. A fresh application should be made for a new planning permission for the new occupants.

8. I decided the Inquiry should continue with both appeals. Although there was a change in names the Council had been aware of this for many months and had not been prejudiced in any way. Of the third party letters received for the appeal, most mentioned the change of name, the Parish Council being one of the few not to do so, so some at least of the local residents were aware of the name change. The Inquiry would also have to be reconvened at a later date to deal with evidence of need and this would give the Council an opportunity to alert statutory consultees of the name change and for any further comments to be processed in the usual way. In the event no new comments were received.

Appeal B – The Enforcement Appeal

The Appeal on Ground (b)

9. There is no dispute that the planning permission has been implemented by the stationing of the mobile homes on the land and the beginning of the day rooms. Pre-commencement conditions were discharged including the provision of a restoration scheme which was agreed by the Council. The Council argue however, that once the time limit condition was exceeded, there ceased to be an authorised residential use on the land. As the mobile homes remained on the site but the site was not occupied residentially, they could only be there for storage purposes. There were also various vehicles seen on the land after the time limit condition was exceeded so they must have been parked there not in association with any lawful use.

10. The appellant argues that it is the intention of the owners of the mobile homes that is important. As they had applied, before the enforcement notice was issued, to continue (or to fully commence) their residential occupation of the land permanently, the intention of leaving the mobile homes on the site was clearly to facilitate the future residential use. The vehicles mentioned in the notice are limited to 1 car and 2 vans and they were being parked there as ancillary to the lawful use of the land which after the time limit was exceeded on the planning permission was as a paddock for grazing horses.

11. The scope of the notice is limited to the storage of the two mobile homes and the parking of vehicles. The evidence for the parking of vehicles is limited to

[2] Bernard Wheatcroft Lawful development certificate v SSE and Another (1982) 43 P.& C.R. 233

four visits made by the Council's enforcement officer. The first was made in January 2016 a few days before the time limit condition was breached and a transit van was seen on the site and recorded in photographs. The second visit was made in February 2016 and in addition to the transit was a Volkswagen Golf, which had dust and leaves on it suggesting it had not been moved for a while. There are no photographs of this visit. A third visit was in March 2016 when the transit and the golf had been joined by a small white van. The transit appears to be parked in the same place as in January 2016. In April 2016 a final visit was made. It seems the transit and van had gone but the Golf was there in a different position and, it seems from the photographs, now cleaned. The enforcement notice was issued soon after this visit.

12. The mobile homes were moved onto the land in 2014 in order to facilitate the residential use. Although the planning permission was commenced by the stationing of the mobile homes and the works for the dayrooms, the site was never occupied residentially. In my view therefore the mobile homes were lawfully placed on the land. As the permission was time limited to 2 years any occupation of the site beyond 9 January 2016 would have been in breach of the time limit but not necessarily unlawful. The continuation of the use after the expiry of the time limit condition is not development, but is a breach of condition. Consequently, it seems the mobile homes could have been left on the site, in breach of the time limit condition, but continuing the residential use.

13. Although the mobile homes have not actually been lived in it is accepted the residential use was lawfully commenced and so continues. To enforce against a material change of use to storage in those circumstances the Council would need to show that residential use of the land had ceased and a new use begun. In fact the opposite is the case as a valid application was made before the expiry of the time limit condition to remove it and other conditions to make the planning permission permanent. That application was refused and appealed, and is subject to this decision. As such the future of the site is in limbo until this decision is issued and so it was not unreasonable for the appellant to leave the mobile homes on the land in anticipation of a favourable outcome. There is no evidence to suggest a new storage use has been commenced, the evidence suggests the opposite, that the residential use is continuing in breach of condition. Given the low or virtually de minims level of parking on the land, it is reasonable to conclude that has been ancillary to the continuing residential use of the land rather than creating a new use of parking.

14. The appeal on ground (b) therefore succeeds and I shall quash the notice. There is no need to consider grounds (c) and (f).

Appeal A – The Conditions Appeal

15. The appellant's first contention is that the site is suitable as a gypsy site, without any personal conditions, but that secondly, if personal circumstances are to be taken into account the site should be limited to three occupants, Andrew and Ben Loveridge and Ben's partner. Finally, if necessary, a time limited condition could be applied. It is on this basis I shall determine the appeal.

16. As described above, the residential occupation of the site has not commenced. The appeal site comprises a rectangle of land which would contain two pitches, each with a mobile home (already on site) and a day room (for which the

concrete footings and some low level brickwork exist), and room for parking of vehicles and a touring caravan. In between the two pitches is an existing stables building. This whole area would be covered with hardstanding. Beyond this rectangle is a larger rectangular paddock. In 2017 the site was open and grassed, by the time of my second site visit in 2018 the site was becoming a bit overgrown, but the paddock area had recently been mown.

17. The site lies in the corner of Nelson's Lane and an unnamed lane leading to Broadcommon Road. The road boundaries are hedged, and as I saw in 2017, there were few views directly into the site apart from at the access. Some of the hedgerow screening comprised conifers that had been planted by the proposed occupiers, but these could be replaced with native species subject to a landscaping condition. A number of mature trees surround the site and these have recently been subject to a TPO. This does not seem to affect this appeal. The access has been partly constructed close to one of the trees and there may have been some root damage, but as the appellant points out the access was constructed lawfully and long before the TPO was in place. I shall consider the location of the site in the wider countryside/urban context separately when discussing locational sustainability.

The policy context

18. The main development plan policies are TB10 of the Adopted Managing Development Delivery Local Plan (2014) which deals with gypsy sites and TB21 which requires that developments should address the Council's Landscape Character Assessment and retain or enhance characters and features that contribute to the landscape. Policies also of relevance are in the Core Strategy (2010), CP6, managing travel demand and CP11, proposals outside of development limits. CP2 deals with inclusive communities and refers specifically to gypsies so that gypsy sites should be in or close to a settlement listed in CP9. CP9 classes Hurst, the nearest village to the site, as a limited development location.

19. Policy TB10 is clearly the most relevant. This is a permissive policy that says planning permission may be granted if certain criteria are fulfilled. Criteria b (impact on identity of settlements); d (flooding or hazards); f (loss of neighbouring amenity); g (mixed uses) and h (SPAs) are not relevant. Criterion a) is that the site must be in or adjacent to an existing settlement, which is not quite the same as required by the CP2/CP9 combination, but given that Hurst is the nearest settlement and this is included in CP9, the latter can be set aside. Criterion c) deals with access to services and e) is that any "*unacceptable impacts on the character and appearance of the surrounding landscape will be minimised through….. design*".

20. The Wokingham District Landscape Character Assessment (WDLCA) notes the landscape in the area of the appeal site is of moderate quality and has moderate sensitivity to change. The strategy for the landscape is to conserve and manage the small pastoral fields, winding rural lanes and low key settlement pattern. Hedgerows and pony paddocks would benefit from improved management. A proposal that was contrary to the WDLCA would be contrary TB21 although not necessarily to TB10(e)

21. The relevant parts of CP6 encourage schemes that allow for choice of modes of sustainable travel and minimise the distances people need to travel, which for

this appeal will essentially be dealt with when discussing the location of the site in the context of TB10(a) and (c).

22. CP11deals with development outside of settlement boundaries except for certain exceptions, none of which are relevant here. This policy is clearly not relevant as it is contrary to TB10 and CP2, which envisage gypsy sites adjacent to or close to and therefore outside of settlements in the borough, so it also can be set aside.

23. Following the evidence from the two proposed occupiers the Council and I accept they are gypsies as far as the definition in PPTS is concerned and so the PPTS is relevant as the latest government policy on gypsy sites. Paragraph 13 requires that sites are sustainable in NPPF terms and allow for peaceful and integrated co-existence with the local community. Paragraph 14 envisages sites in rural settings that do not dominate the nearest settled community but paragraph 25 notes that sites in "*open countryside that is away from existing settlements*" should be very strictly limited.

24. Policy TB10 is more restrictive than paragraphs 14/25 which clearly allow for rural sites that are not literally adjacent to settlements, but the Council argued that "adjacent" need not mean directly abutting, but near to, as in the sense of not being "*away from existing settlements*" in PPTS terms. This seems a reasonable interpretation to me as it would also fit with CP2 which concerns gypsy sites "*close to*" but not necessarily adjacent to settlements. Consequently, I consider that TB10 (a), (c) and (e) and TB21 are the key development plan policies in this appeal and they are not are out of date. I shall deal with 5 year housing land supply under need below.

25. Finally I need to consider the previous decision allowed in 2014. I shall deal with the individual conclusions of that Inspector below, but suffice to say here while the decision is clearly a material consideration I am not bound by those conclusions.

Landscape

26. In the 2014 decision the Inspector considered the landscape issue and divided it into character and then appearance. In character terms she found the area was "*an attractive rural landscape, which on the whole, is unspoilt by built development. Nearby and in the wider surrounding countryside there are some isolated dwellings as well as agricultural buildings. On the periphery of Hurst village the dwellings become more concentrated*". In my view this is a fair assessment, except that it rather underplays the amount of development in the area. As I saw on my site visits, opposite the site is a dwelling and a hundred metres or so south of that are two business parks set on each side of the road, one with a café. The nearest, The Grange business park, also appears to have at least one if not several dwellings being built opposite. Beyond the site on Nelson's Lane heading towards Hurst is a large stables complex and a scattering of houses around the junction with Islandstone lane and along Broadcommon Road to the north of the site. The main built up area of Hurst begins further to the north, but there is a straggle of houses down the A321 towards the site which stops nearly a kilometre from the site by road. Thus while the site does, clearly, lie in the countryside, it is part of an area where scattered dwellings and groups of buildings are very much typical. However, this simply reinforces the Inspector's conclusion that "*the introduction of a small traveller site here would not be at odds with the existing*

character or pattern of development in the surrounding area ….as such, the effect on the character of the area would be very limited".

27. On appearance she found, uncontroversially, that the introduction of two mobile homes, two dayrooms and at times two tourers, along with vehicles and possibly families, would "*result in some visual harm to the appearance of this site and the surrounding area*". She found overall there would be a moderate degree of harm to the appearance of the area, as there was already a stables building on the site and it was reasonably screened. It is clear from her comments that now, some 4 years later, the screening provided by the hedgerows and trees has increased and views of the site would effectively be restricted to those from the access, which reduces the harm somewhat.

28. At the Inquiry, the Council's witness came close to suggesting the site lay in a valued landscape in NPPF paragraph 109 terms. However, no evidence was put forward to suggest this was the case and it certainly does not follow from the description in the WDLCA and I do not think it is a valued landscape, or even comes close. The WDLCA describes it to be of moderate quality and this seems fair to me. I also consider the impact of the access cannot be ignored, the details of its construction were agreed by the Council when they discharged the conditions on the 2014 appeal decision. The conifers are unfortunate but that can be dealt with by conditions. Consequently, I consider there would be less than a moderate degree of harm to the appearance of the area. Taken with the limited harm to the character, I conclude there would be only a limited harm overall to the landscape. However, in my view the proposal would not conflict with the WDLCA strategy to conserve and manage the small pastoral fields, winding rural lanes and low key settlement pattern. I also consider that the pony paddocks would benefit from improved management as would the hedgerows, and the latter could be secured by condition. Consequently, I find the proposal does not conflict with policy TB21 as it addresses the LCA and does little harm to characters and features that contribute to the landscape and so is in accord with WDLCA strategy. However, there is limited harm to the landscape that cannot be mitigated by screening and so it is in conflict with TB10(e) and so, as the previous Inspector found, there would be limited harm to the Council's policies.

Sustainability and social cohesion

29. There are three key issues here, firstly whether the site is away from the settlement of Hurst, secondly whether it provides a choice of modes of sustainable transport and thirdly whether it allows for the peaceful and integrated co-existence with the local community.

30. There was much discussion at the Inquiry whether the site lay close to or distant from Hurst. It is always difficult to say how far from one place another is, the appellant says the site is 2km from Hurst, I measure it as 1.5km along the roads to the roundabout on the edge of Hurst, so 2km seems a fair measure. It is 1.1km as the crow flies to the same roundabout.

31. There is a footpath that links the end of Nelson's Lane directly to the A321 just south of Hurst from where there is a footpath along the main road into the village. This distance is 1.5km and given the sporadic nature of development in the immediate area and the relative proximity to Hurst, I would consider the site is not 'away from' existing settlements, and is certainly not in open

countryside. Consequently, I do not consider it is contrary to TB10(a) or PPTS paragraph 25.

32. Hurst itself is a moderate sized village with a primary school and other services and good bus links to Reading, while a number of other towns, such as Wokingham are within 4km. The distances noted above are all walkable and easily cycled. The walk to Hurst is along, for the most part, quiet and pleasant lanes and paths. However, I was shown the area that was badly flooded one winter, which would have blocked off the footpath, and the path itself was for much of its length muddy, so it would not be an attractive route in wet conditions. It was also unlit, as are the lanes, which would make regular walking or cycling unattractive. It is an easy cycle into Hurst, a journey that can be made entirely along back lanes, but rather like the walk, this would be pleasant in the summer, but much less so in the dark and wet. On balance therefore I share the previous Inspector's concerns about the location of the site and whether it really does offer a choice of transport modes. As the previous Inspector held, most of the journeys would, in reality, be made by car. The appeal site would thus seem not to be sustainably located and so is not in accord with TB10(c) and CP6.

33. The previous Inspector also found the likely use of the car would count against social cohesion. The appellant argued this was mistaken as integration came from using local facilities, not from talking to people on the journey to those facilities. I agree that having a settled base is much more likely to promote peaceful integration than living on the roadside, but if that is all there were to it there would be no need to the PPTS to have it as a separate criterion at paragraph 13. In my view this is a case for considering what is likely to happen, rather than what is possible. If someone is going to go shopping in the car for example, they are more likely not to drive to a local shop regularly, but to go occasionally to the nearest superstore and do it all in one go. I think it is self-evident that if you can walk easily to your local shop, school or pub you are more likely to do so than if you need to drive and so you are more likely to meet people, stop and chat and so on. Once you get in the car, then you have a much wider choice available and are likely to exercise that choice. I therefore consider the location of the site is not likely to encourage peaceful integration.

34. Taking this all together I find the site is not away from the settlement of Hurst in policy terms, but is not close enough to provide a genuine choice of transport modes or to properly encourage peaceful integration. However, the distances are marginal, so although this counts against the proposal, the harm is only moderate.

Need for gypsy pitches

35. The Council rely on a recently completed GTAA[3] to identify the demand for pitches in the district. Although there was considerable dispute about the details of numbers, the key area of disagreement seemed to me to be that the GTAA relied almost exclusively on actual evidence from interviews carried out with gypsy families. The results were then increased by a certain factor to allow for those who weren't interviewed. This was criticised by Mr Green on several grounds, firstly it missed out a lot of young men who were out travelling, secondly it relied on complete answers from those being

[3] Gypsy and Traveller Accommodation Assessment (September 2017)

interviewed, whereas gypsies are notoriously unwilling to talk about non-family members, which would lead to under reporting of doubling-up for example; and thirdly it assumed questions of intent were reliable. Mr Green argued that it was unwise to rely on the views of parents as to how many of their children aged 13-15 would want to move out and establish a separate pitch in the next 5 years. What teenager knows what they want to do when they are 15!

36. Mr Green preferred to use statistics derived from census results to give an overall picture of what was likely to happen. For example in the case of emerging need the GTAA figure based on interviews is 3. This suggests out of 121 gypsy households identified there will only be 3 teenagers who will form a new household in the next 5 years. Mr Green relies on theoretical household formation rates based on the typical age profile of gypsy families. This gives an equivalent figure of 12 new households, although Mr Green argues the base number of 121 is also too low.

37. Similarly for those wanting to move from bricks and mortar, although both parties rely on a 5% figure (more or less) of those wanting to move out of houses to caravans, Mr Green's use of national census data provides a much larger figure than the GTAA which identifies many fewer households living in bricks and mortar to start with. Although there was considerable discussion about the needs of those wanting to move out of or into Bricks and Mortar, and whether they were taken account of, the fundamental difference was the larger base figure used by Mr Green.

38. Dr Bullock, representing ARC4 who produced the GTAA, accepted that the GTAA did seem to have a lot of missing teenage boys, and in many instances did not dispute the assumptions underlying Mr Green's calculations, but the GTAA tends to rely on empirical evidence for the current situation and the immediate future, but then turns to statistics for the periods beyond 5 years.

39. I note from the decisions I have been given that Inspectors have taken different views on how to handle criticisms of GTAAs, but it seems to me the argument over numbers should be treated in the same way as for housing land supply. The GTAA acts like an OAN and at this Inquiry has been subject to a similar level of scrutiny. I find many of Mr Green's criticisms persuasive. It is simple common-sense that the GTAA must underestimate emerging need and, on hidden need, there was plenty of evidence given at the Inquiry of over-crowding on certain sites in the District, although the GTAA had no results for doubling-up. Finally it seems inconsistent to me to identify out-migration but have no allowance for in-migration. Clearly gypsies will want to move into Wokingham, the question is how many. The GTAA identifies historically 11 have moved into the District in the last 5 years, which is actually more than the out-migration figures, suggesting a chance there will be net in-migration in the next 5 years, none of which is accounted for.

40. I have considerable sympathy with ARC4 when trying to ascertain the exact picture of a moving population that is traditionally resistant to communication with authority figures, but this seems to me to reinforce the need to temper interview data with general statistics to obtain a realistic picture. It is no surprise that the figures from the GTAA show a low 5 year need but a dramatically increasing figure for years 6-15, using assumptions similar to Mr Green's. As the GTAA is refreshed every few years, if the same set of assumptions are used, this much greater future demand will never be reflected

in the immediate 5 year figures. It will always be jam tomorrow for the gypsy community.

41. All of this leads me to suggest the Council do not have a robust set of figures for current or future need for the gypsy population. Dr Bullock's arguments certainly suggested Mr Green's figures were somewhat inflated, and in my view reality lies somewhere between the two, but closer to Mr Green's figures than to the GTAA. I am aware this is a different conclusion to the previous Inspector's but she was faced with a quite different set of figures and so reached different conclusions. I have also been referred to four recent appeal decisions[4] all with events held in mid to late 2017, and all of which found the GTAA to be robust. However, these were all Hearings, and none of the Inspectors had the benefit of the forensic analysis of the GTAA that I received.

Supply of future sites

42. On supply, there was agreement about several sites identified by the Council which were due to come forward in the next five years, but Mr Green had doubts about Highfield Park. It had a complex history which affected both need and supply. On the former it seems it was not considered to be a gypsy site and so was not counted in the need section of the GTAA, and yet was identified as having a number of gypsy families all of whom have a need who were excluded from the GTAA figures discussed above. On the latter, Mr Green was concerned that planning permissions for plots 1-4, 6 & 10 and for plots 8 & 9, which account for 9 of the Council's 15 sites were included in future supply. He argued these were rented to migrant workers, and not to gypsy families, despite conditions restricting them to gypsies. The Council argued they would be enforcing the conditions at some point in the future. I saw on a site visit for a different appeal that these plots were apparently occupied by non-gypsies, and this was agreed by Dr Bullock at this inquiry and there would seem to have been at least a 5 year history of occupation of most of these plots by migrant workers. The Council denied Mr Green's assertion that they had an understanding with the owner not to upset the situation, but there is no evidence of any actual or impending enforcement action either. The best I can draw from this is that there is a question mark over a substantial part of the Council's supply figure of 15 pitches.

43. The Council also included turnover figures of 1 vacant space a year from Council sites, but according to Mr Green these were illusory vacancies as they would be accounted for by movement within the District, movement out of Bricks and Mortar (not counted in his 5% figure mentioned above) and in-migration, also not accounted for in the GTAA. This criticism would also seem to have some validity which adds further weight to my suspicion that the supply figures are exaggerated.

44. There is also the vexed question of the new definition of gypsies for policy purposes. It is quite clear the Council only need to plan for a 5 year supply for gypsies who meet the policy test. This leaves open the question as to how they will deal with those who are not policy-gypsies. It is clear they will still be culturally gypsies and will still have certain protected characteristics, such as a right to pursue a gypsy way of life and to live in a caravan because of an

[4] APP/X0360/C/3157598, Hearing May 2017, issued August 2017. APP/X0360/W/17/3169294, Hearing August 2017, issued December 2017. APP/X0360/C/15/3085493, Hearing September 2017, issued January 2018. APP/X0360/W/17/3173546, Hearing November 2017, issued January 2018.

aversion to bricks and mortar. That means they cannot simply be accommodated within the standard 5 year housing supply figures, but will require a specific accommodation assessment and the identification of sites for non-policy gypsies. This is inevitably going to look very much like the GTAA process itself. Nevertheless, there is no dispute that the proposed occupiers are policy gypsies.

45. I consider the GTAA underestimates the level of need in the District and it is likely that the Council cannot rely on all the 15 pitches they identify for their 5 year supply. The very latest figures from the Council, provided at the Inquiry suggest they need only find 6.5 pitches for policy gypsies in the next 5 years against the 15 identified supply. Given that I consider 6.5 is likely to be a considerable underestimate and 15 to be an overestimate it suggests the Council do not actually have a 5 year supply in policy terms. On the wider issue of cultural gypsies who fall outside the PPTS definition, the Council accept they have not identified any sites for these gypsies and are currently relying on policy TB10 to provide windfall sites. They intend to deal with their housing needs in the Local Plan update. This was due for examination in December 2018, but that date has now slipped into 2019 with adoption now likely to be 2020. However, this timing does not seem to take into account the sudden need to find sites for all the non-policy gypsies, which in my experience can be a contentious matter. In this wider context therefore the Council are not able to show a 5 year supply. But, the intended occupiers of the site are policy gypsies and in that narrower context, I also am not satisfied the Council can show a 5 year supply.

46. The appellant argues this translates into a failure of policy overall. I do not think the issues surrounding cultural gypsies are relevant to this appeal, and although I have found there is no 5 year supply of sites for policy gypsies this does not necessarily imply a failure of policy. The Council have clearly gone to considerable lengths to commission several GTAAs, and have a good record of granting planning permissions themselves for gypsy sites. They are not a Council that has buried its head in the sand. If there is a policy failure engendered by the lack of a 5 year supply then it is minor.

47. I accept the arguments of the appellant that the lack of a 5 year supply is a material consideration in support of the appeal, and that paragraph 27 of the PPTS does not restrict this material consideration only to temporary planning permissions. However, I cannot agree that it means the tilted balance in paragraph 14 of the NPPF is engaged. That is engaged only when the development plan is absent, silent or its policies are out of date. Paragraph 49, which triggers the tilted balance, is only relevant in housing land supply cases, and it is clear in this appeal the site is being considered as a policy-gypsy site not a cultural-gypsy site, and only the latter could be argued to fall within the housing land supply figures. Otherwise the development plan is not absent, silent or out of date.

The personal situation of the two proposed occupants

48. I turn now to the two proposed occupiers. Andrew Loveridge is currently living in his touring caravan on a strip of land next to an existing gypsy caravan site in Iver. This land has no planning permission and so his situation is unlawful. Ben Loveridge is doubling-up with a cousin on a site in Datchett. This is also in breach of planning control and he could be evicted at any time if the Council

chose to enforce the conditions on the site. Despite the fact that these arrangements have been in place for a number of years there is no long term security for either person.

49. No evidence has been provided that there are any other sites available for them, nor any evidence that they had ever been offered any other sites and failed to take advantage of those offers. It seems clear to me there are no alternatives available and given the lack of security on their current sites there is a risk they could be made homeless at any time.

50. Andrew Loveridge has four children, although the eldest is 19, the youngest is only 6. The children live their mother but will visit their father when they can. His current living arrangements mean that only two can stay at any one time, and it would clearly be in their best interests if their father had a settled base which they could visit. Ben Loveridge is in a long term relationship and is hoping to get married and settle down soon, this too would be facilitated by a settled base. Both keep horses, but there is no real evidence to suggest this plays any significant part in the appeal.

Conclusions

51. Throughout this appeal I have borne in mind the obligations placed on me by the Public Sector Equality Duty and of course have considered the best interests of the children of one of the proposed occupiers as a primary consideration.

52. I have found the impact on the character of the area to be minimal, but there is limited harm to appearance. I have found the site is not close enough to Hurst to provide a genuine choice of transport modes or to properly encourage peaceful integration and this causes moderate harm. Balanced against this I have found the Council does not have a 5 year supply of sites but there is at worst only a minor failure of policy. In my view the site is not suitable as a general gypsy site and the harm I have identified is not outweighed by the lack of 5 year supply.

53. However, the appeal was actually for a personal permission for Andrew and Ben Loveridge. When I take into account the facts of their current accommodation situation, the lack of any alternative sites and the advantages for them of having a settled base, particularly to enable both of them to pursue a more stable family life, Andrew with his children and Ben with his partner, these factors add sufficient weight to outweigh the harm I have identified and justify a personal permission.

54. In reaching this conclusion I have taken into account the fact that there is no need for either occupant to live on this particular site, but they have to live somewhere and there is no good planning reason why it should not be here. I am also aware they do not own the site; the appellant is George Cauldwell, their uncle. They have no legal agreement with Mr Cauldwell, but I do not find this surprising. The Council argued there could be a family rift and they would no longer be welcome on the site, but if that were the case then personal conditions would prevent anyone else from living there unless they could satisfy the Council they also had good reason to.

Conditions

55. It was agreed that the site should be subject to a standard policy gypsy condition and one restricting it to Andrew and Ben Loveridge, Victoria Mitchell-Gears (Ben Loveridge's partner) and any dependants, along with a site restoration condition as in the original permission. The materials for the dayrooms have been agreed so a condition is required to ensure they are constructed with those materials. The approved plans from the 2014 permission are still relevant as is the fencing condition requiring Council approval of any fencing and boundary treatments in order to protect the character of the area. For similar reasons conditions restricting commercial activities and vehicles are needed, but they should allow one horse box (or float as they are known). It was agreed there could be difficulties defining a commercial vehicle so the number of vehicles overall should be restricted to 6 plus the horse-box. The number of caravans and pitches should be defined to prevent overcrowding, and conditions concerning the finishing of the access and positioning of the gates are necessary. Finally a landscaping condition is needed to deal with the conifers and replace them with native trees or shrubs.

Overall Conclusions

56. I shall allow appeal A and grant a new planning permission subject to the conditions discussed above. I shall also allow appeal B and quash the enforcement notice.

Simon Hand

Inspector

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Edmund Robb of counsel
He called
Chris Hannington
Jeremey Headley
Daniel Ray
Dr Michael Bullock
James McCabe

FOR THE APPELLANT:

Michael Rudd
He called
Matthew Green
Andrew Loveridge
Ben Loveridge

DOCUMENTS

1. Revised proof from James McCabe
2. TPO documents
3. Statements from Andrew and Ben loveridge
4. Council's closings
5. Appellant's closings

Annex – Schedule of Conditions

1) The site shall not be occupied by any persons other than gypsies and travellers as defined in Annex 1: Glossary of Planning Policy for Traveller Sites (or its equivalent in replacement national policy).

2) The occupation of the site hereby permitted shall be carried on only by the following and their resident dependants: Mr Andrew Loveridge, Mr Ben Loveridge and Miss Victoria Mitchell-Gears

3) When the land ceases to be occupied by those named in condition 2 above the use hereby permitted shall cease and all caravans, structures, materials and equipment brought onto or erected on the land, and/or works undertaken to it in connection with the use, shall be removed and the land shall be restored to its condition before the development took place.

4) There shall be no residential occupation of the site until details of a scheme to restore the land to its condition before the development took place (or such other restoration as agreed in writing by the local planning authority) at the end of the period during which the site is occupied by those permitted to do so shall have been submitted to and approved in writing by the local planning authority. These details shall include an implementation programme. The restoration works shall be carried out in accordance with the approved details.

5) There shall be no more than 2 pitches on the site and on each of the 2 pitches hereby approved no more than 2 caravans shall be stationed at any time, of which only 1 caravan shall be a static caravan.

6) The permitted dayrooms shall be constructed only using the previously agreed materials.

7) The development hereby permitted shall be carried out in accordance with the following approved plans: 11_469_003 & 11_469_004.

8) Notwithstanding the fencing shown on Plan Ref 11_469_003 or the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any order revoking, re-enacting or modifying that Order), no fences, gates or walls shall be erected without the prior written approval of the local planning authority.

9) No more than six vehicles of any sort shall be kept on the site for use by the occupiers of the pitches hereby approved and none of those vehicles shall exceed 3.5 tonnes in weight. In addition a single horse-box or 'float' is permitted which may be of any weight.

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

11) Any gates provided shall be set back a distance of at least 5 metres from the highway boundary and they shall open into the site.

12) The residential use of the site shall not commence until the vehicular access has been surfaced with a bonded material across the entire width of the access for a distance of 5 metres measured from the carriageway edge.

13) There shall be no residential occupation of the site until there shall have been submitted to and approved in writing by the local planning authority

a scheme of landscaping. The scheme shall include indications of all existing trees and hedgerows on the land, identify those to be retained and set out measures for their protection throughout the course of development.

14) All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the site; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.