

**IN THE MATTER OF AN APPEAL AGAINST THE
DECISION OF WREXHAM COUNTY BOROUGH
COUNCIL TO REFUSE TO GRANT PLANNING
PERMISSION FOR THE REPLACEMENT OF EXISTING
STABLE BUILDING AND SHED WITH ONE MOBILE
HOME, ONE MOBILE UTILITY STRUCTURE AND 2
NO. TOURING CARAVANS**

**TOWN AND COUNTRY PLANNING ACT 1990 (AS
AMENDED) s78**

PLANNING INSPECTORATE REF: APP/H6955/A/16/3144761

1. I have been instructed as Agent by the Appellant in this matter, Mr Andy Cash to address the reasons given for refusing to grant planning permission. It will be submitted that the Appeal should be allowed subject to reasonable Conditions as very exceptional circumstances exist as will be detailed below.

QUALIFICATIONS AND EXPERIENCE

2. My qualifications include a BA with Honours (Goldsmith's, London University, 1989), an MSC (Bristol University, 1996), a Ph D (Bristol, 2000) and an MA in Town and Country Planning (University of the West of England, 2006). I am a Member of the Royal Town Planning Institute. I have been professionally involved with the planning system as it relates to Gypsies and Travellers for some 20 years and have taken Gypsy and Traveller planning cases at Local Planning Authority (LPA) level, on Appeal, to the High Court, to the Court of Appeal and as far as the House of Lords. I am widely published in the field, including in the Journal of Planning and Environment Law (2002 and 2008), and am co-author of the Planning Chapter in the lead text-book on the subject, *Gypsy and Traveller Law* (Commission for Racial

Equality/Legal Action Group, 2008). My most recent instruction in the High Court was in the case of Moore and Coates v SSCLG and Bromley and Dartford Councils. The Equality and Human Rights Commission (interveners) that was handed down by Gilbert J on 21st January 2015.

PLANNING HISTORY

3. There is planning permission granted pursuant to BRO 22749 for a stable building on the Appeal site, as well as hardstandings to service that stable building. As that stable is neither related to agriculture or forestry that part of the Appeal site is to be considered as Previously Developed Land. This has implications for the assessment of the alleged harms by way of visual impact and openness that will be discussed later. It is also relevant to the consideration of what structures and hard surfaces would remain were the Appeal to be dismissed.
4. Circular 30/2007 advises that weight should be afforded to using PDL for Gypsy and Traveller sites and this is a material consideration in favour of allowing the Appeal. I attach at Appendix 1 a recent Green Belt Decision Letter [DL] in which I was instructed where this issue was given weight. I also attach at Appendix 2 the transcript from the subsequent High Court challenge to that DL that was dismissed.
5. It is acknowledged that the DL in respect of this site (APP/H6955/A/12/2172149) dismissed the Appeal for “*a travellers chalet and caravan park for one plot plus amenity building*” in August 2012 and that the DL should be afforded weight. However that s78 Appeal was determined on its own merits on the evidence available at the time. This Appeal can be distinguished from that Appeal on a number of grounds that permit a different decision on this occasion, *inter alia*:
 - a) No highways evidence was presented by the Appellant in the previous Appeal, whereas now the concerns in relation to highway safety have been resolved;

- b) No landscape evidence was presented at the previous Appeal Hearing in 2012 where now the Appellants have instructed a Landscape Architect, Mr Rhodri Crandon of TDA who has produced a Hearing Statement for these proceedings;
 - c) The 2012 Appeal concerned solely one plot for Mr Andrew Cash; the current Appeal involves both Mr Cash's ex-wife and their children, as well as his sister, Margret Delaney and her immediate family. It will be demonstrated that a number of these individuals have significant health and other personal circumstances issues that add substantial weight to the proposal;
 - d) In 2013 the Council undertook a Quantitative Needs Assessment [QNA] which discloses a significant level of unmet need, a diminishing supply and a chronic failure of policy, each of which is a separate material consideration which should be afforded substantial weight;
 - e) In January 2014 the Council accepted the findings of the QNA;
 - f) The issuing of the Welsh Government paper 'Travelling to a Better Future'
 - g) The re-introduction of the statutory duty to provide Gypsy sites by way of the Housing (Wales) Act 2014 the main provisions of which came into force on 25th February 2015
<http://www.legislation.gov.uk/anaw/2014/7/contents/enacted>;
 - h) The development of case law, in particular in relation to the best interests of the children and related matters.
6. It is also accepted that on 22nd July 2014 an Enforcement Appeal (APP/H6955/C/13/2210461 – Appendix 3) was dismissed. On the basis of the evidence that was then before him, the Inspector appointed to determine that Appeal found that very exceptional circumstances did not at that time exist but that the Appellants should be given a reasonable period of time to seek and relocate to another site and therefore the compliance period was extended to 18 months (DL paragraph 70).
7. Following the Inspector's Decision Letter, the Appellant and his family used this period to look for alternative accommodation but without success. As the

letter from R Jones, Estate Office Manager for the LPA dated 25th January 2016 (within the bundle of documents in Appendix 4) demonstrates, the Appellant sought the assistance of the Council in finding a site but were informed that *“further to your enquiry relating to vacancies on the [Ruthin Road] please be advised that we have no vacancies at present.”*

8. Given that there is Common Ground between the parties that there is an unmet need and no supply of sites in Wrexham, the Council should have allocated sites to meet that need since 2007. Therefore through our offices the Appellant also consulted the Development Plan for a site but no sites have been allocated, despite there being an acknowledged clear unmet need that goes back many years – this being an issue of policy failure that attracts substantial weight. The Appellant also tried to find private sites but were unable to find any either. This means that there are no suitable, affordable alternative sites, a material consideration that attracts significant weight in addition to the issues of unmet need and failure of policy.
9. Facing eviction onto the roadside with no suitable place to go, the family became increasingly desperate and asked me to submit a planning application for a temporary period so that they could continue looking for alternative accommodation with the assistance of the Council. It is that application that forms the subject of this Appeal. Attached to the planning application was a substantial Design and Access Statement which addresses many of the issues that arise in this Appeal so to avoid repetition, I will not reproduce those matters here but rely upon them in these proceedings.
10. Mrs Margaret Delaney (the Appellants sister who resides on the Appeal site) became increasingly distressed at the prospect of being evicted from the site. I would ask that the following paragraphs are redacted from the documents available to the public due to their sensitive nature. Suffice to say that Mrs Delaney is a seriously ill woman and the consequences of this Appeal could not be more serious.
11. In the previous Appeal, Margaret Delaney was reluctant to reveal the full extent of her mental illness as she was embarrassed to reveal such personal

matters in a public forum but now Margaret has become so ill revealing these issues is simply unavoidable. Following the dismissed Appeal Margaret tried to commit suicide and was then detained in a psychiatric hospital having been Sectioned pursuant to the Mental Health (Wales) Act 2010 for being a danger to herself. Margaret tried to take her own life because of the impending eviction in the absence of anywhere to go. Attached to this Statement at Appendix 4 is a letter from Dr John Clifford, Consultant Psychiatrist at Wrexham Maelor Hospital dated 3rd May 2016 which states:

*“I wish to raise issues to support Mrs Delaney with the eviction. She suffers from a severe depressive episode with psychotic symptoms and has been in psychiatric hospitals many times with her illness and high suicide risks. **In recent times she has needed hospitalisation and home treatment team involvement. She is concerned the eviction will lead to her being on the road and unable to access the medication she needs as she will not have a GP. She is likely to deteriorate severely without medication and will again be a suicide risk.** She also suffers from sleep apnoea but will not be able to use the machine at night as there will be no power.¹ She also worries about her son who she says has a thyroid operation coming up soon. Previously when given a house to live in she was victimised she thinks for her identity as a Traveller – and so she is against this idea. She is fearful of being placed on the Ruthin Road site because of family issues and feels unsafe on this site.”*

12. Also attached at Appendix 4 is letter from Mrs Delaney’s GP, Dr Burton at the local Caritas Surgery dated 19th April 2016 which states:

“Mrs Delaney has asked me to write a support letter regarding her possible eviction. I can confirm that Mrs Delaney has been under the

¹ The Appellant, Andy Cash also suffers with sleep apnoea and, like his sister, needs an electricity supply so that the oxygen machine can work at night.

*care of the mental health team in the hospital with depression and psychosis. She has been on regular medication. **Currently her mental health has deteriorated and I was very concerned about her today. Indeed I contacted specialists for a same day assessment. She is very low at present and I feel an eviction would be detrimental to her mental health. Please can this be taken into account.***

13. Mrs Delaney's situation and that of her family has very strong and compelling similarities with the case of AZ which was recently upheld by the Court of Appeal. In AZ's re-determined s78 Appeal (Appendix 5) – which, like here, concerned a residential caravan site in the Green Belt in a situation where extant enforcement notices were in continuing breach - Inspector Clive Hughes allowed the Appeal on a personal basis because of the following matters, dealing first with the extent of the planning harms involved:

“In terms of the effect on the Green Belt, therefore, the proposals would constitute inappropriate development; would encroach into the countryside in conflict with one of the purposes of including land within the Green Belt; and would result in a loss of openness. This constitutes a significant amount of harm that, in accordance with advice in the Framework, carries substantial weight against the development. It would also be contrary to Policy CS5(6) of the CS which refers back to the Green Belt provisions of the Framework.”

14. In terms of the “other material considerations” which Inspector Hughes considers, the Appellant's personal circumstances were pivotal and ultimately determinative of the Appeal:

“The personal circumstances of AZ are of great weight in the determination of this appeal. ...Dr Reeves has known AZ for about 4 years and is satisfied that his symptoms are genuine. He concluded that if AZ loses his home there is a probability that he will take his own life; he considered this to be a real and genuine risk notwithstanding the protective factors of his wife and child. The chronic anxiety that AZ suffers from requires him to have a safe place that is, in effect, a place of sanctuary. Experience has shown that this must involve a

large area of open space where he can resort to quickly in the event of an anxiety attack.

The space needs to be private, away from other people. Without such a safe place, Dr Reeves considers that his condition would be unbearable. The PTSD stems from abuse he suffered when he was young. I have no reason to doubt this professional, specialist and highly detailed evidence.

29. At the Inquiry Dr Reeves accepted that while PTSD is not curable its effects can be ameliorated with appropriate treatment. A temporary planning permission would allow a period of certainty and security during which the treatment could commence. However, there is no certainty that the treatment would be successful or permanent; the closer the appellant got in time to the end of the planning permission the greater his level of anxiety would be likely to become.

30. There are four extant ENs in respect of the site; the appellant has previously been prosecuted for his failure to comply with them. The Council has stated that it would not immediately enforce the ENs if this appeal fails. However, this would leave the appellant with the permanent threat of eviction hanging over him and he would have no control over this. This would not be a satisfactory situation and could lead to some deterioration in his mental health.”

15. In my view the new medical evidence in this Appeal – that was not available to the previous Inspector - provides a clear additional support for the contention that there are “*very exceptional circumstances*” for the purposes of PPW and 30/2007 for the temporary retention of these Appellants’ caravans on the Appeal site; and I would invite the Inspector to conclude that this additional evidence adds substantial weight to the case for the s78 Appeal to be allowed.

16. Taken with the issue of the best interests of the children (in this case the Appellants' children who have been temporarily living on the site with their mother of which more below) there is overwhelming evidence in support of the case for the Appeals to be allowed if only on compassionate grounds.
17. Turing to the children: although Ann Berry and Andy Cash have been estranged for many years and have been living in different countries, because of Ann's recent caring responsibilities for her father (Michael Berry of Homestead Lane, Wrexham who is extremely ill) Ann has returned to Wrexham temporarily and is living on the Appeal site as she too has nowhere else to go (Homestead Lane is a) in the same Green Barrier; b) is restricted by way of a personal Condition and c) is too small for additional caravans. Ann was living on a site in Chester that had temporary planning permission at the time of the previous Appeal but since then that site is now unauthorised and has an extant Enforcement Notice requiring the family to leave. These factors represent a significant change in the material considerations at issue since the previous Appeal, in particular as there are now children living on the site who attend the local school and for whom no suitable, affordable alternative site exists, thereby raising the issue of the best interests of the children.
18. The Appellant's twin sons, Michael and Tom (aged 10) have moved back to the site temporarily since the previous Hearing and attend the local school in Wrexham whilst their mother helps care for her father. Tom suffers from ADHT whilst Michael is partially deaf. Letters from the school have been requested and will be provided as soon as possible.
19. As raised above, as Tom and Michael are now living on the site, this raises the issue of the children's best interests, this being a factor which recent case law confirms is a key statutory requirement for all decision makers to take into consideration: in the case of Sedgemoor District Council v Marie Hughes and Ors (unreported [2012] EWHC 1997 (QB) handed down in July 2012 - HHJ Thornton refused to grant an Injunction pursuant to s187B TCPA to restrain a breach of planning control by Gypsies and Travellers who remained living on their own land in caravans in breach of an Enforcement Notice upheld on

Appeal in 2009. The Defendants argued that they had obtained substantial new highway safety evidence which meant that on Appeal to the Secretary of State's Inspector, the site had a realistic prospect of success (see South Buckinghamshire District Council v Porter [UKHL] 2004). The judge then went further still and stated:

27. A further, and to my mind significant, consideration that both this court and the planning inspector must consider, are the best interests of the ... children...

28. There is now a statutory duty on any public authority, which would include both a judge of this court and a planning inspector, to give consideration to the best interests of the children and there is some evidence from the adult defendants that the best interests of these children would be put at risk if there was any enforced removal from this site in the near future. The considerations that must be considered by any public authority include their education, their safety, their welfare and the appropriateness of the accommodation in which they are living.

29. The defendants' evidence is... that there is no other place available to them... where they will be able to pitch their caravans and continue their life as travellers. Furthermore, whereas at present those... who are of school age are making reasonable progress in schools and the educational difficulties that have historically confronted travellers' children are well known, that progress will be hindered if not wholly disrupted since there will be no obvious schooling available to them, certainly in the immediate aftermath of their leaving this site.

30. Indeed, the somewhat gloomy prognosis is put forward by the defendants that they will simply have to pitch their caravans by the roadside since there are no available sites in the Sedgemoor District Council area.

31. It would appear that Sedgemoor District Council do not regard it as any part of their function to involve Social Services in a consideration of the welfare of these children. Indeed, it is suggested that they have no obligation to do so, it is a county matter for Somerset [County Council] to be involved in. There is certainly no available evidence to this court to give any indication of how the balancing

exercise that this court must undertake should be undertaken other than the somewhat unstructured evidence from the defendants themselves.

32. Traditionally in planning enforcement proceedings, welfare evidence of the kind I have indicated has not been used. However, courts and tribunals, including planning appeal inspectors, are now, particularly since the judgment of Baroness Hale in the relatively recent decision of the Supreme Court (admittedly in the field of immigration), having to take account of the welfare and best interests of children. It seems to me that a proper consideration of the claimants' applications must involve a consideration of the best interests of these children and ordinarily that needs to involve, at the very least, social inquiry reports or welfare reports from those other than the defendants themselves which give consideration to these matters. It is not sufficient for the claimants simply to place the onus on the defendants, particularly in situations where it is now very difficult to obtain public funding to obtain appropriate welfare reports in this type of situation."

20. The immigration case in the Supreme Court to which the judge referred above is that of ZH (Tanzania) v. Secretary of State for the Home Department [2011] 2AC 166 where it was held that:

"international law placed a binding obligation upon public bodies, including the immigration authorities and the Secretary of State, to discharge their functions having regard to the need to safeguard and promote the welfare of children; that the obligation applied not only to how children were looked after in the United Kingdom but also to decisions made about asylum, deportation and removal from the United Kingdom; that any such decision which was taken without having regard to the need to safeguard and promote the welfare of any child involved would not be "in accordance with law" for the purposes of article 8.2 of the Convention; that, further, in all decisions directly or indirectly affecting a child's upbringing national authorities were required to treat the best interests of the child as a primary consideration, by identifying what those best interests required and then assessing whether the strength of any other consideration, or the cumulative effect of other considerations, outweighed the child's best interests."

21. From paragraph 36 of the AZ Appeal Decision, Inspector Hughes applies the issue of the best interests of the child thus:

“Concerning human rights, the dismissal of this appeal would be likely to result in the appellant and his wife and son having to vacate the land. The land is already the subject of ENs and the Council has previously instigated legal proceedings against AZ for his failure to comply with the ENs. The land is their home and the loss of their home would clearly impact upon their rights under Article 8 of the European Convention on Human Rights. As AZ’s child is aged under 18 and lives with AZ on the land I have also had regard to the United Nations Convention on the Rights of the Child (UNCRC). This relates to the best interests of the child living on the site which must be a primary consideration in the determination of this appeal; no other factor can inherently carry greater weight.

37. Concerning the Article 8 rights, it is necessary to consider the 5 questions posed by His Honour Judge Anthony Thornton QC in the High Court.

38. These questions are:

- *Will the proposed decision be interference by a public authority with the exercise of the appellant and their family’s right to respect for their private / family life or home?*
- *If so, will such interference have consequences of such gravity as potentially to engage the operation of Article 8?*
- *If so, is such interference in accordance with the law?*
- *If so, is such interference necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others?*
- *If so, is such interference proportionate to the legitimate public end sought to be achieved?*

39. *The dismissal of this appeal would undoubtedly amount to interference with the exercise of the appellant's and his family's right to respect for their private family life and their home. This interference would engage the operation of Article 8. The interference would be in accordance with the law provided a proportionality assessment is carried out. Concerning the fourth bullet point, the interference would be necessary in a democratic society as development control measures are recognised as an important function of Government and the Government places substantial weight on the protection of the Green Belt.*

40. *Since the Article 8 rights of the appellant and his family are engaged, a proportionality assessment is necessary. In the AZ v SoS judgement the four stages necessary for a proportionality assessment are set out. These are:*

- Identification of all relevant considerations relating to the appellant and their family's respective rights of enjoyment of family life and a home.*
- The identification of the best interests of the children.*
- The identification of public or community interests to be balanced against the appellant and their family's interests.*
- A structured weighing up and balancing of all these interests. The balancing exercise should involve a consideration of children's best interests first and then strike a fair balance between the rights of the individuals concerned and the interests of the community.*

41. *At the Inquiry AZ, his wife and his son all gave evidence so they were able to set out exactly what they considered the relevant considerations to be. Their personal circumstances are set out in some detail above. Based upon the evidence to the Inquiry, I consider that the principal considerations for the appellant are the loss of his home and the impact that this could have on his mental health. The lack of any known suitable alternative accommodation, combined with the known anxiety that he suffers, would be likely to exacerbate*

the impact of the loss of his home. Any harm to the health of AZ would also be harmful to the wellbeing of his wife and child.

...

43. Concerning AZ's son, I have also had regard to article 3(1) of the UNCRC. This requires that in all matters involving children the best interests of the child shall be a primary consideration. In the Supreme Court the case of ZH (Tanzania) v SoS Home Department [2011] UKSC 4 emphasised that the best interests of children are a primary consideration; no other factor should be given more weight as a matter of policy. In that judgement Lady Hale described the best interests as broadly meaning the well-being of the child. Lord Kerr commented that the best interests of a child are not a factor of limitless importance in the sense that it will prevail over all other considerations. However, he said that it is a factor that must rank higher any other. In paragraph 46 he says "Where the best interests of the child clearly favour a certain course, that course should be followed unless countervailing reasons of considerable force displace them".

44. In this appeal the best interests of the child largely coincide with those of the adults. AZ's son gave evidence at the Inquiry. He is clearly fully conversant with the uncertain future of their home. I have no doubt that he wishes to remain living on the site and attending his local school. A settled education is generally beneficial; it seems reasonable to place greater importance on this when the child has had such an unsettled early life. He has friends locally and has no desire to change schools as this would result in the loss of his friends and the life he has built. He stated that he associates living on the site with all the good things in his life. His greatest fear, however, concerns the effect the leaving the site would have on his father.

45. The best interest of the child in this case is undoubtedly to allow him to remain on the site. It is his home and provides security, continuity of education and access to healthcare. While there is no evidence to demonstrate that this is the only site where such interests could be achieved, for example an alternative school may well meet his education needs, no suitable

alternative sites have been identified. The balancing exercise is carried out in the following section.

Whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations

46. Paragraph 87 of the Framework sets out the presumption against inappropriate development in the Green Belt and says that such development should not be approved except in very special circumstances. The Framework says that inappropriate development is, by definition, harmful to the Green Belt and that substantial weight should be given to any harm to the Green Belt. It further says that very special circumstances to justify inappropriate development will not exist unless the potential harm to the Green Belt by reason of inappropriateness and any other harm are clearly outweighed by other considerations.

47. The other material considerations advanced must therefore be balanced against the public and community interests. There is an in-principle presumption against inappropriate development in the Green Belt. Other objections to the development concern its impact on the openness of the Green Belt and on one of the purposes of including land in the Green Belt. These carry substantial weight against the development. Also weighing against the development, although to a much lesser degree, is its impact upon the character and the appearance of the area. The impact on the appearance of the area, in particular, is very limited and can be further reduced by additional planting.

There would also be conflict with the Framework as the new dwelling would be in an isolated location. The Framework says that the Government attaches great weight to Green Belts and that one of their essential characteristics is their openness.

48. The other material considerations largely arise from the personal circumstances of the appellant, his wife and his child. In accordance with the

provisions of article 3(1) of the UNCRC I have had regard to its requirement that in all matters involving children the best interests of the child shall be a primary consideration. The best interests of AZ's son are clearly to remain living on the site where he feels secure and from where he can access his school. This coincides with the best interests of his father, who needs the space and secure surroundings to provide a safe sanctuary. The health needs of AZ are very significant and potentially life threatening; it is difficult to contemplate how they could be more serious. They carry substantial weight in favour of the development.

49. The Human Rights considerations concerning AZ, his wife, his son and, albeit to a lesser extent, those of his parents-in-law, are also relevant. Their Article 8 rights are clearly engaged and carry significant weight. The lack of any suitable alternative accommodation carries significant weight in favour of the development. I have given a relatively high degree of weight to this factor in part because there are extant ENs in respect of the site; if the appeal fails there appears to be no known suitable accommodation to which the family could move.

50. The harm arising from the development, while substantial in weight, is nonetheless limited in scale and highly localised. However, there would be conflict with the interests of the community as set out in Government advice and in the development plan. Considering the best interests of the child and considering the Article 8 rights of the individuals involved, any refusal of planning permission resulting in the Council enforcing the ENs would not represent a proportional response. The harm that this development would cause is undoubtedly outweighed by the other material considerations.

22. In my opinion the similarities with AZ are compelling, disturbing and such that on the facts of this case, should be given substantial - indeed, determinative - weight.

23. In addition, Margaret Delaney's children live on the site and share a caravan with her: Tom (aged 14) and Lou Lou (aged 19). Lou Lou is a lesbian and as

such is ostracized by the Traveller community, a factor which restricts further the accommodation options open to the family.

24. Margaret separated from her husband, Ned after the previous Appeal whereupon Ned took up temporary accommodation in housing as he had no other option available to him but found that he could not cope with living in conventional bricks and mortar housing. Ned and Margaret are attempting a reconciliation currently. Ned has serious heart problems and a Report has been requested from his Consultant and will be provided as soon as possible.
25. Finally Margaret's adult son Johnny, his wife and their 2 year old son live on the site in the second touring caravan. As the confidential medical documents that were submitted with the planning application – as well as those in Appendix 4 – demonstrate, Johnny also suffers from significant health problems.
26. So far as the issue of need is concerned, the LPA has been under a statutory duty – again introduced since the previous Appeal – to produce an up to date Gypsy and Traveller Needs Assessment by the 25th February 2016. My understanding is that this assessment has increased substantially the already considerable level of unmet need for further sites in Wrexham. I have asked the LPA for a copy of the draft GTAA but they have refused to provide it on the grounds that it is still in draft. Other authorities in Wales have provided theirs – such as Newport – even though their's is also in draft. The Appellant reserves the right to respond to this GTAA once it is provided.

CONCLUSIONS

27. There is evidence of a clear and immediate need for further sites for Gypsies and Travellers, a fact now acknowledged by the LPA itself and evidenced through a Gypsy and Traveller Accommodation Assessment. The Appellant's primary case is that the Appeal proposal complies with the Development Plan so far as it is relevant and up to date. Insofar as the Appeal proposal fails to comply with any element of the Development Plan, material considerations indicate that the Appeal should be allowed in any event. In particular, the

personal circumstances of these Gypsy Travellers, including their health and educational needs to allow for planning permission in this case. The Appellant is agreeable to the imposition of any reasonable Planning Conditions which the Inspector might consider necessary.

28. For the reasons detailed above, the Appellant respectfully invites the Inspector to allow this Appeal.

APPENDICES

1 BEANEY DECISION LETTER JULY 2015

2 TRANSCRIPT OF DARTFORD BC V SSCLG AND BEANEY

3 THE 2014 DECISION LETTER ON THIS SITE

4 CONFIDENTIAL MEDICAL AND OTHER DOCUMENTS

5 THE AZ/SOUTH GLOUCESTERSHIRE DECISION LETTER



Appeal Decision

Hearing held on 4 June 2013

by David Smith BA(Hons) DMS MRTPI

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

Decision date: 23 July 2015

Appeal Ref: APP/T2215/A/12/2189200

Shirehall Farm, Shirehall Road, Hawley, Kent, DA2 7SL

- 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 & Mrs J Beaney against the decision of Dartford Borough Council.
 - The application Ref DA/12/00287/COU, dated 1 March 2012, was refused by notice dated 22 June 2012.
 - The development proposed is a change of use of land to a private gypsy and traveller caravan site comprising one mobile home and one touring caravan.
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Decision

1. The appeal is allowed and planning permission is granted for a change of use of land to a private gypsy and traveller caravan site comprising one mobile home and one touring caravan at Shirehall Farm, Shirehall Road, Hawley, Kent, DA2 7SL in accordance with the terms of the application, Ref DA/12/00287/COU, dated 1 March 2012, subject to the conditions in the attached schedule.

Preliminary Matters

2. After the hearing the appeal was recovered by the Secretary of State for him to determine. The parties were advised of this on 13 September 2013. This direction was revoked in April 2015.
3. In response to a letter from the Planning Inspectorate the Council advised that there has not been any change in circumstances since the close of the hearing and the appellants indicated that they had no further comments to make. I subsequently obtained confirmation of the position regarding the development plan and the emerging Development Management Plan (DMP).
4. In addition, the Council provided new information regarding a Gypsy and Traveller Assessment in November 2013. The appellants have responded to this matter by providing proofs of evidence and appendices in relation to another appeal (Ref: APP/T2215/A/13/2192990). I confirm that I have taken this further evidence into account.

Main Issues

5. Paragraph 14 of the Planning Policy for Traveller Sites (PPTS) confirms that traveller sites in the Green Belt are inappropriate development. The main issues are therefore:
 - The effect of the proposal on the openness and purposes of the Green Belt and on the character and appearance of the surrounding area; and

- Whether the harm to the Green Belt by reason of inappropriate development, and any other harm, is clearly outweighed by other considerations, so as to amount to the very special circumstances necessary to justify the development.
6. It is not disputed that the appellants fall within the definition of gypsies and travellers at Annex 1 of the PPTS. Its provisions should therefore be applied. Moreover, the other considerations in this case should include the general need for and provision of traveller sites in the Borough; the alternatives open to the appellants and any personal circumstances.

Background

7. The appellants are from gypsy families and were both born in Kent. In their younger days they lived in caravans and had a traditional lifestyle moving round from farm to farm picking fruit. However, due to Mr Beaney's health they settled at Shirehall Farm in 2001. Their daughters live at Belvedere and Swanley and the husband of the eldest is severely disabled.
8. Their son James has always been with them initially staying in a tourer behind the house. He got married in 2005 and had a year of travelling with his wife. After the birth of their 2 daughters the difficulties of living in cramped and uncomfortable conditions got too much for Louise and she and the children returned to her parents pitch at Ash Green. However, in late 2011 they started living together in a mobile home at the appeal site.

Reasons

Openness and purposes of the Green Belt and character and appearance

9. The mobile home and tourer would be within the residential curtilage of Shirehall Farm. As a result there would be no encroachment into the countryside and none of the 5 purposes of the Green Belt would be infringed.
10. By virtue of their physical presence the mobile home and tourer would reduce openness but by a limited degree. Having regard to the lawful domestic use of the site, it is accepted that permitted development rights could be exercised that might have a similar impact. This could take the form of the stationing of caravans for ancillary purposes or a domestic outbuilding. The 'fall back' position is nevertheless a theoretical one as there is no indication that either scenario would occur if the appeal failed.
11. Policy C1 of the Dartford Local Plan of 1995 indicates that proposals for development in the countryside will not normally be permitted. They will be considered against a number of factors including the appropriateness of the use to a rural location. Although, according to the PPTS, new traveller sites should be strictly limited in the open countryside paragraphs 12 and 23 countenance sites in rural or semi-rural settings. As such, the proposal should not be ruled out as a matter of principle due to its location outside of any settlement.
12. The mobile home would be set well back into the site and would not be prominent in the wider area. Some glimpses of it would be obtained from the east but the main public views would be from the lane directly in front of it. However, the appellants' Landscape Statement suggests that this could be ameliorated by moving the entrance to the pitch and thereby avoiding a direct 'line of sight'. Moreover, the existing fence could be replaced and a planter

containing shrubs and climbers placed in front of it to further reduce the visual impact. In so doing, the tourer and associated parking would also be shielded.

13. Furthermore, the context of the proposed mobile and tourer is set by Shirehall Farm on one side and a group of workshops with containers at the rear on the other. Beyond this cluster the landscape is largely flat and open but because of the neighbouring buildings the proposal would not stand out in the way that it might have done in a more isolated and exposed location. The gap between the house and the adjoining units would be closed. Nevertheless, the recessed position of the caravans and the measures to improve the appearance of the site mean that the proposal would not detract from the locality in this respect.
14. Therefore the proposal would not be intrusive or incongruous and would not harm the character and appearance of the surrounding area. As any adverse impact on the countryside would be minimised it would accord with Local Plan Policy C2. Openness would be reduced by a limited degree.

Other considerations

General need for and provision of traveller sites in the Borough

15. The Dartford Gypsy, Traveller and Travelling Showpeople Accommodation Assessment (GTAA) was undertaken in May 2013 and this is the base date. Its findings are that the need for pitches between 2013 and 2017 is 13 and that total need to 2027 is for 34 pitches. The appellants maintain that there is considerable doubt about the robustness and reliability of the GTAA particularly in relation to the way it was carried out and the subsequent analysis. According to them it is "rushed and incomplete". However, they accept that it is not necessary for me to reach a definitive figure of unmet need.
16. Leaving that aside, the Council relies on a site at Knoxfield Caravan Park to meet identified need in the next 5 year period. Planning permission was given in July 2013 for the stationing of 16 caravans and Condition 03 limits occupation to gypsies and travellers as defined in the PPTS. According to the Council there are no known constraints to delivery and so Knoxfield represents a specific deliverable site. However, the need in the GTAA is expressed in terms of pitches rather than caravans.
17. There are 9 long-term vacant pitches at Knoxfield. The GTAA refers to the current authorised residential provision as 62 pitches. On the basis of this definition these pitches should be included in the figure for existing provision. There is no direct evidence from the site owner regarding his intentions about their occupation. He will clearly have the 'final say' as to whether to rent any spare pitches to other travellers or whether to exclude certain families from the site. So even if treated as part of the available supply, rather than as existing provision, the empty pitches at Knoxfield may not be available to all travellers.
18. Condition 04 of the 2013 permission provides that no more than 13 caravans shall be statics or mobile homes. At the hearing reference was made to 7 further pitches at Knoxfield and the written report on the application refers to an increase from 9 to 16 caravans on Plots 4, 5 and 6. As such, the additional capacity permitted is below the 13 pitches that are needed by 2017 according to the GTAA. If all 13 permanent caravans at Knoxfield are treated as pitches this would meet the expectations of the GTAA but with no slack.

19. In any event, given that 2 years have passed since the 'start point' of the GTAA, it is reasonable to expect that the level of need has increased. In this respect the GTAA applies a standard compound growth rate. It is therefore now more than 13. There is no evidence that other sites have come forward in the interim. As such, it cannot be said with certainty that there is currently a 5 year supply of sites in Dartford. Furthermore, if the GTAA is used as the basis for this there is, at the present time, a general unmet need for sites albeit a relatively modest one.
20. At the time of the hearing the Council expected that the DMP would be adopted in spring 2015. This was intended to set out pitch requirements, identify suitable sites against this target and include a criteria based policy for other sites. However, this has clearly not occurred. The Council acknowledges that the DMP has been delayed and it is now due to be submitted in December 2015 with adoption likely in summer of 2016. Nevertheless there is a high proportion of Green Belt in Dartford and also an Area of Outstanding Natural Beauty so the identification of new sites is unlikely to be easy.
21. Using the GTAA assessment there is an outstanding need for sites in the Borough. This weighs in favour of the proposal although the level of that need is not high. The DMP is being progressed but based on past experience further slippage cannot be ruled out before it is adopted and even then time will be required to obtain permission for sites and to lay them out. As a consequence it is likely to be some time before general needs will be addressed. This adds further support to the immediate provision of a pitch at Shirehall Farm. These findings are a manifestation of how previous planning policies have operated and therefore I give weight to them rather than past policy failings per se.

Alternatives for the appellants

22. One option is for James Beaney junior and his family to occupy the site at Knoxfield. However, there has been a disagreement between the Beaney and Harber families over many years so that the couple do not wish to live there. Mrs Carol Beaney said that she would be "frightened" if that came to pass because of her concerns about safety. In theory, the extended family group could move together but the appellants need peace and quiet because of their health issues. Although the reaction of the site owner is not known the Council accepted that there would be potential tensions. Indeed, the oral evidence given indicates that this is not a realistic proposition.
23. Planning permission has been given in the past to convert a double garage at the property to living accommodation. Others suggested that Shirehall Farm could be extended to create space for the current occupiers of the mobile home. However, Mrs Louise Beaney has never lived in a house and the need is for a caravan site. Amongst other things the PPTS seeks to facilitate the traditional way of life of travellers. Living in caravans is an intrinsic part of this rather than it simply being a lifestyle choice. Consequently these possibilities do not represent credible solutions to the needs of this young family.
24. Therefore there are no suitable, authorised alternative sites available to the current occupiers of the mobile home. In the event that the appeal failed and they were forced to leave it the likely outcome would be a roadside existence or an unauthorised site elsewhere. This might include reverting to a touring caravan behind the house which proved to be untenable. The absence of alternatives therefore favours the proposal. Although occupied without

planning permission the appeal site is the home of Mr and Mrs Beaney junior and their family. Requiring the mobile home to be vacated would therefore represent an interference with their home and family life.

Personal circumstances

25. The appellants clearly value having James on hand as a carer. In particular, since the time when he and his wife were travelling, Mrs Carol Beaney's own health has deteriorated. I was told that he assists with maintenance tasks, heavy housework and shopping and is also there as a back-up for his father if his mother is taken ill. All of these practical tasks could be performed if he was living somewhere else and because of this it is of limited weight in favour. Nevertheless, his presence saves worry and anxiety and is consistent with the gypsy tradition of looking after their own.
26. The Beaney's have local connections having stayed and worked around the area for many years and there are other family members in the vicinity. The children at the site are doing well at New Ash Green Primary School. Apparently the behavioural issues that occurred when they were separated from their father have been resolved. From the evidence available the best interests of children would be served by staying at the site.

Further considerations

27. The definition of previously-developed land in Annex 2 of the National Planning Policy Framework excludes land in built-up areas such as private residential gardens. However, the appeal site is within a rural area and as the mobile home and tourer would be located within the curtilage of developed land it should be treated as previously-developed land. In turn, the PPTS indicates that weight should be attached to the effective use of such land. There is nothing to suggest that the land was previously untidy or derelict but it is preferable for traveller sites to be located on land of this type rather than on 'greenfield' sites. I therefore give significant weight to the fact that the appeal site is previously-developed land.
28. Policy CS20 of the Core Strategy confirms that in identifying sites to meet an agreed requirement account will be taken of the protection of the openness of the Green Belt. In the absence of other policies it is reasonable to use its criteria in the consideration of individual applications. There is no conflict with the other factors. My findings in relation to openness are set out earlier. However, given that future traveller sites are likely to be located in the Green Belt, the policy does not seek to prevent any impact on openness. In this case the consequences of a single pitch within a domestic curtilage are as about as low as they could be. Therefore whilst taking criterion c) into account there is no conflict with that development plan policy.
29. The PPTS advises that traveller sites should be sustainable economically, socially and environmentally. Many of the factors referred to in paragraph 11 would be met. The Council does not dispute that the appeal site is within 1km of services and facilities and many other gypsy sites are further away. However, Shirehall Road is not conducive to walking so that most journeys would be likely to be undertaken by car contrary to the aim of the Framework of making the fullest possible use of public transport, walking and cycling. As such, the location of the site is neutral in the overall balance.

Other Matters

30. Shirehall Road is narrow and twisting with passing places. It is unlit with no pavements and is prone to flooding. Moving along it at busy times requires care and one local resident described it as "dangerous". However, these problems would not be exacerbated to any meaningful extent by accepting a single traveller site as the volume of additional traffic created would be small.
31. There were in excess of 600 objections to the planning application. Some are concerned about the retrospective nature of the proposal. This is not to be condoned but neither has it had any bearing on my assessment of the merits of the appeal. In particular, it should be noted that the appellants' eldest grand daughter was already at school at the time the mobile home was occupied.
32. Some fear a repeat of Dale Farm but the proposal before me is for one gypsy pitch. More understandably others point to sites in Dartford which have expanded over the years. This tallies with my own experience and is consistent with the gypsy way of life. However, any such proposals would have to be assessed against relevant factors at the time. Furthermore, it seems to me that extending into surrounding farmland would be an entirely different matter to a pitch contained within an existing residential curtilage.

Overall balancing

33. The proposal would be inappropriate development within the Green Belt which Policy CS13 of the Core Strategy seeks to resist. Policy S4 of the Local Plan has similar aims. According to the Framework substantial weight should be given to any harm to the Green Belt. The Written Ministerial Statements also underline that protection of the Green Belt is an explicit policy intent. In addition, there would be a limited reduction in openness. However, there would be no conflict with the purposes of the Green Belt and no harm to the character and appearance of the area subject to certain further works.
34. Although the general level of need for pitches in Dartford is relatively modest it does exist and policies to deal with this in the longer term are still some way from being finalised. Similarly the provision of adequate sites is not imminent. Furthermore, there is a lack of realistic, suitable alternatives for Mr and Mrs Beaney junior and the best interests of their children would be served by staying where they are. Their personal circumstances in supporting the appellants attract limited weight. However, I give significant weight to the fact that the proposed location would be on previously-developed land and that the most directly relevant development plan policy would be met.
35. In the Written Ministerial Statement of July 2013 the Secretary of State makes clear that the single issue of unmet demand for traveller sites is unlikely to outweigh harm to the Green Belt so as to constitute the "very special circumstances" to justify inappropriate development in the Green Belt. This is re-emphasised in the further Statement of January 2014. However, in this case, the factors that weigh in favour of the proposal do not only relate to unmet demand for sites.
36. In the final analysis, the other considerations clearly outweigh the totality of harm that would arise including the conflict with the broad policy aim of protecting the Green Belt. Looking at the case as a whole and having regard, in particular, to the location of the site on previously-developed land and the compliance with the policy relating to gypsies and travellers, I am satisfied that

very special circumstances exist. As such a permanent permission is justified and there is no need to consider a temporary permission as discussed at the hearing or any human rights implications for the appellants.

37. Some representations raised concerns about precedent and regarded the appeal as a 'test case' for traveller sites in the Green Belt. I disagree with those views since the factors that I have assessed in this case are unlikely to be exactly repeated elsewhere. It would be for future decision-makers to perform their own balancing exercises taking account of the evidence before them in those cases should they arise.

Conditions

38. Occupation should be limited to gypsies and travellers given the specific policy basis for accepting the use. As there are no strong personal grounds for the proposal a personal permission is not justified. To limit the visual impact the number of caravans, the siting of the mobile home, the extent of the pitch and the size of vehicles to be kept at the site should be restricted. For similar reasons alterations to the fencing and associated planting should be agreed and implemented but further landscaping as suggested by the appellants is not necessary. Commercial activities should be precluded to protect the wider amenities of the countryside and the Green Belt.

Final conclusion

39. For the reasons given my final conclusion is that permission should be granted subject to conditions and therefore that the appeal should succeed.

David Smith

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The site shall not be occupied by any persons other than gypsies and travellers as defined in Annex 1 of the Planning Policy for Traveller Sites (DCLG, 2012).
- 2) No more than 2 caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 (of which no more than 1 shall be a static caravan or mobile home), shall be stationed on the site at any time.
- 3) The mobile home shall be sited in accordance with the approved drawing. Any material change to its position shall only take place in accordance with details previously submitted to and approved in writing by the local planning authority.
- 4) No vehicle over 3.5 tonnes shall be stationed, parked or stored on the site.
- 5) No commercial activities shall take place on the site including the storage of materials.
- 6) The use hereby permitted shall cease and all caravans, structures, equipment and materials brought onto the land for the purposes of such use shall be removed within 28 days of the date of failure to meet any one of the requirements set out in i) to iv) below:
 - i) Within 3 months of the date of this decision:-
 - a) a scheme of works and a timetable for implementation to replace the existing fence to the south of the mobile home; relocate the entrance to the mobile home and for associated planting as illustrated in the Outline Landscape Proposals in the Landscape Statement prepared by Tirlun Design Associates; and
 - b) details of the extent of the pitch area of the mobile home and touring caravan to include hardstanding, parking and amenity areas;shall have been submitted for the written approval of the local planning authority.
 - ii) Within 11 months of the date of this decision the matters specified at i) a) and b) shall have been approved by the local planning authority or, if the local planning authority refuse to approve the scheme, or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
 - iii) If an appeal is made in pursuance of (ii) above, that appeal shall have been finally determined and the matters specified at i) a) and b) shall have been approved by the Secretary of State.
 - iv) The approved works referred to in i) a) shall have been carried out and completed in accordance with the timetable for implementation.

Neutral Citation Number: [2016] EWHC 635(Admin)

CO/4129/2015

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
THE ADMINISTRATIVE COURT

Royal Courts of Justice
Strand
London WC2A 2LL

Thursday 21 January 2016

B e f o r e:
CHARLES GEORGE QC

(Sitting as a Deputy High Court Judge)

Between:
THE QUEEN ON THE APPLICATION OF DARTFORD BOROUGH COUNCIL
Claimant

v

SECRETARY OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT
Defendant

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(Official Shorthand Writers to the Court)

Mr Ashley Bowes (instructed by Sharpe Pritchard) appeared on behalf of the Claimant

Mr Charles Banner (instructed by Government Legal Department) appeared on behalf of the Defendant

J U D G M E N T
(Approved)
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1. DEPUTY JUDGE: This is a challenge brought by the local planning authority, Dartford Borough Council ("the council"), to a decision letter dated 29 July 2015 of an inspector appointed by the defendant, the Secretary of State for Communities and Local Government. Following an informal hearing, the Inspector allowed the appeal of the second and third defendants Mr and Mrs Beaney Snr against the council's refusal of a retrospective application for the change of use of land within the ownership of Mr and Mrs Beaney Snr at Shirehall Farm Shirehall Road, Hawley, Kent to a private gypsy and traveller caravan site comprising one mobile home and one touring caravan occupied by Mr and Mrs Beaney Jnr and their two daughters. The claim is brought under Section 288 of the Town and Country Planning Act 1990.
2. The site measures some 45 metres by 65 metres. To the south and west is open countryside as also to the north, apart from the existing farmhouse on the site, in which Mr and Mrs Beaney Snr live, and a separate garage. To the east there are some industrial units. The area in front of the house and garage has been hard-surfaced and provides parking and turning for the house.
3. The Issues for the Court
4. These are (1) whether the Inspector misdirected himself that the site was previously-developed land; (2) whether his reasoning in relation to previously-developed land was adequate; (3) whether the Inspector misdirected himself in finding that there were very special circumstances to justify the grant of permission for inappropriate development in the Green Belt and/or reached an irrational conclusion.
5. The decision letter
6. The key parts of the carefully structured decision letter are:
 - i. "Openness and purposes of the Green Belt and character and appearance

- ii. 9. The mobile home and tourer would be within the residential curtilage of Shirehall Farm. As a result there would be no encroachment into the countryside and none of the 5 purposes of the Green Belt would be infringed.
- iii.
- iv. 11. [In the light of Policy C1 of the Dartford Local Plan and paragraphs 12 and 23 of Planning Policy for Traveller Sites] the proposal should not be ruled out as a matter of principle due to its location outside of any settlement.
- v.
- vi. 14. the proposal would not be intrusive or incongruous and would not harm the character and appearance of the surrounding area. As any adverse impact on the countryside would be minimised it would accord with Local Plan Policy C2. Openness would be reduced by a limited degree.
- vii.
- viii. General need for and provision of traveller sites in the Borough

ix.

x. 21. there is an outstanding need for sites in the Borough it is likely to be some time before general needs will be addressed. This adds further support to the immediate provision of a pitch at Shirehall Farm

xi. Alternatives for the appellants

xii.

xiii. 24. there are no suitable, authorised alternative sites available to the current occupiers of the mobile home. In the event that the appeal failed and they were forced to leave it the likely outcome would be a roadside existence or an unauthorised site elsewhere The absence of alternatives therefore favours the proposal Requiring the mobile home to be vacated would therefore represent an interference with their home and family life.

xiv.

xv. 26. From the evidence available the best interests of children would be served by staying at the site.

xvi. Further considerations

xvii. 27. The definition of previously-developed land in Annex 2 of the National Planning Policy Framework excludes land in built-up areas such as private residential gardens. However, the appeal site is within a rural area and as the mobile home and tourer would be located within the curtilage of developed land it should be treated as previously-developed land. In turn, the PPTS indicates that weight should be attached to the effective use of such land. There is nothing to suggest that the land was previously untidy or derelict but it is preferable for traveller sites to be located on land of this type rather than on 'greenfield' sites. I therefore give significant weight to the fact that the appeal site is previously-developed land.

xviii. 28. Policy CS20 of the Core Strategy confirms that in identifying sites to meet an agreed requirement account will be taken of the protection of the openness of the Green Belt. In the absence of other policies it is reasonable to use its criteria in the consideration of individual applications. There is no conflict with the other factors. My findings in relation to openness are set out earlier. However, given that future traveller sites are likely to be located in the Green Belt, the policy does not seek to prevent any impact on openness. In this case the consequences of a single pitch within a domestic curtilage are as about as low as they could be. Therefore whilst taking criterion c) into account there is no conflict with that development plan policy.

xix. 29. The PPTS advises that traveller sites should be sustainable

economically, socially and environmentally. Many of the factors referred to in paragraph 11 would be met. The Council does not dispute that the appeal site is within 1km of services and facilities and many other gypsy sites are further away. However, Shirehall Road is not conducive to walking so that most journeys would be likely to be undertaken by car contrary to the aim of the Framework of making the fullest possible use of public transport, walking and cycling. As such, the location of the site is neutral in the overall balance.

xx.

xxi. Overall balancing

xxii. 33. The proposal would be inappropriate development within the Green Belt which Policy CS13 of the Core Strategy seeks to resist. Policy S4 of the Local Plan has similar aims. According to the Framework substantial weight should be given to any harm to the Green Belt. The Written Ministerial Statements also underline that protection of the Green Belt is an explicit policy intent. In addition, there would be a limited reduction in openness. However, there would be no conflict with the purposes of the Green Belt and no harm to the character and appearance of the area subject to certain further works.

xxiii. 34. Although the general level of need for pitches in Dartford is relatively modest it does exist and policies to deal with this in the

longer term are still some way from being finalised. Similarly the provision of adequate sites is not imminent. Furthermore, there is a lack of realistic, suitable alternatives for Mr and Mrs Beaney junior and the best interests of their children would be served by staying where they are. Their personal circumstances in supporting the appellants attract limited weight. However, I give significant weight to the fact that the proposed location would be on previously-developed land and that the most directly relevant development plan policy would be met.

xxiv. 35. In the Written Ministerial Statement of July 2013 the Secretary of State makes clear that the single issue of unmet demand for traveller sites is unlikely to outweigh harm to the Green Belt so as to constitute the “very special circumstances” to justify inappropriate development in the Green Belt. This is re-emphasised in the further Statement of January 2014. However, in this case, the factors that weigh in favour of the proposal do not only relate to unmet demand for sites.

xxv. 36. In the final analysis, the other considerations clearly outweigh the totality of harm that would arise including the conflict with the broad policy aim of protecting the Green Belt. Looking at the case as a whole and having regard, in particular, to the location of the site on previously-developed land and the compliance with the policy relating to gypsies and travellers, I am satisfied that very special circumstances exist. As such a permanent permission is justified and there is no need to consider a temporary permission as discussed at the hearing or any human rights implications for the appellants.

xxvi. 37. Some representations raised concerns about precedent and regarded the appeal as a 'test case' for traveller sites in the Green Belt. I disagree with those views since the factors that I have assessed in this case are unlikely to be exactly repeated elsewhere "

7. Finally, in allowing the appeal and granting permission, the Inspector imposed conditions to limit the visual impact, the number of caravans, the siting of the mobile home, the extent of the pitches and the size of the vehicles to be kept on site.

8. The National Planning Policy Framework (NPPF)

9. The Core planning principles in paragraph 17 include -

- take account of the different roles and character of different areas, promoting the vitality of our main urban areas, protecting the Green Belts around them, recognising the intrinsic character and beauty of the countryside and supporting rural communities within it;
- encourage the effective use of and by re-using land which has been previously developed (brownfield land) provided that it is not of high environmental value.

10. Included in the provision of housing section are:

- i. "48. Any allowance [for windfall sites] should be realistic having regard to the Strategic Housing Land Availability Assessment and should not include residential gardens.

- ii.

iii. 53. Local planning authorities should consider the case for setting out policies to resist inappropriate development of residential gardens, for example where development would cause harm to the local area.

iv.

v. 55. To promote sustainable development in rural areas, housing should be located where it will enhance the vitality of rural communities "

11. The five purposes of the Green Belt are set out in paragraph 80. These are:

- to check the unrestricted sprawl of large built-up areas;
- to prevent neighbouring towns merging into one another;
- to assist in safeguarding the countryside from encroachment;
- to preserve the setting and special character of historic towns; and
- to assist in urban regeneration, by encouraging the recycling of derelict and other urban land.

12. Development control policy in the Green Belt is contained in two paragraphs:

- i. "87. As with previous Green Belt policy, inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.

- ii. 88. When considering any planning application, local planning authorities should ensure that substantial weight is given to any harm to the Green Belt. "Very special circumstances" will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly
- iii. outweighed by other considerations."

13. Then,

14. "Conserving and enhancing the natural environment

- i. 111. Planning policies and decisions should encourage the effective use of land by re-using land that has been previously developed (brownfield land), provided that it is not of high environmental value "

15. The Glossary to the NPPF includes:

- i. **"Previously-developed land:** Land which is or was occupied by a permanent structure, including the curtilage of the developed land (although it should not be assumed that the whole of the curtilage should be developed) and any associated fixed surface infrastructure. This excludes: land that is or has been occupied by agricultural or forestry buildings; land that has been developed for minerals extraction or waste disposal by landfill purposes where provision for restoration has been made through development control procedures; land in built-up areas such as private residential gardens, parks, recreation grounds and allotments; and

land that was previously-developed but where the remains of the permanent structure or fixed surface structure have blended into the landscape in the process of time."

16. Planning Policy for Traveller Sites (CLG, 2012) ("PPTS")

17. The relevant paragraphs are -

- i. "1. This document sets out the Government's planning policy for traveller sites. It should be read in conjunction with the National Planning Policy Framework
- ii.
- iii. 14. When assessing the suitability of sites in rural or semi-rural settings, local planning authorities should ensure that the scale of such sites does not dominate the nearest settled community.
- iv.
- v. 25. Local planning authorities should very strictly limit new traveller site development in open countryside that is away from existing settlements or outside areas allocated in the development plan. Local planning authorities should ensure that sites in rural areas respect the scale of, and do not dominate, the nearest settled community, and avoid placing an undue pressure on the local infrastructure.

vi. 26. When considering applications, local planning authorities should attach weight to the following matters:

a) effective use of previously-developed (brownfield) untidy or derelict land;

vii. "

18. Policy CS20 of the Dartford Core Strategy 2011

19. Headed "Gypsies and Travellers" and described in paragraph 35 of the decision letter as "the most directly relevant Development Plan Policy", the relevant part provides:

- i. "1. The Council will work with Kent authorities to agree a sub-regional distribution of traveller and travelling showpersons pitches. In identifying sites to meet an agreed requirement, the Council will take into account:
 - a) Impact of proposed pitch provision on adjacent residential communities;
 - b) Accessibility of a proposed location to educational, health, community facilities
- ii. and public transport;

iii. c) Protection of the openness of the Green Belt;

iv. d) The availability and delivery of sites;

v. e) Other planning constraints, including flood risk."

20. Issue 1

21. There are a number of matters of common ground between the parties: (1) that the appeal site is not part of the built-up area but rather forms part of the countryside, and therefore subject to countryside policies; (2) that the mobile home and touring caravan would be located within the curtilage of developed land, that is in the curtilage of the farm house at Shirehall Farm; (3) that the Inspector's finding in paragraph 27 of the decision letter that the appeal site should be treated as previously-developed land turned on two matters, that it was in the curtilage of developed land and that since it was not in a built-up area the appeal site was not excluded as a private residential garden. This last matter turned on his interpretation of the phrase in the Glossary to the NPPF that "land in built-up areas such as private residential gardens" is excluded from the definition of previously-developed land; (4) that the wording of the exclusion of private residential gardens from previously-developed land in the Glossary to the NPPF is almost identical to that in Planning Policy Statement 3: Housing (PPS3) 2010, re-issued 2011, where the exclusion is also prefaced by the words "in built-up areas"; (5) that the Inspector's interpretation of the definition of previously-developed land to include private residential gardens in non-built-up areas went on to play a major part in the reasoning (in paragraphs 34 and 36 of the decision letter) for allowing the appeal, so that if the Inspector's interpretation was wrong the decision would have to be quashed.

22. The claimant's submissions

23. For the claimant, Mr Bowes's first argument is that, read entirely on its own, there is nothing in the definition of previously-developed land in the Glossary to the NPPF to require that only private residential gardens in built-up areas are excluded. Private residential gardens (and parks, recreation grounds and allotments) are primarily found in built-up areas, and the reference to "land in built-up areas" can and should be read as no more than an acknowledgement of that. Thus, private residential gardens in non-built-up areas are also excluded from the definition.
24. If the first argument were not to succeed, Mr Bowes's second argument was that the same broad interpretation of the exclusion can be reached by reading the definition in the Glossary to the NPPF in the light of paragraphs 45 and 53 of the same document, both of which referred to residential gardens, but without any differentiation between those in built-up areas and those in the countryside.
25. This second argument was further bolstered by the wording of a Written Ministerial Statement in the House of Commons on 9 June 2010, in which the Minister explained the Policy ambition to remove residential gardens from the ambit of previously-developed land so as to prevent the phenomenon of "garden grabbing"; and a circular letter to local planning authorities from the chief planning officer of 15 June 2010 in like terms.
26. Third, argued Mr Bowes, given the planning implications of land being classified as previously-developed land (see in this case paragraph 111 of the NPPF and paragraph 24 a) of the PPTS), there was no sensible reason for the Government to differentiate between private residential gardens in built-up areas and those in the countryside. This supported the wider interpretation of the exclusion and the narrower definition of previously-developed land.
27. Fourthly, bearing in mind the observation of Sullivan LJ in Redhill Aerodrome Ltd v Secretary of State for Communities and Local Government [2014] EWCA Civ 1386, paragraph 16, that where the Government seeks to effect a change in national planning policy it is reasonable to expect a "clear statement to that effect", and Eady J's holding in Dartford Borough Council v Secretary of State for Communities and Local Government [2012] EWHC 634 (Admin), paragraph 23, that the changed definition of

previously-developed land was not confined to small or intensively used gardens, but to all gardens, the definition in both planning documents of previously-developed land should be read to exclude all private residential land, whether or not in a built-up area.

28. In the second sentence of paragraph 27 of the decision letter the Inspector had regarded the appeal site as previously-developed land because it was "within a rural area" and not within a built-up area. That was to misconstrue the current definition of previously developed land.

29. Submissions of the defendant

30. For the defendant, Mr Banner contends that the words "land in built-up areas" in the definition of "previously-developed land" in the Glossary to the NPPF and in PPS3 cannot simply be ignored. Mr Bowes's construction meant either omitting the words "in built-up areas" or writing in words which were not there. That was impermissible. As Richards LJ said in Timmins v Gedling Borough Council [2015] EWCA Civ 10; [2015] 2 P & CR 12, paragraph 14, in relation to the NPPF -

- i. "24 Policy statements of this kind should be interpreted objectively in accordance with the language used

31. It was wrong to use other passages in the NPPF to force an artificial interpretation on the definition in the Glossary. It was the Glossary which was the interpretation provision. In any case, paragraphs 48 and 53 were not dealing with previously-developed land and did not compel an artificial interpretation of the definition in the Glossary. The Ministerial Statement and the chief planning officer's circular letter were issued in the context of, and with express cross-reference to, PPS3 (2010) which, in its definition of previously-developed land, differentiated between gardens etc in built-up areas and those which were not so situated. Therefore, the Ministerial Statement and the chief planning officer's letter did not assist Mr Bowes.

32. There was no anomaly. The objectively ascertained intention by the exclusion of private

residential gardens from the definition of previously-developed land was to address concerns about "garden grabbing" in suburban or urban areas, where green space is more limited than elsewhere. Redhill concerned an entirely different situation where an attempt was being made to read down a provision, rather than (as here) to delete express wording in a definition. In Dartford, the court had been considering a private residential garden in a built-up area and anything said there had no relevance to the arguments now advanced by the claimant.

33. In the NPPF there were numerous policies distinguishing between built-up areas and the countryside, for example paragraphs 17, 55 and 80. The approach to previously-developed land was not inconsistent, especially given the fall-back of paragraph 53 (which was available in rural areas as well as built-up areas).

34. The appeal site was not within the built-up area but within the countryside. As a result, the Inspector rightly concluded in paragraph 27 of the decision letter that the exclusion did not apply.

35. Conclusion on Issue 1

36. Mr Banner is plainly right and Mr Bowes plainly wrong. It is impossible to read the definition of previously-developed land in the two Policy documents in such a way as to exclude from it private residential gardens which are not in built-up areas. To do so is to contradict the clear words used in the definition.

37. The exclusion of residential gardens in built-up areas has a rational explanation in that "garden grabbing" is a particular (and some feel undesirable) phenomenon of built-up areas. The observation of Sullivan LJ in Redhill, at paragraph 16, commented upon and distinguished by Richards LJ in Timmins, paragraph 28, does not give carte blanche to disregard the express words of a definition in a policy document.

38. The reasoning of Eady J in Dartford does not assist Mr Bowes. Eady J uncontroversially found at paragraph 21 that the exclusion of residential gardens from the definition of previously-developed land related to "garden grabbing", and in paragraph 23 that there was nothing "to support the notion that it would only be small and intensively used

gardens that should not be 'grabbed'". The issue now raised by Mr Bowes simply did not arise.

39. If the wording of the exclusion in the definition of previously-developed land is due to an oversight (and there is no evidence of this) or, whilst intended, is now thought to have undesirable consequences, then the remedy lies with the Minister to widen the exemption and narrow the scope of previously-developed land. That is not a task for the court (see Timmins, paragraph 28).

40. The challenge on Issue 1 fails.

41. Issue 2

42. Submissions Of the Claimant

43. Mr Bowes here takes issue with another aspect of the second sentence of paragraph 27 of the decision letter, namely the reference to the mobile home and touring caravan being located within the curtilage of developed land. He agrees that the appeal site did include this curtilage and that the mobile home and touring caravan were being permitted to remain on it, but he questions how the Inspector has approached the bracketed phrase in the Glossary's definition of previously-developed land "(although it should not be assumed that the whole of the curtilage should be developed)". Mr Bowes says that in granting permission the Inspector seems to have assumed that the whole of the curtilage of Shirehall Farm "should be developed", without explaining why.

44. As a new point not previously raised, he referred to the absence of any condition attached to the planning permission removing permitted development rights at Shirehall Farm, and

the risk that the planning permission would now lead to additional development taking place under the Town and Country Planning (General Permitted Development) (England) Order 2015. He referred to Schedule 2 Part 1 (Class F) (which permits hard surfacing) and Part 2 (Class A) (gate, fence, wall or other means of enclosure).

45. Submissions of the defendant

46. Mr Banner considers that the point simply does not arise. There is no basis for the allegation that the Inspector assumed the whole curtilage should be developed. Indeed, the conditions he imposed relating to the siting of the mobile home and the extent of the pitch area of the mobile home and touring caravan to include hardstanding, parking and amenity areas showed that he made no assumption.

47. There had been no suggestion at the hearing that the Inspector should impose a condition limiting permitted development rights; and this matter was not therefore an issue on which he should be expected to have given consideration in the decision letter. Permitted development rights under Part 1 (Class F) only applied to the householder, that is to Mr and Mrs Beaney Snr, and not to the occupiers of the mobile home and tourer. Therefore, the position was unchanged as a result of the appeal permission. Any permitted development rights that would accrue to Mr and Mrs Beaney Jnr as occupiers under Part 1 (Class A) were trivial, since, in any event, Mr and Mrs Beaney Snr had those same rights. The only fence that the occupiers of the mobile home were likely to want was one between it and the farmhouse, where that was already the subject of a specific condition in the planning permission providing for replacement of the existing fence.

48. Conclusion on Issue 2

49. There is no basis to find that the Inspector has assumed that the whole curtilage should be developed. The conditions imposed strongly suggest that he has not done so. There is nothing of substance in the new points relating to permitted development rights.

50. The reasons given by the Inspector for his decision in relation to previously-developed land are intelligible and adequate so as to enable the reader to understand why the matter was decided as it was and what conclusions were reached on the important controversial

issues (see South Buckinghamshire District Council v Porter (No 2) 2004 UKHL 33; [2004] 1 WLR 1953, paragraph 36). This is not a case where the local planning authority is substantially prejudiced because the planning considerations on which the decision was based were not explained sufficiently clearly to explain what, if any, impact they may have in relation to the decision on future applications (see Save Britain's Heritage v No 1 Poultry Ltd [1991] 1 WLR 153,167.)

51. Accordingly, this ground must fail.

52. Issue 3

53. Submissions of claimant

54. Mr Bowes claims that the decision letter errs in its approach to "very specific circumstances" in three respects. First, there was an error of law in treating compliance with Policy CS20 of the Core Strategy as capable of contributing to the very special circumstances required for development in the Green Belt to take place by, amongst other policies, paragraph 87 of the NPPF. This is what the Inspector did in paragraph 36 of the decision letter. Second, if Mr Bowes were wrong on this, more reasoning was needed to explain why this compliance could so contribute. Third, and in any event, the Inspector's decision that there were very special circumstances to justify the development was irrational. The first two matters, but not the rationality challenge, were confined to Policy CS20.

55. On the first aspect Mr Bowes's oral submissions contained two strands. The first was that, properly construed, the decision in R (Wychavon District Council) v Secretary of State for Communities and Local Government [2008] EWCA Civ 692; [2009] 1 P & CR 15 (which was in fact, like the present claim, a Section 288 application and not a judicial review contrary to what the reported case name would suggest) supported the view that

the circumstances had to be very special on their own, as distinguishable from being of sufficient strength to justify an exception to Green Belt policy.

56. The second strand was that a proper direction on very special circumstances must "go beyond satisfaction of development control policies": R (Lee Valley Regional Park Authority) v Broxbourne Borough Council [2015] EWHC 185 (Admin), paragraph 71.
57. Applied to the facts of this case, the Inspector was entitled to pay regard to Policy CS20, even though it was a policy on site allocation rather than development control. Nevertheless, the mere fact that the application accorded with "the most directly relevant development plan policy" (see paragraphs 28 and 34 of the decision letter) was incapable of contributing to a finding of very special circumstances.
58. Mr Bowes said that there was a real danger otherwise that proposed development in the Green Belt which accorded with other policies in the Development Plan would be held, on that account, to be permissible because justified by very special circumstances.
59. If he were right on this head then there was no alternative to quashing since one of the two particular and principal matters to which the Inspector had regard in finding very special circumstances was "compliance with the policy related to gypsies and travellers" (see paragraph 36 of the decision letter).
60. If he were wrong on this head, and there could be circumstances where accordance with a policy such as CS20 could contribute to very special circumstances, then more reasoning was needed as to why this was so as had been the case on the facts of Lee Valley, paragraph 71, where the challenge on this head had failed. Absent such reasoning, the local planning authority was prejudiced in its role in relation to other sites.
61. On the third aspect Mr Bowes realised the heavy burden on him to show irrationality. Nevertheless, he drew attention to the way in which the decision in R (Chelmsford Borough Council) v First Secretary of State [2003] EWHC (Admin), [2004] 2 P & CR 34, had been analysed in Wychavon (paragraph 27). The conclusion that the circumstances in this appeal amounted to very special circumstances was a conclusion that no reasonable inspector could have reached in accordance with paragraphs 87 to 88

of the NPPF.

62. Submissions of defendant

63. Mr Banner did not argue that the decision could be saved if any of these three related submissions were to succeed.

64. There was no reason why compliance with Policy CS20 should not be one of the matters which together made up a composite bundle of very special circumstances which was found clearly to outweigh the harm. This was particularly so in circumstances where (a) in the local planning authority's area there was "an outstanding need for sites" (paragraph 21 of the decision letter); (b) "future traveller sites [identified by the local planning authority to meet the need] are likely to be located in the Green Belt" (paragraph 28 of the decision letter); (c) CS20 "does not seek to prevent any impact on openness" and in this case "openness would be reduced by a limited degree" (paragraphs 28 and 14 of the decision letter); (d) "in this case the consequences of a single pitch within a domestic curtilage are about as low as they could be" (paragraph 28 of the decision letter); and (e) "the factors in this case are unlikely to be repeated elsewhere" (paragraph 37 of the decision letter). Thus, there were special factors which explain why the compliance with CS20 was of particular relevance in this case. That was enough to render it capable of being part of the composite bundle.

65. The reasoning in Wychavon, paragraph 26, showed that the factors which make a case very special could be the same or at least overlap with those which justify holding that Green Belt considerations are clearly outweighed, any rigid division between the two sets of factors not being required.

66. The facts of Lee Valley were distinguishable. There, the only factor relied upon as a very special circumstance was a design issue. Even so, given the treatment which had been given to that matter in the officer's report, the challenge on that head failed (see paragraph 71). Here, the Inspector did not suggest that compliance with CS20 was sufficient on its own to constitute very special circumstances.

67. The argument on lack of adequate reasons lacked merit since the Inspector clearly

explained the relevance of CS20 to his decision.

68. The irrationality challenge was hopeless. It was within the range of reasonable planning judgments for the Inspector to accord the bundle of considerations sufficient weight that they clearly outweighed the harm so as to justify the conclusion that very special circumstances existed.

69. Conclusion on Issue 3

70. I accept Mr Banner's contentions that reference to Wychavon and Lee Valley are of no assistance to the claimant. The Inspector plainly had the reasoning in Wychavon in mind in the way he worded his decision letter.

71. This was not a case where mere compliance with other development control policies was claimed to constitute very special circumstances. The Inspector was clearly finding that a search for alternative gypsy sites was unlikely to yield a site with so few adverse consequences as in the present case (see paragraph 28 of the decision letter) and which accorded in so many respects with the allocation policy CS20. If that had stood on its own it might well have been capable of constituting very special circumstances justifying this development. I do not have to decide that point. But I can see no reason whatever why this policy compliance should not form part and indeed a particular part in the constitution of the bundle of circumstances found to be very special. That is enough to dispose of the first aspect of Issue 3.

72. The reasons challenge under issue 3 was initially expressed differently in the Grounds where the allegation went wider than policy CS20 and it was claimed that "the Inspector's reasons as to why very special circumstances existed were inadequate". Mr Bowes was wise to abandon that claim because the Inspector's reasons as a whole are very clearly reasoned and explained. The challenge is however no better when confined to the reasoning in relation to CS20. The Inspector has adequately explained why he took CS20 into account in the appellants' favour and why he placed reliance on it along with other matters in finding that very special circumstances existed to justify the development in the Green Belt. There is no failure or inadequacy of reasoning in the decision letter to

embarrass the council in dealing with future development control decisions. In particular, the Inspector has found that the factors which he assessed which included the unusual extent of compliance with CS20 were unlikely to be exactly repeated elsewhere (paragraph 37 of the decision letter). Whilst factors in planning applications are seldom "exactly repeated", the local planning authority should have no difficulty in drawing appropriate lessons from this appeal decision for application in other cases.

73. The rationality challenge is most surprising. I set out the way in which it was pleaded in paragraph 27 of the grounds:

- i. "The Inspector's conclusion at DL, 33 to 36, in a nutshell, is that the site's compliance with the site allocation selection criteria within CS20 Core Strategy 2011, the moderate shortfall of sites, the lack of alternatives, the limited weight attached to personal circumstances, and the fact that the land fell within what the Inspector understood as being previously-developed land, amounted collectively to 'very special circumstances', even assuming the Inspector had been correct to treat the site as previously developed, the circumstances relied upon cannot reasonably be said to be 'very special'."

74. Mr Bowes confirmed in oral argument that if he were wrong on Issue 1 he did not deny that the fact that the land fell within the definition of previously-developed land was a matter capable of going into the bundle of considerations which were eventually held to be very special. None of the other matters in my view was irrationally included in that bundle. There was in my opinion no overall irrationality. Given the bundle of factors, the facts and findings in this case are readily distinguishable from those in, for example, Chelmsford, which is why the factors in that case could be described as "unremarkable" (see Wychavon, paragraph 27). That in no way assists the claimant

here.

75. Accordingly, the claim in respect of Issue 3 must also fail.

76. Disposal

77. Despite the clarity of Mr Bowes' presentation of the council's case, the application to quash is dismissed on all grounds.

78. MR BANNER: My Lord, thank you very much for that judgment. There are a few consequential matters. The first one is a small point. On a few occasions, if I heard it correctly, when Policy CS20 of the Core Strategy was referred to it came out as C20 (without the S).

79. DEPUTY JUDGE: That is helpful. The shorthand writer will note that we are dealing with CS20.

80. MR BANNER: I am also told that there were references to an Inquiry which ought to be to a hearing because the hearing procedure was used as well.

81. DEPUTY JUDGE: I said in the fourth line "following an informal hearing". I will bear that in mind.

82. MR BANNER: My friend says it was and I have no reason to doubt him.

83. The next thing that follows is an application for costs. Perhaps I may deal first with the principle. I simply rely on the principle that costs follow the event. I have won on all grounds and therefore my client is entitled to his costs.

84. DEPUTY JUDGE: I do not suppose, Mr Bowes, that that can be opposed, can it?

85. MR BOWES: It cannot. I do have two very small matters.

86. DEPUTY JUDGE: The next matter is to turn to your costs schedule which I have.

87. MR BANNER: The total claim - we have not included today's costs and I do not claim, add those - is £6,812 which is a little less than the costs the claimant would have claimed had it been successful. I simply say at this stage that is a reasonable and proportionate amount for a claim of this nature. I think my friend has a couple of small points.

88. DEPUTY JUDGE: Mr Bowes, you have some submissions.

89. MR BOWES: There are two matters. The first is that my Lord will note that there is multiplicity of fee earners incurred in this case. First, section 3, Grade 7 fee earners £160 an hour.

90. DEPUTY JUDGE: I think that is done so that the £200 is very seldom charged and most of the work is done by those who charge the lesser fee rates. I think in most of these cases that is intended to benefit you rather than otherwise. Instead of simply getting Gary Howard and Clare Jones to do all the work, the others have been used. You say there is an excessive number.

91. MR BOWES: We say there must be some overlap between those three individuals. I see no reason why the council should bear that. The second point is a short point over the page. You will see attendance on others: counsel, court, co-defendant etc. The first category: personal attendances.

92. DEPUTY JUDGE: Which page am I on?

93. MR BOWES: Page 2, personal attendances: 3.7 hours at £160 an hour, £592. I have had the benefit of discussing this with my friend. He confirms that is not conference with him as counsel. Therefore, in my submission - - - -

94. DEPUTY JUDGE: It is not what?

95. MR BOWES: It is not a conference with my friend, conference with counsel. It is therefore attendance on somebody else. We say that is awfully high for a straightforward 288 claim. Therefore, what flows from that is that we invite the court to summarily assess costs in the quantum of £6,000.

96. DEPUTY JUDGE: What you say is that something should come off the 6,812?

97. MR BOWES: Yes.

98. DEPUTY JUDGE: You do not say precisely how much.

99. MR BOWES: We would invite the court to summarily assess at 6,000.

100. DEPUTY JUDGE: You would be content at 6,000.

101. MR BOWES: Yes.

102. DEPUTY JUDGE: Has that point previously been notified to Mr Banner or was that new to him?

103. MR BOWES: No. It was new to him this morning. I took instructions on it.

104. DEPUTY JUDGE: Mr Banner, what do you say on those two points?

105. MR BANNER: On those two points, if I may deal with the multiplicity of fee earners first. Mr Lord summarises the point very accurately, if I may say so, that the division of labour is intended to save costs rather than add to them. Principally the costs were done by the mid-ranging fee earners subject to the supervision of the higher-earning fee earners where appropriate, and where tasks could be delegated to the more junior solicitor that was done. That was very sensible and reduced costs. As to the fact that there were - - - -

106. DEPUTY JUDGE: I am just looking through. Where is the £200 ever claimed?

107. MR BANNER: It may not even be on the facts of this case.

108. DEPUTY JUDGE: I am just looking. Page 1, the only reference is to £160.

109. MR BANNER: It is in the schedule. If you go to the very final page - where the work done on documents which then feeds its way through into the form - there is a small amount, in fact barely over one hour, of work done by the more senior lawyers.

110. DEPUTY JUDGE: Where do I find that?
111. MR BANNER: You should have the spreadsheet.
112. DEPUTY JUDGE: I have the spreadsheet.
113. MR BANNER: Do you see "A hours"?
114. DEPUTY JUDGE: Yes.
115. MR BANNER: "A hours". There is 1.2 hours. A is grade A.
116. DEPUTY JUDGE: A is grade A. I have got it.
117. MR BANNER: That is how I understand it anyway.
118. DEPUTY JUDGE: We have a total of 1.2 hours. Of the entire claim, only 1.2 is being claimed at the £200 rate.
119. MR BANNER: That is correct. In my submission it is reasonable for the Secretary of State to have his more senior lawyers keep an eye on - a degree of scrutiny - material that goes out in his name. There is no excess here.
120. As to the fact that there were multiple grade B (£160 an hour lawyers), there was no overlap. I can certainly speak for the division of labour between Mr Torru and Miss Fern because when I prepared my skeleton argument between Christmas and the New Year Mr Torru was away and he had arranged for Miss Fern to receive my skeleton argument, pass it to material clients and to obtain those clients' instructions and then correspond with me. So there was no overlap there. It was simply to cover the absences from time to time of particular individuals.
121. DEPUTY JUDGE: What do you say about the other point raised which is the excessive number of personal attendances - 3.7?
122. MR BANNER: Unfortunately, all I can do is speculate because despite the fact that my friend and his clients have had their schedules since the beginning of this week,

these points were only put to me this morning. My instructing solicitor is in the Court of Appeal at the moment. I can only speculate. What I can say is that specific instructions were taken from the Inspector. I had the benefit of a note from the Inspector at the outset of these proceedings to inform me of various points. Some of the documents in this case produced by my client were filed at court by the Government Legal Department as opposed to by my clerks. Either or both of those may have been within that. There may have been other quite legitimate things but I simply do not know.

123. DEPUTY JUDGE: Does filing at court count as personal attendances?

124. MR BANNER: I think it probably would do because it is attendance on others, including court, so turning up at court with a document would appear to fall within that. I am put in a difficult position by this point being raised only at the last minute this morning.

125. What I would say by way of a higher-level observation is that - contrary to what my friend suggested - it is not an obviously egregious amount of time to spend on attendances in a claim of this nature. There are a significant number of attendances in the claimant's statement of costs amounting to some £450 which are not grossly dissimilar to the amount claimed by my client. In my submission there is nothing overtly untoward that justifies suggesting that the time claimed is not reasonable and nor is it disproportionate, either individually or in terms of its effect. Rounded down, my friend suggests 6,000 which is, in fact, greater than the sum claimed for those attendances in any event.

126. That is all I can say on the matter.

127. DEPUTY JUDGE: I think he was suggesting that you rounded it down, that dealt with the two matters which he was raising broadly.

128. MR BANNER: What I would say also, again by way of interesting observation of my friend's client's costs, is that there were three different fee earners referred to in their statement of costs too. So the council must accept the principle of an appropriate division of labour between more expensive, more senior lawyers, mid-ranking lawyers

and junior lawyers depending upon the nature of the task in hand. One sees that in the description of fee earners at the top of the page.

129. DEPUTY JUDGE: It is slightly unusual - this case - in that the claimant's costs only slightly exceed the defendant's costs whereas claimant's costs usually very considerably exceed defendant's costs partly because they do not have the economies which a local authority conducts because they have the primary burden of presenting the case and that usually, therefore, inflates the costs. It is commendable in this case that their costs have been kept low. Mr Bowes, is there anything more you want to say on the matter?

130. MR BOWES: No. It is in the hands of my Lord to summarily assess the matter and so I invite my Lord to do.

131. Ruling on Costs

132. DEPUTY JUDGE: I have heard the arguments on this matter. There is no justification for saying that the Treasury Solicitor had involved too many people or too much time by a grade A fee earner, it being clear that only 1.2 hours has been done by a grade A fee earner and it being plain from the claimant's own schedule that in their case three solicitors were involved at different rates of pay, including one at £300 an hour which was much higher than any rate of pay charged by the Treasury Solicitor.

133. So far as the suggestion that the 3.7 hours for personal attendances on others was excessive, that had been raised very much at the last moment when this statement has been available for several days and was provided before the hearing on Wednesday of this week. I am simply not in a position to say that it was an unreasonable or disproportionate amount.

134. Accordingly, I decline to reduce the amount and I summarily assess the costs in the total claim which is £6,812.

135. Are there any other matters arising?

136. MR BOWES: There is one application, and that is to seek from my Lord

permission to appeal. It has two strands, this application. It relates to Ground 1. The first strand is that there is a reasonable, compelling prospect of success, and that is that notwithstanding my Lord found that there was a rational explanation for a distinction between land in a built-up area and land not in a built-up area when safeguarding the phenomena of "garden grabbing", that in my submission does not reveal itself from the contemporaneous policy statements of the Department or the Department's (Inaudible).

137. My second point that arises from that is that my Lord has not given effect to the intention of the Minister in producing these amendments. That intention was clear, and it is proper, as I think my Lord accepted, to read Policy Statements in the context of their intention.

138. On that basis I seek permission to appeal on the basis that it has a reasonable, good, prospect of success.

139. The second basis on which permission to appeal is sought is that there is a compelling argument, compelling reason, that the Court of Appeal hear this argument in that it is a matter of acute public interest - the status of residential gardens - in that there is a significant difference in the planning system as to how brownfield and greenfield are treated identified within my Lord's judgment and, secondly, as demonstrated from the Minister's Statement himself, taking the trouble to draw this matter to the attention of the House of Commons.

140. On those two bases I respectfully seek from my Lord permission to appeal.

141. Ruling on Permission to Appeal

142. DEPUTY JUDGE: So far as the first ground is concerned, I do not consider that there is a reasonable prospect of success.

143. So far as the second ground, I do not consider that that is a compelling reason for the Court of Appeal to consider it. But of course if application is made to the Court of Appeal for permission they will have the opportunity, if they see fit and if they were to feel that there were not grounds on the first matter but that there were on that matter, to

grant leave on that matter on the grounds of that consideration.

144. Accordingly, I refuse leave.

145. I think that as this has been a read-out judgment, your time for appealing should not begin to run until there is issued the perfected transcript. (Pause) I may get it next week but then I have to turn it around so there may be a delay. Accordingly, your time for appeal will not start until you receive that. I do not think, Mr Banner, that is going to prejudice anyone in any way.

146. MR BANNER: I did have in mind there are some people, the beneficiaries of the planning permission, who will want to agree finality but it sounds like it is not going to be a delay of months as opposed to days.

147. DEPUTY JUDGE: In any event, they are living in the caravan there so I do not think it is going to make too much difference to them, the extra time.

148. MR BOWES: I am grateful to you. You anticipated my further application.

149. DEPUTY JUDGE: I am grateful to both counsel and of course those behind you for the way the case has been prepared and presented. We got through it very speedily earlier this week.

Penderfyniad ar yr Apêl

Gwrandawriad a gynhaliwyd ar 04/06/14
Ymweliad â safle a wnaed ar 04/06/14

**gan K Nield BSc(Econ) DipTP CDipAF
MRTPI**

Arolygydd a benodir gan Weinidogion Cymru
Dyddiad: 22 Gorffennaf 2014

Appeal Decision

Hearing held on 04/06/14
Site visit made on 04/06/14

**by K Nield BSc(Econ) DipTP CDipAF
MRTPI**

an Inspector appointed by the Welsh Ministers
Date: 22 July 2014

Appeal Ref: APP/H6955/C/13/2210461

Site address: land off the B5101, Southsea, Wrexham, LL11 5NS

The Welsh Ministers have transferred the authority to decide this appeal to me as the appointed Inspector.

- 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 Andrew Cash against an enforcement notice issued by Wrexham County Borough Council.
- The Council's reference is PG/2011/20036¹.
- The notice was issued on 11 November 2013.
- The breach of planning control as alleged in the notice is "Without planning permission the change of use of the land from use for agriculture to a mixed use for agriculture and for the provision of gypsy/traveller residential caravan accommodation, a chalet, the parking of vehicles, the erection of walls, ornate metal gates, fences, a mobile utility and laundry building and associated domestic paraphernalia, the installation of a liquefied petroleum gas tank and the importation of waste materials and tarmac to form a hardstanding for the caravans and chalet".
- The requirements of the notice are:
 - (i) Stop using any part of the land edged red (on the plan attached to the notice) for the provision of gypsy/traveller residential caravan accommodation and/or the parking of vehicles.
 - (ii) Remove from the land edged red (on the plan attached to the notice) all caravans, sheds, amenity blocks, chalet and any other structures associated with the residential use of the land.
 - (iii) Remove the liquefied petroleum gas tank from the land edged red (on the plan attached to the notice).
 - (iv) Reduce the height of the boundary walls at the Southsea Road access to a height of no greater than 1 metre.
 - (v) Remove all tarmac and hardstanding from the land edged red (on the plan attached to the notice) other than that shown cross hatched in blue.
 - (vi) Restore the land edged red (on the plan attached to the notice), (excluding the area cross hatched in blue), to its condition before the laying of hardbound materials and tarmac imported to the site, used to create a hardstanding area for the caravans and chalet.
- The periods for compliance with the above listed requirements are:
 - (i) Nine months after this Notice takes effect.

¹ Taken from the Council's Statement of Case

- (ii) Nine months after this Notice takes effect.
 - (iii) Twelve months after this Notice takes effect
 - (iv) Twelve months after this Notice takes effect.
 - (v) Twelve months after this Notice takes effect.
 - (vi) Twelve months after this Notice takes effect
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (g) of the Town and Country Planning Act 1990 as amended.
-

Summary of Decision

1. The appeal is dismissed with variation and the enforcement notice upheld as set out in the Formal Decision below.

Preliminary matters

2. The Council refused a planning application² for development described as a traveller's chalet and caravan park for one plot (one chalet and two caravans) plus an amenity building at the appeal site in February 2012. An appeal³ against the refusal was considered at a Hearing in July 2012 and the appeal was subsequently dismissed. At the time of the Hearing the Inspector noted that the development referred to in the appeal scheme had commenced.
3. The Council served an enforcement notice against the alleged breach of planning control and an appeal against that was submitted and a Hearing was opened in January 2013. However, the Council withdrew the notice at the Hearing. A further enforcement notice was subsequently issued which is the subject of the current appeal.
4. Although the application is for a permanent consent the Appellant has provided details of the personal circumstances of his family group co-occupying the site as part of the justification for the proposed development. The personal circumstances advanced are also relevant to a consideration of a possible temporary planning consent. Consequently, I will consider the appeal on the basis that the scheme is required for the particular persons identified.

The site, surroundings and background

5. The appeal site is located in open land to the north of the settlement of Southsea. The Appellant owns a narrow, irregularly shaped tract of land between Southsea Road (B5101) to the west and the Brymbo Link Road to the east. This is split by a public footpath linking the two roads. The enforcement notice attacks the use of the land to the north of the footpath. Land to the south of the footpath is used by the Appellant for the grazing of horses.
6. The appeal site is occupied by an extended family group in a number of mobile homes and caravans. A substantial twin unit mobile home⁴, referred to by the parties and in

² Application Ref: P/2011/0670 dated 12 September 2011 was refused dated 6 February 2012

³ Appeal Ref: APP/H6955/A/12/2172149 dated 13 August 2012

⁴ Some doubts were expressed by interested parties as to whether the large mobile home falls within the definition of a caravan due to its size. The Appellant states that it is within the definition (as defined in the Caravan Sites and Control of Development Act 1960 and the

the notice as a "chalet", is occupied by the Appellant and his three children at weekends and school holidays. For consistency with the principal parties and the previous Inspector I will refer to this large mobile home as "the chalet". It is also indicated that Mr Cash occupies a touring caravan at the site at times.

7. There is also a smaller mobile home at the site occupied by Margaret Delaney, (the Appellant's sister) with her husband Edward (known as Ned) and their youngest son. Their elder son, Jonny, his wife Mary and young child live in a touring caravan at the site. A second sister, Mary, also lives at the site with her son. Mary's daughter lives in a touring caravan at the site with her young child. In addition to the above caravans there is a "mobile" laundry/utility unit, hut, LPG⁵ tank, stables, items of domestic paraphernalia and vehicles (including the Appellant's camper van) within the site which is now enclosed by wooden fencing with a concrete base and posts.
8. I noted at my visit that the ground is partly covered with loose hardcore material. At the original site entrance (which provided access to the stables and agricultural land) from Southsea Road a splayed brick entrance, with metal gates and ornamental features, has been constructed. A short section of tarmac surface leading from the highway into the site has been provided.

Common ground

9. The Council does not dispute that the Appellant and other co-occupants of the site are gypsies as defined in Welsh Assembly Government Circular 30/2007: *Planning for Gypsy and Traveller Caravan Sites* (WAGC 30/2007). On the basis of the evidence before me of their cultural background and nomadic lifestyle I am also satisfied that they come within the definition and, consequently, the policy regime that applies to gypsies and travellers is engaged.
10. The appeal site and adjacent land to the south owned by the Appellant are within an area designated in the UDP⁶ as "Green Barrier". The UDP points out (section 5.2) that, in Wrexham, Green Barriers possess the same characteristics as and purposes of formal Green Belts, except for their long term permanency.
11. Planning Policy Wales (PPW) explains (paragraph 4.8.1) that around towns and cities there is often a need to protect open land and local planning authorities need to consider establishing Green Belts and making local designations, such as green wedges. In this case the term "Green Barrier" applied in the UDP is the Council's local designation for, and is synonymous with, the term green wedge used in PPW. PPW indicates that green wedge policies should be reviewed as part of the development plan review process but until that time should serve the same purpose as a Green Belt (paragraph 4.8.1 and 4.8.3).

Caravan Sites Act 1968 (as amended)) and it is not disputed by the Council. I have no reason to reach a different view.

⁵ Liquefied petroleum gas (LPG)

⁶ Wrexham Unitary Development Plan 1996 – 2011 Adopted 14 February 2005 (UDP)

Appeal on ground (a)

Main issues

12. It was agreed at the Hearing that the main issues in the ground (a) appeal are:

- (i) whether the development is inappropriate development in the Green Barrier;
- (ii) the impact of the development on the Green Barrier in terms of its openness and the purposes of including land within it;
- (iii) the effect on the character and appearance of the site and the surroundings;
- (iv) the effect on highway safety, and
- (v) whether the harm to the Green Barrier by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations which amount to very exceptional circumstances to justify the development.

The other considerations are:

- (a) the general need for and supply of gypsy sites in the area taking into account national and local planning policy;
- (b) the accommodation needs of the Appellant and those residing on the appeal site and their personal circumstances, and
- (c) whether a grant of temporary planning permission would be appropriate in the event that it is found that a permanent permission would not be.

I shall also refer to the human rights of the Appellant and those residing on the appeal site.

What are the changes since the previous appeal?

13. As the issues in this ground (a) appeal are similar to those in the 2012 s78 appeal I asked the principal parties at the Hearing for a summary of any significant changes in circumstances since the previous appeal that might be regarded as significant material considerations in the present appeal.

The Appellant

14. The Appellant states that this appeal has provided evidence from a qualified highway engineer and a landscape consultant to deal with disputed matters. There are now more occupants at the site for which health and other personal circumstances are advanced to support their case. Additional evidence regarding the need for gypsy and traveller sites has been made available and accepted by the Council. In addition, there has been the issue of a Welsh Government paper: *Travelling to a Better Future* together with the stated intention of the Welsh Government to re-introduce the statutory duty for local authorities to provide gypsy and traveller sites which, it is contended, supports the Appellant's position. Finally, recent case law, in particular in relation to the best interests of children, weighs in favour of the proposal.

The Council

15. The Council, whilst accepting recent case law, the availability of new information regarding the need for sites and the current position of the Welsh Government, does

not consider there has been significant material change to the main issues that were the subject of the previous appeal.

Reasons

Does the proposal constitute inappropriate development in the Green Barrier?

16. As I indicate above there is no dispute that the appeal site is within the Green Barrier. UDP policy EC1 follows the thrust of PPW and states that within such areas development will only be granted planning permission if it is for specified forms of development which maintain the openness of the Green Barrier and do not conflict with the purpose of including land within it. The development alleged in the notice does not fit any of the permitted forms of development and therefore it would be inappropriate development in the Green Barrier which conflicts with UDP policy EC1.
17. The Appellant accepts that the development within the Green Barrier is inappropriate development for the purposes of UDP policy EC1. However, it is argued that its designation as Green Barrier "is not the same thing as treating the site as being within the Green Belt"⁷. The inference by the Appellant is that being sited within the Green Barrier would carry less weight than location within the Green Belt. However, paragraph 4.8.14 of PPW states that "when considering applications for planning permission in Green Belts or green wedges, a presumption against inappropriate development will apply".
18. PPW also states that substantial weight should be attached to any harmful impact which a development would have on such designated areas. Paragraph 4.8.15 states that inappropriate development should not be granted planning permission except in very exceptional circumstances where other considerations clearly outweigh the harm which such development would do to the Green Belt or green wedge and any other identified harm. Consequently, I attach little weight to the Appellant's contention with regard to this matter.

The impact of the development on the Green Barrier

19. One of the stated purposes of the Green Barrier is to assist in safeguarding the countryside from encroachment. The development that has taken place conflicts with that stated purpose as it encroaches into the mainly open area of land between Southsea Road (which is at the edge of built development) and the Brymbo Link Road.
20. The siting of the chalet, caravans and structures (as indicated in the notice) within the site occupy a significant part of the notice land and serve to reduce the openness of the site within the Green Barrier. The site is enclosed to a large extent by mature hedgerows at the site boundaries to both Southsea Road and the Link Road and by fencing (about 1.8m in height) around the majority of the appeal site erected by the Appellant which, taken together, limit views into the site from public view points. Notwithstanding those matters, I noted at my visit that views into the site of the development that had taken place could clearly be obtained at the site entrance from Southsea Road and at the position of a gate providing access to the site from the public footpath to the south of the site.
21. I accept that a previously existing stable itself led to some loss of openness of the site but that occupies only a small area compared to the extent of development that is

⁷ Appellant's Written Statement paragraph 16.

being enforced against. Consequently, that does not alter my view as to the overall loss of openness that results from the development that has taken place.

22. Taking these factors into account I conclude on this issue that the development would be harmful to the Green Barrier in terms of its openness and the purposes of including land within it contrary to UDP policy EC1 and national policy in PPW.

Effect on character and appearance

23. Amongst other matters UDP policy GDP1 requires that all new development should make a positive contribution to the appearance of the nearby locality. The Appellant has submitted a Landscape Design Statement to support his case. That document argues that the landscape in this area is of a fragmented character and does not relate well to other areas of open land within the Green Barrier. It is contended that the development serves to improve the character of an otherwise untidy area. It is further indicated that the visual envelope of the site is constricted by landscape features as it sits below a large, well vegetated highway embankment which provides effective screening to its eastern periphery, is below the level of the field to the south of the site and is defined by a tall hedgerow to the west. Consequently, the Appellant argues that the appeal site is neither prominent nor visually intrusive within the wider landscape. Schemes to provide landscape enhancement are suggested by the Appellant in the appeal evidence and it is indicated that the proposed measures would serve to promote habitats and biodiversity.
24. The Council points out that the site is located in the Wrexham Ridges and Valley Landscape Character Area within the adopted Wrexham LANDMAP SPG⁸ where the proposed management structure is for conservation and maintenance of the Green Barrier between villages and avoiding proliferation of fences are stated aims. A number of interested parties noted that the site had a different character now to that which existed prior to the development alleged in the notice taking place. It was previously agricultural land but now it has an enclosed domestic quality and views across it have changed.
25. The Appellant suggests that the site (or at least a significant part of it) should be regarded as previously developed land prior to its occupation by the Appellant and other co-occupants. Aerial photographs (Photograph P1) submitted by the Appellant showing the site at 2006, 2007 and 2009 appear to indicate some limited use of the land as the vegetation is denuded and there are some items⁹ sited on it. Nevertheless, in the photographs it still retains an open verdant quality.
26. A number of interested parties made reference either at the Hearing or in written representations that prior to the alleged development taking place the site had provided a degree of visual amenity for local residents particularly when viewed as an open area from the public footpath. There is also some evidence that the site had been used in the past for some community activities (Photograph P4) although the circumstances around that use are not clear.
27. The stable building, which was granted planning permission in 1994, would no doubt have had some form of limited surfacing adjacent to it and access from Southsea Road in connection with the stables and other agricultural use of the land within the current

⁸ Wrexham LANDMAP Supplementary Planning Guidance (SPG)

⁹ It is not clear from the photographs but appear to be vehicles or some form of storage

appeal site and further to the south. However, apart from the small area permitted for the stables it appears to me that the authorised use of the remainder of the site would remain as agricultural use since there has been no planning permission for an alternative use and as such would not meet the definition of previously developed land in PPW. I have no reason to consider that the authorised use of the land for stables and agriculture led to material harm to the character of the notice land and it is likely to have been significantly less than that which has occurred from the alleged development. Consequently, I attach little weight to the Appellant's contentions in this regard.

28. I regard the site as being an important component of the open area between the edge of the settlement and the raised Brymbo Link Road. The residential use that has been introduced has led to a significant change in the local landscape character. In addition, the enclosure of the site with fences has led to greater fragmentation of the landscape in this area. Taking all the above into consideration I conclude on this issue that the significant harm I have identified to the character and appearance of the site and the surroundings, in conflict with the objectives of UDP policy GDP1, has added to the harm I found to the Green Barrier.

Effect on highway safety

29. UDP policy GDP1(d) requires all new development to ensure safe and convenient access to and from development sites both on site and in the nearby locality. WAGC 30/2007 requires local authorities to take highway considerations into account in respect of the identification of new gypsy and traveller sites. It further indicates that projected vehicle movements for gypsy and traveller sites should be assessed on an individual basis for each site.
30. The appeal site entrance is located at the inside of a curve of Southsea Road. In the vicinity of the site the highway has a 30mph speed limit although that changes to the national speed limit some short distance to the north. Traffic speed¹⁰ (which is not disputed) measured in the vicinity of the site entrance for traffic approaching from the north is 38mph whilst from the south is 37mph. In both cases these exceed the speed limit for this section of road.
31. I visited the site twice, once informally in the late afternoon prior to the Hearing and again after the Hearing in early afternoon as an accompanied visit. At my first visit the road had a steady flow of traffic in both directions at a time around the end of the school day. At my accompanied visit the traffic was much lighter often with lengthy gaps between passing vehicles. I noted that the hedgerow along the verge to Southsea Road had recently been cut back¹¹ to increase the extent of visibility. I was informed by the Appellant at my site visit that he had undertaken that work.
32. Guidance on the provision of safe visibility at junctions is provided in TAN 18¹² which applies data from MfS1¹³. Both MfS1 and MfS2 suggest a pragmatic approach to the application of highway design standards taking account of local context.

¹⁰ 85th percentile speeds

¹¹ I was informed by the Council representative at the site visit that hedge maintenance along this part of Southsea Road is the responsibility of the local highway authority

¹² Technical Advice Note 18: Transport (TAN 18)

33. There is no dispute that visibility from the site entrance to the north is acceptable. The Council's concern is with traffic approaching from the south on the opposite side of Southsea Road to the site entrance. The guidance in both MfS1 and MfS2 indicates that some circumstances make it unlikely (my emphasis) that vehicles approaching from the left on the main arm will cross the centreline of the main arm and opposing flows may be physically segregated at that point. If that is the case MfS suggests that the visibility splay to the left can be measured to the centreline of the main arm.
34. In this case I noted that in the vicinity of the site entrance Southsea Road has a reasonable width to allow vehicles to pass easily. The Appellant contends that it is unlikely (in terms of the test required by MfS) that vehicles approaching the site entrance from the south would cross the centreline of the main arm. In response to my direct questions at the Hearing the Council officer would not offer a definite view as to whether it was unlikely that vehicles would cross the centreline merely indicating it was "possible" and referred to the comments of the previous Inspector regarding this matter. Notwithstanding the Council's reticence to state a clear view, on the basis of my site observations at my two site visits, I consider it is very unlikely that drivers would seek to overtake in this section of highway. However, I accept that a few drivers may seek to narrow their line around the bend and in so doing encroach to the centreline or slightly over but that would be an unlikely occurrence. In that situation drivers approaching from the south would have a good view of oncoming traffic along Southsea Road and also of the possibility of traffic emerging from the site access into it. Consequently, I reach a view that it would be appropriate in this case to take the visibility splay measurement to the south to the centreline of the road.
35. Applying the guidance in TAN 18 and MfS1 a stopping sight distance (SSD) of 59m for a level road is appropriate for the design speed of 37mph. As there is a slight uphill gradient for northbound traffic at this point an adjustment in accordance with MfS guidance can be applied such that a SSD of 54.550m¹⁴ is obtained. This is applied as the Y distance for assessing the visibility splay.
36. The Council suggests that the visibility splay should be taken from a point 2.4m back from the highway (X distance) to comply with the guidance in TAN 18 as it is indicated that that distance represents a reasonable maximum distance between the front of the car and the driver's eye. Such a degree of visibility from the appeal site entrance to traffic approaching from the north can be obtained and maintained with minor hedge trimming. However to obtain that degree of visibility to the south the Council contends that it would be likely to require some removal of the existing mature hedgerow.
37. Notwithstanding the above, MfS2 suggests that a minimum X distance of 2m may be considered in some "slow speed"¹⁵ situations when flows on the minor road are low, but using this value will mean that the front of some vehicles will protrude slightly into the running carriageway of the major arm and many drivers will tend to cautiously nose out into traffic. The ability of drivers and other road users to see that overhang should be considered in that situation.

¹³ Manual for Streets (MfS1) and Manual for Streets 2: Wider Application of the Principles (MfS2)

¹⁴ Including a 2.4m bonnet length correction

¹⁵ The Appellant's consultant referred to guidance in respect of traffic speeds in Design Manual for Roads and Bridges

38. In the previous appeal the Inspector accepted the Council's evidence that the best visibility splay that can be achieved from the site entrance to the south by the trimming back of the hedge would be 25m (measured to the nearside edge of the carriageway) or 42m (if measured to the centreline of the carriageway)¹⁶. However, those stated measurements appear to underestimate the actual visibility from the entrance. Measurements provided for this appeal by the Appellant's consultant¹⁷ (and cross checked with measurements taken at the site at the accompanied visit) indicate that at an X distance of 2.4m, a visibility splay of approximately 37.5m to the kerb edge was obtained and 47m to the centreline. However, at an X distance of 2m the visibility south from the access increased to about 40m to the near edge and approximately 50m¹⁸ to the centreline.
39. However, in view of my comments above I consider that an X distance of 2m would be appropriate in this case as traffic flows are for the main part light and can be considered as being of reasonably slow speed. Vehicles slightly protruding from the site access would be visible to traffic in both directions and the road is wide enough to allow the free flow of traffic if that did occur.
40. Taking all the above factors into account a visibility splay to the south of some 2m x 50m to the centreline of the road can be achieved. That would be only slightly less than the application of TAN 18 guidance. Nevertheless, taking into account the local context I have described I consider that the degree of visibility along Southsea Road that can be achieved with a 2m x 50m splay in both directions is acceptable. In addition, the achievement of that visibility splay would not require the removal of the hedgerow along the site frontage.
41. I have taken into account comments from some interested parties at the Hearing that referred to "near misses" along this section of road. However, no actual accidents appear to have been reported either to the police or to the local highway authority and brought to my attention as substantive evidence and that has reduced the weight I can attach to those comments.
42. To the extent that my views on this issue differ from those of the previous Inspector I have relied to a large extent on my own observations and the measurements provided and validated at the site visit.
43. I conclude on this issue that the appeal scheme would not be materially harmful to highway safety and would accord with guidance in TAN 18 and MfS.

Other considerations

Need for gypsy and traveller sites

44. It is not disputed that there is a shortage of sites for gypsies and travellers in the Wrexham area. A recent GTAA¹⁹ has updated the information base. Taking into

¹⁶ In both cases an X distance of 2.4m is applied as indicated in paragraph 36 of the appeal decision

¹⁷ Hearing statement of Jeremy Hurlstone and attached documents. I have applied the measurements from the written evidence

¹⁸ A measurement of 52.6m for this was obtained at the site visit

¹⁹ Wrexham Gypsy and Traveller Accommodation Needs Assessment 2013 – 2018 (GTAA)

account the GTAA the Council stated at the Hearing that there is a need for 27 pitches required in total for Wrexham. Of that figure 15 are for socially rented pitches and 6 are for private pitches. The remainder are required to enable an upgrading of the Council's Ruthin Road site.

45. The Council pointed to a number of unauthorised developments in the Wrexham area some of which are "tolerated" by the Council without enforcement action being taken. Nevertheless, as the Appellant pointed out, there has been a shortage of sites for a lengthy period and that is referred to in a number of previous appeal decisions provided to me. He contends that there is no current mechanism in place by the Council to deliver new sites. The Appellant also referred me to recent initiatives of the Welsh Government in the publication of "Travelling To A Better Future" and the intention to re-introduce the statutory duty on local authorities to provide gypsy/traveller sites. These factors serve to emphasise the current shortage of sites in the Wrexham area.
46. The Council has accepted the GTAA as a basis for site allocation in a forthcoming development plan which it indicated could be adopted during 2016. Nevertheless, even if that transpires it is likely to be in the region of some 3 years before allocated and deliverable sites will be available. In the meantime sites would come forward only as "windfall" developments. In conclusion, there is a clear current need for additional pitches which is unlikely to be met in the short term by planned deliverable sites. These factors, taken together, significantly weigh in favour of the proposed development.

Accommodation needs and personal circumstances

47. The appeal site is occupied by a single family of Irish Travellers. I have outlined earlier the family members residing at the site.
48. There is little substantive evidence before me that a robust search for sites was undertaken by the Appellant before choosing to locate at the appeal site. It is indicated that the family group would not consider location at the local authority site at Ruthin Road due to disputes with some of the other occupants. In addition, it is not clear to me that the Council owned site could accommodate the family group as a whole and offer land to accommodate their horses even if some pitches there became available.
49. Unless the family group can find a suitable, alternative site, which, given the present need for sites in the area, may be difficult, the likelihood is that the extended family would have to resort to living on the road or on land where gypsy and traveller use is unauthorised. This would no doubt lead to some hardship and be likely to undermine the opportunities for regular education for children and access to health care.
50. Little evidence of the personal circumstances of the family group was submitted in connection with the earlier application and, consequently, detailed information in respect of their personal circumstances was not before the Council when it resolved to issue an enforcement notice.
51. Additional information was submitted at the Hearing (Document 5) in respect of medical conditions of two of the site occupants. In addition, information regarding social problems encountered by a further occupant was provided. Oral evidence was

provided at the Hearing by the operator of a Help Centre²⁰ regarding the educational progress of another occupant since attending a Horse Care course in the locality.

52. There are children currently at the site and who would occupy the proposed development. The Courts²¹ have established that the best interests of children are a primary consideration so that it is necessary to identify those best interests and then continue by "*assessing whether the strength of any other consideration, or the cumulative effect of other considerations, outweighed the child's best interests*".
53. I have no doubt from the evidence and my site visit that access to education and health facilities from a site offering stability would be more advantageous than from an unauthorised one if all other matters are acceptable. Although little evidence was provided of a robust search for alternative sites at which to locate the personal circumstances of the Appellant and co-occupants weigh in favour of the development.

The balance of considerations – permanent planning permission

54. The use of the site for the alleged development constitutes inappropriate development in the Green Barrier which, by definition, is harmful. The development would cause significant harm to the openness of the Green Barrier and lead to encroachment into the countryside beyond the well established settlement edge of Southsea, currently provided by the B5101, contrary to one of the defined purposes of the Green Barrier. PPW requires substantial weight to be afforded to any harm to the Green Barrier and there is conflict with UDP policy.
55. The appeal scheme would also lead to harm to the character and appearance of the site and its surroundings which would not be fully mitigated by additional planting and the imposition of conditions. The development also runs counter to the management theme of conservation for the LCA. Whilst this area is only of low landscape importance at a local level, the harm to the landscape character and appearance is another factor which weighs against the grant of permanent planning permission.
56. Set against this cumulative harm there is a general need to provide additional pitches for gypsies and travellers in the District. From the evidence before me, the level of need is significant and there has been no recent provision other than on unauthorised sites. The forthcoming development plan will seek to address this situation for Wrexham but it will not be completed and adopted for some time. No firm date for that was provided by the Council but it appeared to be at least 2 years away. It will be longer before deliverable sites are available for development.
57. The Appellant has undertaken a search for alternative sites although the evidence that that was of a robust nature is very limited. The personal accommodation needs of the named family members are significant and finding a suitable, available and affordable alternative site for the group is no doubt likely to be difficult in advance of the new development plan and given the Green Barrier constraints applying to parts of the District. The benefit of continuity of education for school age children resident at the site is also a point in favour as are the treatment of medical conditions of the occupants. In addition, I found that the development would not be harmful to highway safety. Taken together, these are significant factors weighing in favour of the development scheme.

²⁰ Oral evidence of Michelle Crowther: Yard Manager of The Horse and Owner Help Centre

²¹ A leading case is *ZH (Tanzania) v Secretary of State for the Home Department* [2011] 2AC 166

58. However, the harm I have identified to the Green Barrier and the added harm to the character and appearance of the site and its surroundings is considerable and this outweighs any of the other considerations in favour of granting permanent planning permission, whether taken individually or cumulatively. Therefore I conclude that no very exceptional circumstances prevail to warrant the granting of permanent planning permission.

The balance of considerations –temporary planning permission

59. Welsh Office Circular 35/95 (WOC 35/95) states that a temporary permission may be justified when it is expected that the planning circumstances will change in a particular way at the end of the temporary period. WAGC 30/2007 indicates that, where there is an unmet need but no available alternative gypsy and traveller site provision in an area but there is a reasonable expectation that new sites are likely to become available at the end of that period in the area which will meet that need, decision makers should give consideration to granting temporary permission where there are no overriding objections on other grounds. Paragraph 14 of WAGC 30/2007 states that such circumstances may arise in a case where a local planning authority is preparing its sites allocation as a part of the LDP, and that in such circumstances, decision makers are expected to take into account the consequences of the unmet need in considering whether a temporary planning permission is justified.
60. I have given significant weight to the lack of available pitches in the area and taken into account the time that it will take for the Council to bring forward sites in a development plan. Windfall sites that come forward in the intervening period may help to alleviate some of the current need. There is a degree of uncertainty regarding the Council's programme for the provision of a plan which allocates sites for gypsies and travellers, though it could be the case that allocated and deliverable sites will be available in, say, three years' time. I therefore accept that planning circumstances could change as referred to in paragraph 14 of WAGC 30/2007. I am also appreciative of the personal circumstances of the family group occupying the site, particularly with regard to the medical conditions of those occupants that have been notified to me, and also those concerning the welfare and well-being of the children on the site.
61. However, in this case, I consider that the harm caused to the Green Barrier (and the additional harm I have identified) even for the short term if a temporary planning permission was granted would be substantial and would not be outweighed by the considerations weighing in favour of allowing the appeal development for a temporary period pending the provision of sites through the development plan process. The harm cannot be adequately mitigated through the use of planning conditions.
62. After taking all matters into account (including the case law and various appeal decisions referred to by the Appellant and the Council), I am of the view that the legitimate aim of the protection of the Green Barrier in this area can only be safeguarded by the dismissal of the appeal. Consequently, I consider that it would not be appropriate to grant temporary planning permission in this particular case.

Human rights

63. I appreciate that my decision results in an interference with the rights of the intended occupiers and their families in respect of private and family life and their home, and that Article 8 of the European Convention on Human Rights is engaged. I am aware

that incorporated into my obligations under Article 8 are the obligations under the United Nations Convention on the Rights of the Child including Article 3.

64. The needs of the children who would be on the site is a primary consideration and the Children's Act 2004 requires that in discharging my functions I must have regard to safeguarding and promoting the welfare and well-being of the children. However, I consider that my response is proportionate after taking into account the conflicting matters of public and private interests so that there is no violation of human rights.

Other matters

65. Some concerns were expressed by interested persons at the Hearing regarding flooding. Photographs were submitted (Photograph P5) which indicated flooding on Southsea Road in the vicinity of the site. However, there is no evidence before me that the appeal site itself was liable to flood.
66. I have had regard to all other matters raised but none leads me to a different view as to the main issues on which the appeal turns.

Overall conclusion on the ground (a) appeal

67. Bringing the conclusions together, I consider that the substantial harm that would result from the appeal scheme is not clearly outweighed by other considerations. None of the other considerations put forward by the Appellant either individually or cumulatively amount to very exceptional circumstances that clearly outweigh the harm to the Green Barrier and the harm I have identified to the character and appearance of the site and the surroundings to justify this inappropriate development in the Green Barrier on either a permanent or temporary basis. I conclude that the appeal should not succeed.
68. The appeal on ground (a) fails.

Appeal on ground (g)

69. The purpose of the compliance period is to give a reasonable time to meet the requirements. The notice requires the residential use to cease and the caravans and related structures to be removed within 9 months with a further 3 months allowed for other site restoration works.
70. Whilst the Appellant and family members have occupied the site since 2011 they should still be given a reasonable period of time to comply with the requirements of the notice and seek alternative accommodation. The Appellant has suggested a period of 2 years. Given the harm I have found, particularly to the Green Barrier, I do not consider that an extension of the period of occupation to 2 years is appropriate in the public interest. As a compromise between the two positions and in order to provide additional time to search for and secure an alternative site I find that a period of 15 months would be reasonable (for requirements (i) and (ii)) and an additional 3 months (that is a total of 18 months) for the remaining requirements (requirements (iii), (iv), (v) and (vi)).

Formal decision

71. The enforcement notice is varied by:

(i) the deletion from paragraph 6 "Time for Compliance" of the words "Nine months" in requirements (i) and (ii) and their substitution therefor of the words "Fifteen months", and

- (ii) the deletion from paragraph 6 "Time for Compliance" of the words "Twelve months" in requirements (iii), (iv), (v) and (vi) and their substitution therefor of the words "Eighteen months"

Apart from the partial success on ground (g) the appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Kevin Nield

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Dr Angus Murdoch	Planning consultant
Rhodri Crandon	Landscape consultant
Jeremy Hurlstone	Highways consultant
Andrew Cash	Appellant
Trevor Mennell	Consultant
Margaret Delaney	Appellant's sister
Michelle Crowther	Yard Manager, The Horse and Owner Help Centre

FOR THE LOCAL PLANNING AUTHORITY:

J S Sutherberry	Senior Planning Officer
Stephen Griffiths	Planning Officer
Peter Douthwaite	Highways Officer

INTERESTED PERSONS:

Fred Derbyshire	Chairman of the Southsea Action Committee
Jo Prince	Secretary of the Southsea Action Committee
Fred Prince	Community Councillor for Broughton
Debbie Davies	Community Councillor for Vron
Alexandra Gomer	Local resident
Tony Gomer	Local resident
Chris Lloyd	Local resident

DOCUMENTS

- D1 Copy of the Council's letter of notification of arrangements for the Hearing
- D2 Copy of e-mail from Janet Sutherland to Trevor Mennell dated 7 December 2011
- D3 Extract from Wrexham Unitary Development Plan 1996 -2011 - Policy H9: Gypsy Caravan Sites
- D4 Extract from Countryside Council for Wales LANDMAP study for Wrexham
- D5 Bundle of (original) documents submitted by the Appellant relating to personal circumstances of occupants of the appeal site

PHOTOGRAPHS

- P1 Aerial photographs of the site from 2006, 2007 and 2009 submitted by the Appellant
- P2 Photographs of a landscape scheme at Bridgend submitted by the Appellant
- P3 Photographs dated June 2009 (from Google Maps) showing the site entrance and the view into the appeal site submitted by a local resident
- P4 Photographs of community event at the appeal site undated but said to be from 1995 submitted by Fred Derbyshire
- P5 Photographs (undated) of flooding of the B5101 in the vicinity of the site



Appeal Decision

Inquiry opened on 17 September 2013

Site visit made on 18 September 2013

by Clive Hughes BA (Hons) MA DMS MRTPI

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

Decision date: 1 July 2014

Appeal Ref: APP/P0119/A/10/2130078

Sloes Well Paddock, Westerleigh Road, Pucklechurch, South Gloucestershire BS16 9PY

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by AZ against South Gloucestershire Council.
 - The application Ref PK09/5583/F is dated 13 October 2009.
 - The development proposed is the use of land for the stationing of a mobile home for residential purposes together with the formation of hard standing and utility building ancillary to that use.
 - The inquiry sat for 4 days on 17 & 18 September and 16 October 2013 and 1 April 2014.
 - This decision supersedes that issued on 19 November 2010. That decision on the appeal was quashed by order of the High Court.
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Decision

1. The appeal is allowed and planning permission is granted for the use of land for the stationing of a mobile home for residential purposes together with the formation of hard standing and utility building ancillary to that use at Sloes Well Paddock, Westerleigh Road, Pucklechurch, South Gloucestershire BS16 9PY in accordance with the terms of the application, Ref PK09/5583/F dated 13 October 2009 subject to the conditions set out in the Annex to this decision.

Application for costs

2. At the Inquiry an application for costs was made by AZ against South Gloucestershire Council. This is the subject of a separate Decision.

Anonymity Order

3. On 20 December 2012, His Honour Judge Anthony Thornton QC, sitting as a judge of the High Court (*AZ v SoS for Communities and Local Government and South Gloucestershire District Council [2012] EWHC 3660 (Admin)*) (*AZ v SoS*) made the following direction:
 - (1) *The applicant is to be named and known as "AZ" for all purposes in connection with this judgement and these proceedings.*
 - (2) *No newspaper report of the proceedings shall reveal the name, address or school, or include any particulars calculated to lead to the identification, of the child concerned in this application or in the planning appeal from which this application is brought, either as being one of the*

persons by or in respect of whom the planning appeal was brought or this application is made or as being a witness or providing evidence to the planning appeal or that is referred to in this application.

- (3) *No picture shall be published in any newspaper as being or including a picture of any child or young person so concerned in the proceedings as aforesaid; except in so far (if at all) as may be permitted by the direction of the court.*
- (4) *This order extends to any subsequent hearing or inquiry held in connection with the planning appeal which this order relates to and which results from the quashing of the decision previously made that has been ordered as a result of the judgement in this application.*

Procedural Matters

4. On 5 August 2010 the Council's Development Control (East) Committee resolved that had it been in a position to determine the application it would have refused it for the following reasons:

- (1) *The site is located within the Bristol/ Bath Green Belt and the proposal does not fall within the limited categories of development normally considered appropriate within the Green Belt. The applicant has not demonstrated that very special circumstances apply which would outweigh the normal presumption against development in the Green Belt. The proposal is therefore contrary to the provisions of PPG2, Policy GB1 of the adopted South Gloucestershire Local Plan and Development in the Green Belt Supplementary Planning Document 2007.*
- (2) *The site is located within the Bristol/ Bath Green Belt wherein there is a general presumption against development, which would harm the openness of the Green Belt. The proposed development by virtue of its location, layout, design, scale and form would result in material harm to the openness of the Green Belt and would result in an adverse impact on the visual amenity of the Green Belt and character and appearance of the area. The proposal is therefore contrary to the provisions of PPS1, PPS7, PPG2, Policies GB1, D1 and L1 of the adopted South Gloucestershire Local Plan and Development in the Green Belt Supplementary Planning Document 2007.*
- (3) *The proposal relates to new residential development in open countryside outside any defined settlement boundary or the urban area as defined in the adopted South Gloucestershire Local Plan 2006. The applicant has provided no justification for the proposed development as affordable housing for agricultural or forestry workers. As such the proposal fails to accord with Policy H3 of the adopted South Gloucestershire Local Plan and Government advice contained in PPS1 and PPS7.*

5. There have been significant changes in Government advice during the period since the Council made the above resolution. The *National Planning Policy Framework* (the Framework) was published in March 2012. Both parties took this national policy advice into account in their statements and I have had regard to it in this Decision. The putative reasons for refusal refer to *Planning Policy Statements 1 and 7* and to *Planning Policy Guidance 2*. These documents have now been replaced by the Framework and I have determined this appeal in the context of current national planning policy.

6. The Inquiry closed on 16 October 2013. However, on 11 December 2013 South Gloucestershire Council formally adopted its Core Strategy (CS). Policies CS1, CS2 and CS5 of the CS were cited by the Council and these now carry full weight where in conformity with the Framework. Policies D1, L17, EP1 and GB1 of the South Gloucestershire Local Plan, previously cited by the Council, have now been superseded by the CS. Other Local Plan policies referred to by the parties, including Policies H3 and L1, have been saved and remain part of the development plan.
7. On 6 March 2014 the Government published the on-line *Planning Practice Guidance* (PPG). Of particular relevance to this appeal is the *Housing and economic land availability assessment* chapter. Both the adoption of the CS and the PPG are highly relevant to the determination of this appeal and so the Inquiry was re-opened for a single day on 1 April 2014.

Main Issues

8. It is agreed by the parties that the proposals comprise inappropriate development in the Green Belt. The main issues are
 - the effect of the development on the Green Belt with particular regard to the effect on openness and the purposes of including land within it;
 - the effect of the development on the character and the appearance of the area; and
 - whether the harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify the development.

Reasons

Background

9. The site, which has an area of about 0.1ha, forms a relatively small part of a substantially larger land holding (about 1ha) located in the countryside between Pucklechurch and the M4 motorway. It is of irregular shape with, to the east, a finger of land running deeper into the countryside alongside the Feltham Brook. The western part of the site is largely laid to grass and is grazed by a couple of goats. It is also used for the appellant's mobile home and associated structures which are all located within a fenced compound; a large shed; car parking; a boat; and a touring caravan. The gated entrance is in the north west corner fronting a slip road off Westerleigh Road.
10. Immediately beside the entrance is the start of a public footpath that heads almost due south and runs to the rear of Nos 160-166 Westerleigh Road. At the time of my visit the footpath was overgrown and gave the appearance of being little used. There is a high close boarded fence along the eastern side of the footpath where it crosses the appeal site. The eastern part of the site, comprising the finger of land, is overgrown with dense vegetation save for a track down its centre.
11. The area is fairly flat, although there are gentle slopes upwards to the north and south. The site has the Feltham Brook as its southern boundary. In general the boundaries are well screened with mature vegetation. The current development can be seen from the public footpath that crosses the land but

there are few other views into the site. Due to the strength of the vegetation there are no public views into the site from the other public footpaths to the north and east. The site adjoins agricultural land on all sides apart from its short road frontage to a slip road off Westerleigh Road. There is a single pitch traveller site and a house on the opposite side of that slip road. To the south, and separated by a field, is a terrace of 4 houses (Nos 160-166).

12. The unauthorised development would be removed and the new development would be sited to the south east of those structures. The first part of the access track would be retained. It is proposed to extend the track, which comprises hardened earth, and provide an area of hardstanding for a mobile home and a utility/ day room. A 5 metre wide buffer would be provided along the whole length of the boundary with the Brook to provide habitat for water voles. The site would be occupied by AZ, his wife and his son.
13. The planning history of the wider land holding, which includes the appeal site, is pertinent to this appeal. The land was purchased by the appellant's wife in late 2005 and shortly afterwards the appellant moved a mobile home onto it. He constructed a day room, sheds, fencing and associated paraphernalia around the mobile home and, with his son, moved onto the land. A planning application was submitted in April 2006 for the siting of 2 caravans for a gypsy family, a reference to the appellant, his wife and his son. This application was refused in late September 2006. In the meantime the Council had served two Stop Notices (in July and August 2006). Two Enforcement Notices (ENs) were issued on 9 August 2006 and two further ENs were issued on 4 September 2006. The cumulative effect of these Stop Notices and ENs was to require AZ to remove his mobile home and unauthorised development from the site.
14. Appeals were made against the 4 ENs and the refusal of planning permission. Following a Hearing on 5 June 2007, all 5 appeals were dismissed, although the period for compliance with the ENs was extended from 28 days to 6 months. That period ended on 11 January 2008. In dismissing the appeals, the Inspector concluded that while AZ may have some Gypsy ancestry, there was nothing to indicate that he followed a nomadic way of live or that his lifestyle fell within the (then) Circular 01/2006 definition of gypsies and travellers.
15. Following the dismissal of all the appeals, the Council prosecuted AZ for non-compliance with the ENs. It appears from third party evidence that AZ pleaded guilty in the Crown Court and was given a conditional discharge and ordered to pay the costs of the prosecution (£8,000). He says that he is still paying these costs on a weekly basis. These ENs are still extant and the development on the site is in breach of them. The plans accompanying the ENs show that they relate to the whole land holding including the current appeal site.

Green Belt considerations

16. The site lies within the Bristol/ Bath Green Belt and there is no dispute between the parties that the proposals constitute inappropriate development in the Green Belt as described in Chapter 9 of the Framework. Paragraph 87 of the Framework advises that inappropriate development is, by definition, harmful to the Green Belt and paragraph 88 says that substantial weight is to be given to any harm to the Green Belt. Paragraph 80 advises that the Green Belt serves five purposes, including "to assist in safeguarding the countryside from encroachment". It is not disputed that the proposals, by extending the built form into the countryside, would conflict with this purpose.

17. Paragraph 79 of the Framework advises that the essential characteristics of Green Belts are their openness and their permanence. There is no built development on the appeal site, although the appellant is currently living in unauthorised accommodation elsewhere within his land holding and some of this development lies on the route of the proposed access. The proposals include a mobile home, utility/ day room, fencing, hard surfacing and parking, although the vast majority of the land holding would remain open. There would be likely to be some domestic paraphernalia close to the mobile home as, for example, the appellant usually takes his meals outdoors. There would continue to be a need for kennels for the dogs and shelter for the goats. The appeal site is undeveloped, save for the existing access drive and fencing and gates around the site entrance. There is no doubt that the proposals would result in some loss of openness of this part of the Green Belt.
18. In terms of the effect on the Green Belt, therefore, the proposals would constitute inappropriate development; would encroach into the countryside in conflict with one of the purposes of including land within the Green Belt; and would result in a loss of openness. This constitutes a significant amount of harm that, in accordance with advice in the Framework, carries substantial weight against the development. It would also be contrary to Policy CS5(6) of the CS which refers back to the Green Belt provisions of the Framework.

Effect on the character and appearance of the area

19. The site is situated in the countryside some distance to the north of the village of Pucklechurch. Westerleigh Road is the main road running north from the village and over the M4 motorway. For the most part this section of the road runs through open countryside although there are a few scattered dwellings on its eastern side. However, these are few and far between and for the most part farmland predominates. There is a cluster of buildings set back from the road to the south east of the appeal site, but this is very much the exception and the overall character is agricultural.
20. There appear to be no similar isolated dwellings in the immediate area that are set back from the road and surrounded by farm land. The proposals, therefore, would be out of keeping with the established character of the area. The provision of a dwelling with ancillary development and paraphernalia would introduce a discordant feature into the countryside, harmful to its character and contrary to saved Policy L1 of the Local Plan. This land has not been identified as having any particular protection; it is not identified as a valued landscape. Nonetheless, the fifth bullet point of paragraph 17 of the Framework requires that the intrinsic character and beauty of the landscape be recognised and the Policy is not in conflict with this core planning principle.
21. Saved Local Plan Policy H3 says that proposals for residential development outside the boundaries of settlements will not be permitted unless they are for one of the three cited exceptions. This proposal does not fall into any of these categories. While it could be argued that it is for a replacement dwelling, as the existing development would be removed, due to the fact that that development is unauthorised and the subject of ENs this is not a reasonable interpretation of the policy. The proposals would be in conflict with Policy H3. However, this policy is not consistent with the Framework and so carries limited weight. Paragraph 55 of the Framework takes a less restrictive approach than Policy H3, saying that new isolated homes in the countryside should be avoided unless there are special circumstances. The paragraph gives a list of examples

- of such exceptions. While the current proposals do not fall into any of these categories the wording allows for other exceptions to be considered.
22. The term “isolated” is not defined in the Framework and so it has its ordinary meaning. There was much discussion at the Inquiry as to whether the site should be considered as being isolated. This site is separated from the built confines of Pucklechurch by several hundred metres. The proposed dwelling would be set well back from the road with no other dwellings in the immediate vicinity. While it is possible to see other houses from the appeal site, in particular Nos 160-166 Westerleigh Road, these houses are also sited well outside the village. The site is not remote as it is within walking distance of the village. However, due to its physical separation from any settlement; the fact that it would be surrounded by agricultural land; and its siting so far from the road, it would appear as a new isolated home in the countryside. This would be in conflict with the Framework.
23. In terms of its appearance, the current development is visible from a short section of Westerleigh Road, but only when travelling north. It is also visible from a short section of the public footpath that crosses the site, although the mobile home and some of the ancillary paraphernalia is largely screened from views from the northernmost part of the footpath due to close boarded fencing. The appearance of the site, however, is unsightly and detracts from its rural surroundings. The appeal proposals involve resiting the mobile home deeper into the site and so further from public view. There would be a need to remove some vegetation to allow space for the mobile home and the hardstanding.
24. There would still be views of the development from the short section of the Westerleigh Road slip road between No 166 and the site entrance and from the public footpath. However, the indicative landscaping scheme submitted with the Hearing documents indicates that views of the development from the road could be significantly reduced although it is probable that there would still be views of it from a short section of the public footpath where it crosses the field adjacent to No 166. Beyond this field, however, views would be blocked by outbuildings to the rear of Nos 160 to 166 and by a mature hedge. Overall, and provided all the existing unauthorised development is removed, there would be only very limited harm to the appearance of the area.
25. This identified harm needs to be balanced with the other material considerations advanced in support of the proposals.

Other material considerations

26. The appellant raised a number of other material considerations which are considered below. In particular, reference was made to the personal circumstances of the appellant and his family, the lack of suitable alternative sites, the five-year housing land supply and human rights issues.

Personal circumstances

27. The personal circumstances of AZ are of great weight in the determination of this appeal. In *AZ v SoS* his Honour Judge Anthony Thornton QC criticised the decision of the previous Inspector for her failure to mention or take into account much of the professional psychiatric, psychological and medical evidence presented by the appellant. Much of this evidence was repeated at this Inquiry; the evidence of Dr Reeves was not challenged. Concerning the previous Decision, the Judge stated (para 125):

"...there is no reference to the fact that the applicant suffers from a serious personality disorder which affects his cognitive ability, affectivity, interpersonal functioning and impulse control. It takes no account of the appellant's illiteracy and relatively low IQ; his potentially enduring brain damage originally suffered when he was a child; his propensity to both depressive bouts and suicidal ideation; his recurrent pain from the permanent white finger and other hand damage suffered when working with pneumatic tools in his late teens and his marked inability, without the daily care and assistance of his wife, to cope with the exigencies of daily living and to care for his son. The applicant's chronic and apparently untreatable PTSD-type symptoms, his phobia of being situated in an enclosed space and his need for an open-air lifestyle need to be considered in conjunction with all his other psychiatric, psychological and medical complaints since they are obviously affected and enhanced by the other complaints which are not referred to in the decision and from which he also suffers."

28. Dr Reeves has known AZ for about 4 years and is satisfied that his symptoms are genuine. He concluded that if AZ loses his home there is a probability that he will take his own life; he considered this to be a real and genuine risk notwithstanding the protective factors of his wife and child. The chronic anxiety that AZ suffers from requires him to have a safe place that is, in effect, a place of sanctuary. Experience has shown that this must involve a large area of open space where he can resort to quickly in the event of an anxiety attack. The space needs to be private, away from other people. Without such a safe place, Dr Reeves considers that his condition would be unbearable. The PTSD stems from abuse he suffered when he was young. I have no reason to doubt this professional, specialist and highly detailed evidence.
29. At the Inquiry Dr Reeves accepted that while PTSD is not curable its effects can be ameliorated with appropriate treatment. A temporary planning permission would allow a period of certainty and security during which the treatment could commence. However, there is no certainty that the treatment would be successful or permanent; the closer the appellant got in time to the end of the planning permission the greater his level of anxiety would be likely to become.
30. There are four extant ENs in respect of the site; the appellant has previously been prosecuted for his failure to comply with them. The Council has stated that it would not immediately enforce the ENs if this appeal fails. However, this would leave the appellant with the permanent threat of eviction hanging over him and he would have no control over this. This would not be a satisfactory situation and could lead to some deterioration in his mental health.
31. The other relevant personal circumstances include the fact that AZ's son attends a nearby school. He has had a disrupted childhood having had no significant contact with his birth mother since he was very young. Initially he was passed back and forth between his mother and his father, but he has now no contact with his mother and does not wish to resume contact. This site is the only home he has had. After initial difficulties at school, he has now settled and is progressing well. He has made friends there. He suffers nightmares arising from the thought of having to leave the site, his school and his friends. He is also fearful about the potential harmful effect on the health of his father.
32. The wife of AZ stays overnight with her parents, about 3 miles from the appeal site. She used to permanently care for her sister who suffers from Multiple Sclerosis but her condition deteriorated and she is now in a nursing home. This

is about 6 miles away; she visits regularly. Her parents, however, now need assistance with day-to-day tasks and she stays with them most nights. She also has to cope with the needs of AZ and she now stays at the appeal site more regularly. These personal circumstances of the appellant and his family carry very significant weight in favour of the appellant.

Alternative sites

33. The needs of AZ and his family are specific and out of the ordinary. His mental health issues are such that any accommodation needs a safe sanctuary that involves a large expanse of private open space. If the appeal fails and the Council enforces the ENs then AZ would become homeless. The Council has not identified that it has any alternative accommodation that would be suitable for his exceptional needs. There are no known alternative sites that would be suitable and affordable. While this is not a traveller case, there is established case law to the effect that alternative sites for travellers must be suitable, available and affordable (*Angela Smith v Doncaster MBC [2007] EWHC 1034 (Admin)*). It is reasonable to transfer that requirement to this case and so any accommodation provided by the Council would need to be both suitable and available. The Council has not demonstrated that it could provide such accommodation. This carries weight in favour of the appellant.

Housing land supply

34. The CS identifies that the Council has a five-year housing land supply. The CS is a very recent document that was adopted in December 2013. The Council, however, is in an unfortunate position in that the PPG was issued soon after the adoption of the CS. Advice in the PPG (paragraph 4 of section 3-035-20140306 in the *Housing and economic land availability assessment* chapter) is that authorities should aim to deal with any undersupply within the first five years of the plan period where possible; where it is not possible authorities will need to work with neighbouring authorities under the duty to cooperate. The figures in the CS are based upon dealing with past undersupply over the whole plan period. If the undersupply has to be provided within the first five years, and the Council did not argue that this is not possible, it currently has an undersupply of housing land. The first paragraph of section 3-030-20140306 of the PPG identifies that figures in up-to-date adopted plans, as in this case, should be the starting point for calculating the 5 year supply. It is therefore necessary to start from the CS figures and then apply the more recent advice in the PPG. In these circumstances, the Council is unable to demonstrate a five-year housing land supply.
35. This issue would not be relevant in respect of a temporary planning permission on this site; in the case of a personal planning permission it is of only relatively limited significance as it would only provide a single unit of accommodation for as long as the appellant chooses to live on this site. It would not provide an additional permanent dwelling. Nonetheless, the absence of an up-to-date five-year housing land supply weighs in the appellant's favour.

Human rights

36. Concerning human rights, the dismissal of this appeal would be likely to result in the appellant and his wife and son having to vacate the land. The land is already the subject of ENs and the Council has previously instigated legal proceedings against AZ for his failure to comply with the ENs. The land is their

home and the loss of their home would clearly impact upon their rights under Article 8 of the *European Convention on Human Rights*. As AZ's child is aged under 18 and lives with AZ on the land I have also had regard to the *United Nations Convention on the Rights of the Child* (UNCRC). This relates to the best interests of the child living on the site which must be a primary consideration in the determination of this appeal; no other factor can inherently carry greater weight.

37. Concerning the Article 8 rights, it is necessary to consider the 5 questions posed by His Honour Judge Anthony Thornton QC in the High Court.

38. These questions are:

- Will the proposed decision be interference by a public authority with the exercise of the appellant and their family's right to respect for their private / family life or home?
- If so, will such interference have consequences of such gravity as potentially to engage the operation of Article 8?
- If so, is such interference in accordance with the law?
- If so, is such interference necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others?
- If so, is such interference proportionate to the legitimate public end sought to be achieved?

39. The dismissal of this appeal would undoubtedly amount to interference with the exercise of the appellant's and his family's right to respect for their private family life and their home. This interference would engage the operation of Article 8. The interference would be in accordance with the law provided a proportionality assessment is carried out. Concerning the fourth bullet point, the interference would be necessary in a democratic society as development control measures are recognised as an important function of Government and the Government places substantial weight on the protection of the Green Belt.

40. Since the Article 8 rights of the appellant and his family are engaged, a proportionality assessment is necessary. In the *AZ v SoS* judgement the four stages necessary for a proportionality assessment are set out. These are:

- Identification of all relevant considerations relating to the appellant and their family's respective rights of enjoyment of family life and a home.
- The identification of the best interests of the children.
- The identification of public or community interests to be balanced against the appellant and their family's interests.
- A structured weighing up and balancing of all these interests. The balancing exercise should involve a consideration of children's best interests first and then strike a fair balance between the rights of the individuals concerned and the interests of the community.

41. At the Inquiry AZ, his wife and his son all gave evidence so they were able to set out exactly what they considered the relevant considerations to be. Their

personal circumstances are set out in some detail above. Based upon the evidence to the Inquiry, I consider that the principal considerations for the appellant are the loss of his home and the impact that this could have on his mental health. The lack of any known suitable alternative accommodation, combined with the known anxiety that he suffers, would be likely to exacerbate the impact of the loss of his home. Any harm to the health of AZ would also be harmful to the wellbeing of his wife and child.

42. AZ's wife does not live full time on the appeal site as she looks after her parents. Nonetheless, the loss of AZ's home would impact significantly upon her as she visits him each day to help look after him. Were he to have to vacate the site and move far away this would impact upon either her ability to look after him or her ability to look after her parents. In the latter case, the Article 8 rights of her parents would also be likely to be engaged as AZ's wife is their main carer.
43. Concerning AZ's son, I have also had regard to article 3(1) of the UNCRC. This requires that in all matters involving children the best interests of the child shall be a primary consideration. In the Supreme Court the case of *ZH (Tanzania) v SoS Home Department [2011] UKSC 4* emphasised that the best interests of children are a primary consideration; no other factor should be given more weight as a matter of policy. In that judgement Lady Hale described the best interests as broadly meaning the well-being of the child. Lord Kerr commented that the best interests of a child are not a factor of limitless importance in the sense that it will prevail over all other considerations. However, he said that it is a factor that must rank higher than any other. In paragraph 46 he says "*Where the best interests of the child clearly favour a certain course, that course should be followed unless countervailing reasons of considerable force displace them*".
44. In this appeal the best interests of the child largely coincide with those of the adults. AZ's son gave evidence at the Inquiry. He is clearly fully conversant with the uncertain future of their home. I have no doubt that he wishes to remain living on the site and attending his local school. A settled education is generally beneficial; it seems reasonable to place greater importance on this when the child has had such an unsettled early life. He has friends locally and has no desire to change schools as this would result in the loss of his friends and the life he has built. He stated that he associates living on the site with all the good things in his life. His greatest fear, however, concerns the effect the leaving the site would have on his father.
45. The best interest of the child in this case is undoubtedly to allow him to remain on the site. It is his home and provides security, continuity of education and access to healthcare. While there is no evidence to demonstrate that this is the only site where such interests could be achieved, for example an alternative school may well meet his education needs, no suitable alternative sites have been identified. The balancing exercise is carried out in the following section.

Whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations

46. Paragraph 87 of the Framework sets out the presumption against inappropriate development in the Green Belt and says that such development should not be approved except in very special circumstances. The Framework says that

inappropriate development is, by definition, harmful to the Green Belt and that substantial weight should be given to any harm to the Green Belt. It further says that very special circumstances to justify inappropriate development will not exist unless the potential harm to the Green Belt by reason of inappropriateness and any other harm are clearly outweighed by other considerations.

47. The other material considerations advanced must therefore be balanced against the public and community interests. There is an in-principle presumption against inappropriate development in the Green Belt. Other objections to the development concern its impact on the openness of the Green Belt and on one of the purposes of including land in the Green Belt. These carry substantial weight against the development. Also weighing against the development, although to a much lesser degree, is its impact upon the character and the appearance of the area. The impact on the appearance of the area, in particular, is very limited and can be further reduced by additional planting. There would also be conflict with the Framework as the new dwelling would be in an isolated location. The Framework says that the Government attaches great weight to Green Belts and that one of their essential characteristics is their openness.
48. The other material considerations largely arise from the personal circumstances of the appellant, his wife and his child. In accordance with the provisions of article 3(1) of the UNCRC I have had regard to its requirement that in all matters involving children the best interests of the child shall be a primary consideration. The best interests of AZ's son are clearly to remain living on the site where he feels secure and from where he can access his school. This coincides with the best interests of his father, who needs the space and secure surroundings to provide a safe sanctuary. The health needs of AZ are very significant and potentially life threatening; it is difficult to contemplate how they could be more serious. They carry substantial weight in favour of the development.
49. The Human Rights considerations concerning AZ, his wife, his son and, albeit to a lesser extent, those of his parents-in-law, are also relevant. Their Article 8 rights are clearly engaged and carry significant weight. The lack of any suitable alternative accommodation carries significant weight in favour of the development. I have given a relatively high degree of weight to this factor in part because there are extant ENs in respect of the site; if the appeal fails there appears to be no known suitable accommodation to which the family could move.
50. The harm arising from the development, while substantial in weight, is nonetheless limited in scale and highly localised. However, there would be conflict with the interests of the community as set out in Government advice and in the development plan. Considering the best interests of the child and considering the Article 8 rights of the individuals involved, any refusal of planning permission resulting in the Council enforcing the ENs would not represent a proportional response. The harm that this development would cause is undoubtedly outweighed by the other material considerations.
51. Paragraph 88 of the Framework says that very special circumstances will not exist unless the harm to the Green Belt by reason of inappropriateness and any other harm are clearly outweighed by other considerations. In this case I am satisfied that it has been shown that the harm is clearly outweighed.

Do very special circumstances exist?

52. AZ, his wife and child have particular accommodation needs which cannot be met on any known suitable alternative sites in the district. A potential consequence of a dismissal of the appeal would be that the Council would enforce the extant ENs and that the family would have to leave the site and become homeless. This is a real possibility given the Council's previous legal action against AZ. This would not be in the best interests of the child.
53. AZ's health needs and personal circumstances can reasonably be regarded as being truly exceptional. In coming to this conclusion I accept the unchallenged professional evidence of Dr Reeves. The loss of their home would be likely to disrupt the continued schooling of AZ's son. It would also result in interference with the Article 8 rights of the wider family and it would not be in the best interests of the child. All in all I find that taken together the circumstances can be objectively regarded as very special.

Conditions

54. The Council's list of suggested conditions was discussed at the Inquiry. The permission is personal to AZ, his wife and resident dependants as their personal circumstances were a material consideration of very great weight in the determination of this appeal. The development is limited to the siting of a single caravan/ mobile home as that is the extent of the permission sought. Conditions have been imposed in respect of landscaping, external lighting, fencing, commercial uses, commercial vehicles, external materials for the utility building and the external colour of the caravan/ mobile home as the site is in a countryside location and such conditions are necessary to protect the appearance of the area. A condition concerning drainage has been imposed as no such details have been submitted. The provision of on-site car parking is necessary in the interests of highway safety. The development needs to be carried out in accordance with the approved *Water Vole Survey* as water voles are in the vicinity of the site. The approved plans have been identified for the avoidance of doubt and in the interests of the proper planning of the area.

Temporary planning permission

55. One of the reasons for allowing this appeal is that it will enable AZ to receive the treatment that he needs for his PTSD. This treatment may or may not be successful; it would not be possible, or, indeed, reasonable, to devise a condition requiring him to leave the site if and when the treatment is successful. A temporary permission linking the period to the date when AZ's son turns 18 would be possible and would accord with article 3(1) of the UNCRC. A temporary permission would also reduce the harm to the Green Belt and to the character and appearance of the area. However, according to Dr Reeves, the uncertainty that would arise from a temporary permission may itself be harmful to the health of AZ. In order to provide some certainty in his life and to give him the best chance of receiving successful treatment a temporary permission would not be suitable. The second paragraph of section 21a-014-20140306 of the *Use of planning conditions* chapter of the PPG advises that a temporary permission may be appropriate where it is expected that the planning circumstances will change in a particular way at the end of that period. Unfortunately there is no such expectation in this case.

Overall conclusions

56. I have taken into account all the other matters raised at the Inquiry and in the written representations. I have found nothing in these other matters that outweigh my conclusions on the main issues. Overall, I conclude that the material considerations clearly outweigh the harm such that very special circumstances exist. I therefore grant personal planning permission.

Clive Hughes

Inspector

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Richard Langham	Of Counsel, instructed by the Head of Legal and Democratic Services, South Gloucestershire Council
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He called Sean Herbert BTP MRTPI	Planning Officer
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FOR THE APPELLANT:

Michael Rudd	Of Counsel, instructed by Green Planning Solutions
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He called Matthew Green Dr R W K Reeves MB BS DPM FRCPsych AZ AZ's wife AZ's son	Principal, Green Planning Solutions Consultant Forensic Psychiatrist Appellant Appellant's wife Appellant's son
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DOCUMENTS SUBMITTED AT THE INQUIRY

- 1 Signed Statement of Common Ground
- 2 Summary proof of evidence of Sean Herbert
- 3 Letter dated 7 June 2013 from Patrick Conroy (SGC) to P Crysell
- 4 Plan (Scale 1:3426) showing public rights of way in vicinity of appeal site
- 5 Closing submissions on behalf of the Council
- 6 Closing submissions on behalf of the Appellant
- 7 ZH (Tanzania) v SoS for the Home Department [2011] UKSC 4
- 8 Chikwamba v SoS for the Home Department [2008] UKHL 40
- 9 Jane Stevens v SoS Communities and Local Government & Guildford BC [2013] EWHC 792 (Admin)
- 10 Charmaine Moore v SoS Communities and Local Government & LB Bromley

- [2013] EWCA Civ 1194
- 11 Charmaine Moore v SoS Communities and Local Government & LB Bromley [2012] EWHC 3192 (Admin)
 - 12 O E-A, O O. E-A, O O. E-A, IE-A v SoS for the Home Department [2011] UKUT 00315 (IAC)
 - 13 Elizabeth Collins v SoS Communities and Local Government & Fylde BC [2013] EWCA Civ 1193
 - 14 Application for costs by the Appellant
 - 15 Council's response to application for costs
 - 16 Council's neighbour notification letter in respect of re-opened Inquiry and list of persons notified
 - 17 Additional proof of evidence by Sean Herbert (adoption of Core Strategy)
 - 18 Third proof of evidence by Sean Herbert (publication of Planning Practice Guidance)
 - 19 Additional proof of evidence of Matthew Green
 - 20 Further closing submissions (concerning adoption of Core Strategy and publication of Planning Practice Guidance) on behalf of the appellant
 - 21 Bloor Homes East Midlands Ltd v SoS Communities and Local Government & Hinckley and Bosworth Borough Council [2014] EWHC 754 Admin

PLANS

- A Drawing No 07_083_001 – Site location plan (1:1250)
- B Drawing No 07_083_002 rev A – Proposed site layout
- C Drawing No 07_083_003 – Utility Room, layout and elevations

ANNEX – Schedule of conditions (15)

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The occupation of the site hereby permitted shall be carried on only by the following and their resident dependants: AZ (the appellant) and his wife.
- 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 on to or erected on the land, 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) No more than 1 caravan, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 shall be stationed on the site at any time.
- 5) No development shall take place until there has been submitted to and approved in writing by the local planning authority a scheme of landscaping, which shall include indications of all existing trees and hedgerows on the land, and details of any to be retained, together with measures for their protection in the course of development. The scheme shall include details of a programme for its implementation and subsequent management.
- 6) 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 first occupation of the caravan/ mobile home on the appeal site. Any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the local planning authority gives written approval to any variation.

- 7) No development shall take place until samples of the materials to be used in the construction of the external surfaces of the utility building hereby permitted and details of the external colour of the caravan/ mobile home hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details and the external colour of the caravan/ mobile home shall not be changed without the prior written approval of the local planning authority.
- 8) No vehicle over 3.5 tonnes shall be stationed, parked or stored on this site.
- 9) No commercial activities shall take place on the land, including the storage of materials.
- 10) Details of any external lighting shall be submitted to and approved in writing by the local planning authority before the use hereby permitted begins. No further external lighting shall be provided on the site without the prior written approval of the local planning authority. The development shall be carried out in accordance with the approved details.
- 11) Details of any proposed boundary fencing or internal fencing within the appeal site shall be submitted to and approved in writing prior to the first occupation of the caravan/mobile home hereby permitted. Development shall be carried out in accordance with the approved plans. Thereafter, and notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that Order with or without modification), no fences, gates or walls shall be erected within the site without the prior written approval of the local planning authority.
- 12) The caravan/ mobile home shall not be occupied until space has been laid out within the site for cars to be parked. This space shall thereafter be kept available for the parking of cars.
- 13) The development shall be carried out in strict accordance with the recommendations of the approved *Water Vole Survey* by Just Ecology (April 2010).
- 14) The development shall not commence until surface water drainage details including SuDS (Sustainable Drainage Systems eg soakaways if ground conditions are satisfactory) for flood prevention, pollution control and environmental protection have been submitted to and approved in writing by the local planning authority. The scheme shall include a timetable for its implementation. The scheme shall be implemented in accordance with the approved details
- 15) The development hereby permitted shall be carried out in accordance with the following approved plans: Drawings No 07_083_001, 002 rev A and 003.