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## Appeal Decisions

Hearing Held on 13 June 2018

Site visit made on 13 June 2018

**by Chris Preston BA(Hons) BPI MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 16 July 2018**

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**Appeal A Ref: APP/L1765/C/17/3184051**

**Appeal B Ref: APP/L1765/C/17/3184052**

**Appeal C Ref: APP/L1765/C/17/3184053**

**Appeal D Ref: APP/L1765/C/17/3184054**

**Land adjacent to Berkeley Farm, Durley Street, Durley, Hampshire**

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeals are made by Mr T Keet (Appeal A), Mr B Keet (Appeal B), Mr J Saunders (Appeal C) & Mr T Castle (Appeal D) against an enforcement notice issued by Winchester City Council.
- The enforcement notice was issued on 15 August 2017. The Council's reference number is 17/00166/CARAVN
- The breach of planning control as alleged in the notice is:  
Without planning permission, the material change of use of the Land from agricultural use to use as a site for caravans for residential use together with ancillary operational/ engineering development including but not limited to:
  - i) The construction of day rooms (shown marked in their approximate position with an "X" on the attached plan;
  - ii) The erection of fences;
  - iii) The installation of areas [of] decking;
  - iv) The laying of rubble and gravel to create hard standings and a track (shown in its approximate position shown hatched in green on the attached plan); and
  - v) The installation of water supplies and drainage
- The requirements of the notice are:
  - i) Cease the use of the Land as a residential caravan site;
  - ii) Remove from the Land all caravans (static/mobile homes and touring caravans), vehicles and trailers, and all residential and domestic paraphernalia;
  - iii) Remove from the Land the fences that divide each plot;
  - iv) Remove from the Land the day rooms and all areas of decking;
  - v) Dig up and remove the track, hardstandings, rubble and gravel from the Land;
  - vi) Remove the water supply and drainage from the Land and refill the resulting holes following the removal of the water supply and drainage;
  - vii) Return the Land to its condition and appearance as agricultural land that is clear, level and seeded to grass after compliance with steps (i) to (vi).
- The period for compliance with the requirements is: Steps (i) and (ii) 6 months after the notice takes effect; Steps (iii) to (vi) 7 months after the notice takes effect; and Step (vii) 8 months after the notice takes effect.
- Appeal A is proceeding on the grounds set out in section 174(2) (a) and (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act. Appeals B, C & D are proceeding on ground (g). Since the prescribed fees have not been paid within the specified period in respect of Appeals B, C & D, the appeals on ground (a) and the applications for planning permission deemed to

have been made under section 177(5) of the Act have lapsed in relation to those appeals.

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### **Appeal E Ref: APP/L1765/W/17/3184059**

#### **Land opposite Forge Cottage, Durley Street, Durley, Winchester**

- 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 T Keet against the decision of Winchester City Council.
  - The application Ref 16/03090/FUL, dated 25 October 2016, was refused by notice dated 30 May 2017.
  - The development proposed is: The use of land as a gypsy and traveller caravan site consisting of 4 no. pitches, each containing 1 no. mobile home, 1 no. touring caravan; 1 no. semi-detached utility building; play area; and associated development.
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#### **Decision on Appeal A**

1. It is directed that the enforcement notice be varied by the deletion of the time periods for compliance set out in section 6 and the substitution for the following time periods: For step (i) 6 months after this notice takes effect and, For steps (ii) to (vii) 12 months after this notice takes effect. Subject to these variations the appeal is dismissed and the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

#### **Decisions on Appeals B, C & D**

2. It is directed that the enforcement notice be varied by the deletion of the time periods for compliance set out in section 6 and the substitution for the following time periods: For step (i) 6 months after this notice takes effect and, For steps (ii) to (vii) 12 months after this notice takes effect. Subject to these variations the appeals are dismissed and the enforcement notice is upheld.

#### **Decision in Relation to Appeal E**

3. The appeal is allowed and planning permission is granted for the use of land as a gypsy and traveller caravan site consisting of 4 no. pitches, each containing 1 no. mobile home and 1 no. touring caravan and for the erection of 2 semi-detached utility buildings, a play area and associated development at Land opposite Forge Cottage, Durley Street, Durley, Winchester in accordance with the terms of the application, Ref 16/03090/FUL, dated 25 October 2016, and the plans submitted with it, subject to the conditions that are appended to this decision.

#### **Preliminary and Procedural Matters**

4. Five appeals are before me for determination and I have referred to them as appeals A, B, C, D and E, as set out in the banner heading above. Four of those appeals are made against the Council's decision to serve an enforcement notice and the fifth is made against its decision to refuse to grant planning permission. The relevant fee was only paid in relation to one of the enforcement appeals, as is often the case where multiple appellants appeal against the same notice. Accordingly, the appeal on ground (a) will only be considered in relation to Appeal A and Appeals B, C and D will proceed on ground (g) alone.

5. In terms of chronology, the planning application was submitted to the Council before any development took place and the site was occupied shortly after the decision to refuse the application. The description of the site address on the application form was different from the address used by the Council in relation to the enforcement notice. However, although there is a minor difference between the red line boundary on the site location plan which depicts the application site and the red line boundary on the plan attached to the enforcement notice, the two are broadly similar and cover the same site.
6. The description of development given on the application form in relation to Appeal E refers to the use of land. The proposed utility buildings would amount to operational development and, for clarity, I have amended the description of development in my formal decision to include reference to the 'erection of' those buildings.
7. Where an appeal against an enforcement notice is made on ground (a), it is necessary to consider whether to grant planning permission for the matters stated in the enforcement notice. As described above, those matters relate to a material change of use to use as a caravan site for residential use, with ancillary operational and engineering operations. The operational development and engineering works are specifically listed within the notice and the scope of the appeal on ground (a) is defined by that description.
8. There are a number of differences between the development that has taken place and the layout put forward in the "site layout & detailed landscape proposals plan" (the site layout plan) that was submitted with the application<sup>1</sup>. The number of pitches is the same but the exact position of those pitches is different. As a result, the fences and hedges demarcating the pitches are not as shown on the site layout plan and the areas of hardstanding have not been developed as shown. Decking areas have been erected around the static caravans whereas none were shown on the site layout plan. Wooden sheds/ huts have been erected for use as storage/ for day rooms and those are different to the day rooms shown on the site layout plan in terms of their materials, design and location. The central play space has not been created as shown and the soft landscaping shown on the site layout plan has not been carried out.
9. Individually, those components are relatively small but the cumulative effect is that the development as undertaken is quite different in terms of its character when compared to that proposed in the application. The appellant indicated that the differences were due to the fact that the families did not wish to invest in more permanent day room facilities or undertake other landscaping without knowing whether planning permission would be granted for the use of the site. That is an understandable position. Nonetheless, I must consider the appeal on ground (a) on the basis of the description of development as set out in the enforcement notice and the development that was on the ground at the time the notice was issued.
10. The agent for the appellant accepted at the Hearing that the current layout has caused some harm in terms of landscape impact and suggested that the layout could be made to comply with that shown on the site layout plan through the imposition of conditions, if I was minded to grant planning permission. However, in line with the view of the Council, I have reservations about that

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<sup>1</sup> Drawing number TDA.2219.05 revision A

approach. In essence, the question is whether the suggested conditions would change the scope of the appeal under ground (a) to such a degree that it would amount to the approval of a different form of development than that described in the notice.

11. On balance, I consider that would be the case in this instance due to the cumulative effect of the various differences between what has occurred and what was proposed. The use of the land may be the same but the layout, buildings and hard surfaces are materially different. The suggested conditions in relation to the appeal on ground (a)<sup>2</sup> would also require elements of development to be carried out that fall outside of the description of the breach, including the construction of the day rooms; buildings that would undoubtedly require planning permission in their own right. That reinforces my view that the suggested conditions seek to secure a remedy by way of developing a scheme that is quite different to that enforced against. The correct place to consider that scheme is in relation to the appeal against the refusal to grant planning permission. Likewise, the correct approach to assessing the appeal on ground (a) is to consider the development as undertaken and that is how I shall proceed.
12. I appreciate that there may be circumstances where the imposition of a 'site development scheme' condition may be appropriate to secure alterations to existing site layouts. The appellant has referred to an enforcement appeal decision relating to a site in Sevenoaks where the Inspector imposed such a condition<sup>3</sup>. However, the question of whether the changes are so substantial as to amount to a different scheme will always be a matter of fact and degree in any given case. I cannot be certain of the specific details of the Sevenoaks case and it does not alter my conclusion on the correct approach in this instance.
13. In terms of the structure of my decision, the main issues in relation to Appeal A on ground (a) and Appeal E are the same. The issue of the need for, and supply of, gypsy and traveller sites is common to both and my conclusions on those matters are not affected by the differences in layout described above. Consequently, I have considered that issue first. Following that I have considered each appeal individually in terms of the other main issues due to the differences between the two schemes, starting with Appeal E.
14. Within the Statement of Common Ground (SoCG) the parties agree that all of the residents on site fall within the definition of "gypsies and travellers" as set out at Annex 1 of the Government's Planning Policy for Traveller Sites (August 2015) (PPTS). Having regard to the information before me, including the assessment of the County Council's Gypsy Liaison Officer, the families are ethnically Romany Gypsies falling within the definition and I have no reason to doubt the agreed position.

### **Appeal A on Ground (a) and Appeal E**

15. The main issues in respect of both are:
  - i) Whether there is a need for additional gypsy and traveller sites in the area and, if so, if there is sufficient provision to meet those needs;

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<sup>2</sup> As appended to the Statement of Common Ground

<sup>3</sup> APP/G2245/C/15/3134905, APP/G2245/C/15/3134906, APP/G2245/W/15/3025094

- ii) The effect of the development on the landscape character and appearance of the countryside;
- iii) Whether the development is contrary to the relevant policies of the development plan and, if so;
- iv) Whether the conflict with the development plan is outweighed by other material considerations to the extent that planning permission should be granted.

***Whether there is a need for additional gypsy and traveller sites in the area and, if so, if there is sufficient provision to meet those needs – As Applicable to Appeal A on Ground (a) and Appeal E***

16. The Winchester District Local Plan Part 2: Development Management and Site Allocations (LPP2) was adopted as recently as April 2017. Policy DM4, entitled “Gypsies, Travellers and Travelling Showpersons”, states the following:

*Planning permission will be granted for pitches to meet the accommodation needs for the area covered by this Plan for people falling within the definition of ‘travellers’, of about 15 gypsy/ traveller pitches and about 24 travelling showperson’s plots between 2016 and 2031.*

*Sites will be identified and consent granted as necessary to meet identified traveller needs in the Plan area which could not otherwise be met, subject to the criteria outlined in Policy CP5. Proposals for transit sites will be considered on an individual basis, following the criteria of CP5.*

17. The figure of ‘about 15’ gypsy/ traveller pitches derives from the Winchester Gypsy and Traveller Accommodation Assessment – Need Summary Report which was published in October 2016 (the 2016 GTAA). That report was before the Local Plan Inspector and the Plan would have been subject to consultation. Although I have not been provided with the Inspector’s comments, it is reasonable to conclude that the evidence was properly considered as part of the plan making process.
18. As a result of that process, the figures within policy DM4 now form part of the adopted development plan and, in line with section 38(6) of the Planning and Compulsory Purchase Act 2004, the development plan remains the starting point for the assessment of planning applications.
19. The LPP2 does not allocate sites to meet the needs identified in policy DM4. That is the aim of the emerging Winchester District: Gypsy, Traveller and Travelling Showpeople Development Plan Document (the Traveller DPD). From information given at the Hearing I understand that the document has been subject to consultation and has now been submitted to the Planning Inspectorate for examination. An Inspector has been appointed but no dates for the examination have been set. As noted in the SoCG there are outstanding objections to the DPD, including an objection from Dr Murdoch, the agent for the appellant in this case, regarding the robustness of the data that underpins the assessment of need.
20. It is a moot point whether those matters would be re-examined in relation to the Traveller DPD which has a specific aim of allocating sites. However, the precise scope of that examination will be a matter for the relevant Inspector. I cannot pre-judge any of those matters and, as such, cannot draw any

meaningful conclusions on the likely outcome of the examination. Accordingly, the weight that I can attach to the Traveller DPD is limited, having regard to paragraph 216 of the National Planning Policy Framework (the Framework).

21. Therefore, at the present time, no sites have been identified in the development plan to meet the need identified in policy DM4. Nonetheless, the Council maintains that it can demonstrate a five year supply of sites based on a combination of predicted windfall sites that it expects to secure planning permission within the next five years, and a site that is currently vacant. Table 8, produced in the "Local Planning Authority Response to Appellant's Hearing Statement and Landscape Statement" identifies a five year requirement of an additional 2 pitches for the five year period from September 2017 to August 2022. Whilst the appellant disagrees with the Council's conclusions on the need for sites and the methodology of the 2016 GTAA, he was satisfied that the mathematics behind the data produced at Table 8 was accurate, if based on the Council's own figures.
22. Against that requirement for 2 pitches, the Council maintains it can demonstrate a supply of 6 pitches, 1 vacant site and 5 windfall sites. In line with footnote 4 to paragraph 10 of the PPTS to be considered deliverable, sites should be available now, offer a suitable location for development and be achievable with a realistic prospect that development will be delivered on the site within the next five years.
23. No details of the vacant site have been provided. It does not necessarily follow that it is available because it is vacant and that may depend on the ownership of the site and whether any former occupants intend to re-use the site in future. Consequently, on the information before me, there is uncertainty in that regard.
24. Furthermore, reliance upon an assumed windfall of sites that may achieve planning permission in the future is not consistent with those criteria. I am not satisfied that the sites without planning permission are "available now". The three windfall sites relied upon are sites put forward by the Council within the Traveller DPD<sup>4</sup>. As stated above, that has yet to be examined and the Inspector will no doubt have to consider each site, taking account of any representations received. Whether the sites will be considered acceptable for inclusion within the DPD is unknown.
25. At the Hearing, the Council did provide an update to state that planning permission has now been granted for three permanent pitches at 'Ourlands', which is one of the sites put forward in the Traveller DPD. I was not provided with a copy of the decision but have no reason to doubt that is the case. On the Council's assessment that permission would be sufficient to meet the five year need for 2 additional pitches, with a marginal surplus of 1.
26. However, I am mindful that the figure of 'about 15' additional pitches was considered to be the minimum of what would be required within the 2016 GTAA. A key component of the assessment of future need was based upon interviews carried out with existing gypsy and traveller households. Those interviews were used to assess whether the households fell within the definition of gypsies and travellers set out in Annex 1 of the PPTS and to assess the likely future needs of those households.

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<sup>4</sup> The Piggeries, Ourlands and Land adjacent Gravel Hill, Swanmore

27. The subsequent analysis of need within the 2016 GTAA only related to those considered to fall within the PPTS definition. How the Council anticipates meeting the needs of those who may be ethnically gypsies or travellers but do not fall within the definition is not clear. As a result of the interviews 20 households were determined to fall within the new definition, 18 were considered to be outside the definition and 11 were 'unknown', either as a result of a refusal to take part or because the households could not be contacted<sup>5</sup>.
28. Of the interviews that did take place, approximately half of the households were considered to fall within the PPTS definition. However, an allowance of only 10% is made for the 11 'unknown' households within the 2016 GTAA i.e. only one in ten is considered likely to fall within the definition. The report suggests that the 10% figure is based on the national average of surveys carried out by ORS – the consultants who prepared the 2016 GTAA – but no analysis of those figures is provided. I can see no obvious reason why the proportion would be so much lower than that for other local households, or why a national figure should be preferred over more localised evidence, especially when the issue in question is one of local needs. It seems likely to me that significantly more of the 'unknown' households would fall within the PPTS definition.
29. Seven of those unknown households were living on unauthorised sites. The 2016 GTAA concludes that the overall level of need could rise by up to 11 pitches if information was made available to the Council that those 'unknown' households did meet the PPTS definition (based upon the existing seven pitches plus an additional 4 from new household formation)<sup>6</sup>. In other words, the figure of 'about 15' within policy DM4 may need to rise if additional evidence of unknown need comes to light.
30. Five of the 'unknown' households occupy sites that are put forward by the Council within the Traveller DPD, four at The Piggeries and one at land adjacent to Gravel Hill<sup>7</sup>. Clearly, the intention of the Traveller DPD is to allocate sites to meet the needs of gypsies and travellers who meet the definition. In putting forward The Piggeries and land adjacent to Gravel Hill the Traveller DPD states that "this strategy will, however, not only secure the planning status of the sites for the current occupants, *contributing to the specified need* (my emphasis), but also provide certainty in relation to the delivery of sites to meet the needs in Policy DM4"<sup>8</sup>.
31. In other words, there appears to be an acceptance within the Traveller DPD that the present occupants of those sites contribute to the need for gypsy and traveller sites within the area. However, those occupants were not considered to contribute towards need within the 2016 GTAA because they fell into the 'unknown' household category. If those households do fall within the definition, as seems likely having regard to the Traveller DPD, the overall need would be greater than the figure of 15. Thus, the Council is putting forward those sites to meet future needs but does not appear to have factored in the needs of the present occupants in determining the overall pitch requirement.

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<sup>5</sup> Figure 3, produced at page 21 of the 2016 GTAA

<sup>6</sup> Paragraph 5.23 of the 2016 GTAA

<sup>7</sup> Figure 1 of the 2016 GTAA

<sup>8</sup> Paragraph 4.9

32. If those households are added to the assessment of need, or an appropriate allowance is applied to the 'unknown' households, the need would be greater than that identified by the Council. That need would also appear to be an immediate need, given that the households are already resident in the area. Having regard to those matters, it appears to me that the five-year need is likely to be somewhat greater than the 2 additional pitches, based upon the Council's own approach and methodology. Given my comments on the limited available supply of sites, as set out above, I am not satisfied that the Council is able to demonstrate a 5 year supply of deliverable sites to meet that need.
33. As noted, my conclusions in that regard are based purely on an analysis of the Council's own data, including the 2016 GTAA and the Traveller DPD. None of those documents take account of the needs of the present occupants of the site. The families were not interviewed as part of the 2016 GTAA and their needs were not accounted for in that assessment. The Council does not explicitly dispute that the families have accommodation needs relating to the local area.
34. The planning application had been submitted in October 2016 and the surveys and interviews conducted to inform the 2016 GTAA were completed early in October 2016. Had the application been made a few weeks earlier, the Council would have been aware of the appellants' circumstances and that may well have prompted ORS, who produced the 2016 GTAA to interview them as part of the process. It strikes me that assessing local needs is not an exact science and there will be cases, particularly where travelling families are involved, when particular households may be missed in surveys. That does not dictate that their needs should not be taken into account, particularly if those families have a local connection and local need relating to their circumstances.
35. From the information provided by the Gypsy Liaison Officer (GLO) at the County Council the families have roots in the local area. The GLO also noted that there were no vacancies on sites in Hampshire which were previously owned by the County Council and that the one remaining Council owned site had six applicants on the waiting list but was also "in the wrong area to satisfy the accommodation needs of these families". Having regard to that and the other information before me I am satisfied that the needs of the families are for accommodation in the local area. Therefore, it is reasonable take account of their needs for a permanent residential base in the local area into account when assessing need more generally.
36. That approach is consistent with the recommendation in the 2016 GTAA and paragraph 11 of the PPTS, that Council's should develop criteria based policies for assessing applications in relation to unknown households who provide evidence that they meet the definition.
37. In terms of policy DM4 of the LPP2, the approval of four pitches at the appeal site may result in slightly more than 15 pitches being approved over the plan period if the currently envisaged sites in the Traveller DPD also secure permanent planning permission. However, the wording of the policy contains a built in degree of flexibility in that it states that permission will be granted for "about 15" pitches. The evidence base behind the 2016 GTAA also acknowledges that the level of need may be greater depending on the status of the 'unknown' households. The policy does not expressly state that permission should be refused for any pitches over that number and, in view of the



flexibility within the policy and the evidence base, an approval of four pitches at the appeal site would not be of such a scale as to increase numbers materially beyond what was envisaged in the development plan.

38. Moreover, the policy states that "sites will be identified and consent granted as necessary to meet identified traveller needs in the Plan area which could not otherwise be met, subject to the criteria outlined in policy CP5". I have concluded that there is an unmet need for additional permanent gypsy and traveller pitches and am not satisfied that the Council is able to demonstrate a five-year supply of sites to meet that need. The Council does not allege any conflict with the criteria based policy CP5 and, on that basis, I find no conflict with the aims of policy DM4.
39. In reaching those conclusions I have based my decision on the adopted planning policy position and the evidence base that underpinned that policy. I appreciate that Dr Murdoch has raised a number of objections relating to the methodology and conclusions of that evidence base. The matters raised include, amongst other things, concern that the interview questions led to a fundamental miscalculation whether people met the gypsy and traveller definition; concerns that the surveys were carried out at the wrong time of year during the travelling season; a failure to take account of any allowance for people living in bricks and mortar; and a failure to make an allowance for families living on unauthorised sites.
40. As noted above, those matters would more appropriately have been submitted at the consultation stage relating to the LPP2. How the examining Inspector in relation to the Traveller DPD deals with the submissions will be a matter for him or her. However, I see no reason to address those matters here because there is no suggestion that the current evidence over-estimates the need for sites. Given that I have concluded that there is an unmet need based upon that evidence consideration of the matters raised would not lead me to a different conclusion.

## **CONSIDERATION OF APPEAL E**

### ***The effect of the development on the landscape character and appearance of the countryside***

41. The appeal site relates to a roughly rectangular parcel of land, formerly used as a paddock for horse grazing, situated to the west of Durley Street, adjacent to Berkeley Farm. Durley Street is a linear settlement with houses and farmsteads strung out along the roadside. The majority of the built development is situated to the south and east of the road although a number of farms and houses are scattered more loosely to the north and west. The site is located within the countryside for the purposes of the development plan but is not subject to any particular landscape designation in terms of planning policy.
42. The Council has produced the Winchester District Landscape Character Assessment (2004) (the WDLCA) which breaks down the district into broad landscape types and more local character areas. The area falls within the 'Mixed Farmland & Woodland Landscape Type' and the 'Durley Claylands' character area. I took the opportunity to view the site from surrounding roads and footpaths and walked a number of other footpaths around the settlement to appreciate its character. The small paddock at the appeal site and the

- surrounding fields and woodland is typical of the local landscape as described in the WDLCA, as is the low density and sprawling nature of the settlement.
43. In particular, I noted a predominance of small enclosed fields on either side of the main road adjacent to the village and a tendency for the enclosures to become slightly larger as one moves further into the countryside. The effect of that pattern of development is an intimate association between the built form of the village and the surrounding fields. When combined with the mature trees and hedgerows, the low lying and gently undulating topography limits views of the site from the wider area.
44. In terms of visual impact the primary vantage points of the site are from the road to the front and the public footpath which passes to the north and east. The proposed layout plan shows that the pitches and the associated caravans and built development would be situated well within the confines of the site, surrounded by existing and proposed landscaping. Gaps in the hedgerow would be filled with native species and a buffer zone of native understorey planting would be created to the rear of the existing hedgerow. The retention and reinforcement of the hedgerow would ensure that a key feature of the local landscape would be retained.
45. Whilst some views of the internal areas would be possible, particularly in the winter months, the density of caravans and buildings would be low. In addition, the site layout plan indicates that the caravans and buildings would be sited towards the south-western edge of the site, adjacent to the existing buildings at Berkeley Farm. That would help to minimise views from the footpath to the north, as would the internal planting that is designed to delineate the plots within the site. The low density nature of the development and careful attention to the siting of units and buildings would ensure that the built form did not dominate the surrounding character. From the outside looking in I am satisfied that the prevailing sense would be of a paddock with some buildings within it.
46. That would not be unduly out of character with the surrounding landscape, particularly the fields and paddocks immediately adjacent to the settlement where stables, agricultural buildings and other structures are relatively common. By virtue of their design and materials, the caravans would undoubtedly have an appearance that is at odds with the more rustic feel of the other buildings referred to above. The development would also have a suburbanising effect through the introduction of structures and hard standings. Nonetheless, I am satisfied that careful siting and landscaping as proposed would avoid any undue harm. The low roof height of the structures would help in that regard.
47. Furthermore, the site is closely adjacent to existing buildings and the linear nature of the settlement is one of its defining features. A small and well-planned addition in an enclosed paddock would not bring about any major change to the prevailing character of the village. The site is adjacent to a well-used rural road adjacent to other houses. As such, I see no reason why the residential use would lead to a noticeable loss of tranquillity and any lighting scheme could be controlled through condition to ensure that no harmful effects arise in that regard.
48. For all of those reasons I find that the development would not cause harm to the landscape character of the area or to the character and appearance of the

settlement. In those respects it would conform to the aims of policies DM15, DM23 and CP5 of the LPP2 and with paragraph 25 of the PPTS which states that sites in rural areas should respect the scale of and not dominate, the nearest settled community.

***Whether the development is contrary to the relevant policies of the development plan***

49. For the reasons given, I find no conflict with the aims of policy DM4 on the basis that there is an identifiable need for the development and a shortage of available and suitable alternative sites. Policy MTRA4 of the Winchester Local Plan Part 1: Joint Core Strategy (2013) (the LPP1) relates to development in the countryside and states that the local planning authority will only permit specified types of development. The use of land as caravan sites for gypsy and traveller families is not a type of development listed within the policy.
50. Nonetheless, the Council does accept that such sites may be appropriate in countryside locations, depending upon need. I understand that all of the sites put forward within the Traveller DPD are within the countryside. That provides an indication that the Council do envisage that development in the countryside will be necessary to meet the needs of gypsies and travellers in the district.
51. The Council does not allege that the proposal would contravene any of the criteria within policy CP5 and I concur with that view. The site is well related to the existing settlement and the development is of a modest scale such that it would not dominate the existing village. It is accessible to local services, having regard to its rural context, adequate utility provision can be secured by condition and no objection has been raised from the highway authority in terms of highway safety. I find that adequate visibility splays are available and the nature of the road is such that on-coming drivers would have adequate notice of vehicles pulling out from the site. In fact, there are many driveways and access points along the road, many of which no doubt would not meet modern standards but no accident records have been presented to indicate that there is a highway safety problem in the locality. I note concerns expressed by a neighbouring resident regarding the future maintenance of the visibility splays, including the suggestion that land immediately to the north-east of the point of exit is not in the ownership of the appellant. That may be the case but there is no reason to suppose that the grass verge is likely to be put to any other use such that it would impair visibility. That sliver of land is set below the level of the adjacent field to the front of the hedgerow. In practical terms it forms part of the highway verge and it is difficult to see what other purpose the land could be put to. As such, that matter does not alter my conclusions on the safety of the access arrangements.
52. Therefore, whilst policy MTRA4 does not provide for an exception for caravan sites, I am satisfied that the development would not be contrary to the aims of the development plan when read as a whole.

***Other Matters***

53. Given that I have concluded that the development would comply with the relevant policies of the development plan it is unnecessary to undertake a detailed balancing exercise in relation to the personal circumstances of the families who reside at the site. Nonetheless, I understand that a number of the children attend school and a letter from the educational advisor at the County

Council has been provided to that effect. Having a settled base would assist those children in continuing their education. I am also mindful of the medical condition of one of the children who needs to attend hospital regularly. A stable home would no doubt be a benefit in that regard. Consequently, the needs of the families, particularly the needs of the children, are factors that add weight in favour of the development.

### **Conditions**

54. A list of suggested conditions has been forwarded by the parties as part of the statement of common ground. If I am minded to allow the appeals I will attach those conditions that meet the tests set out in paragraph 206 of the Framework, making corrections to the wording, where necessary, for clarity and to avoid repetition. A number of conditions would require further information to be submitted and approved in writing by the Council. Although the scheme that has been implemented on site is not the same scheme as that put forward in Appeal E, the residential use of the site has commenced and the caravans are occupied. In view of that, rather than imposing conditions which require information to be submitted 'prior to first occupation', I have worded the conditions to allow a reasonable period for the submission of further details, and the subsequent implementation of the required details, ensuring that the conditions remain enforceable in the event of non-compliance.
55. In the interests of the character and appearance of the area conditions are necessary to ensure that the development is carried out in accordance with the plans submitted with the application and to ensure that existing planting is retained and new landscaping is carried out in accordance with the submitted plans. For the same reason and in the interests of providing satisfactory residential environment conditions are needed to ensure that the play area is laid out and maintained as shown on the submitted plan.
56. It is also necessary to attach a condition to ensure that the site is occupied by gypsies or travellers, as defined in Annex 1 of the PPTS because my conclusions on need for that type of accommodation and compliance with the development plan are based upon use by people falling within that definition. It is also necessary to limit the number of pitches to 4 because the suitability of the layout is based upon the plan depicting how that number of units can be accommodated without causing harm to the character and appearance of the area. Similarly, it is necessary to attach a condition to ensure that the utility buildings are used for purposes ancillary to the residential use of the caravans to ensure that those buildings serve the four families in the interests of providing satisfactory living conditions and to regulate the residential use of the site.
57. I am satisfied that the suggested conditions to prevent commercial activity on the site and to limit the size and number of vehicles that can be parked or stored at the site are necessary in the interests of the character and appearance of the area and to ensure that the development does not have a harmful effect on the living conditions of neighbouring residents, or residents of the site itself. The condition seeking to prevent any materials being burnt on the site seems unnecessary and onerous to me. Many homeowners will often have fires to burn garden waste and cuttings and that may well be necessary on this site from time to time given the extent of vegetation.

58. A condition to prevent the installation of external lighting unless details of such lighting have first been submitted to and agreed by the local planning authority is required to prevent unnecessary light spillage in the interests of the character and appearance of the area. Also for that reason I agree that a condition is required to remove permitted development rights for the erection of walls, fences and other means of enclosure. The suggested conditions relating to the provision of bird and bat boxes, the protection of nesting birds, badgers and trees are all necessary to conserve and enhance biodiversity, in line with the aims of paragraph 118 of the Framework. In the interests of highway safety conditions are necessary to ensure satisfactory visibility splays are maintained and to provide a surface water receptor adjacent to the site entrance to avoid run-off onto the highway.
59. Finally, details of how foul and surface water will be disposed of should be submitted to and agreed by the local planning authority to avoid the risk of pollution and neighbouring amenity and a condition to secure a waste management plan detailing measures for the collection of waste and recycling is necessary in the interests of the appearance of the site and the living conditions of its residents.

### ***Conclusion in Relation to Appeal E***

60. For the reasons given above I am satisfied that there is an identified need for the proposed development taking account of the evidence base presented by the Council and also the specific needs of the families concerned. The proposed site layout plan has been carefully considered and would mitigate the effects on the surrounding landscape to a satisfactory degree and provide a suitable residential environment for the occupants of the site, without harming the living conditions of neighbouring residents. The proposal would meet the criteria set out in policy CP5 and it represents a suitable scheme of a modest scale in a suitable location.
61. Any other matters can be adequately mitigated by the imposition of appropriate conditions and, subject to those conditions, I conclude that the appeal should be allowed and planning permission granted.

### **CONSIDERATION OF APPEAL A ON GROUND (a)**

#### ***The effect of the development on the landscape character and appearance of the countryside***

62. As noted above, the agent for the appellant accepted at the Hearing that the current layout has caused harm to the character and appearance of the area. Mr Crandon, the appellant's landscape architect, assessed the impact upon landscape character to be 'moderate adverse' without mitigation. I concur with that assessment of the current impact. In particular, the layout of the site is markedly different to that submitted with the application in relation to the position of the units and associated buildings. The unit on the most northerly pitch is situated closer to the site boundary and the timber sheds that have been erected in association with that unit are directly adjacent to the hedgerow<sup>9</sup>.
63. Those timber buildings are specifically referred to in the notice and form part of the scheme for consideration under ground (a). The position of the buildings

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<sup>9</sup> As depicted in photograph 14 at Appendix C to the Council's statement

and the caravan is such that they are clearly visible from the footpath which runs to the north of the site and, from those angles, the accumulation of buildings and the caravan presents a somewhat cluttered appearance within one of the more noticeable parts of the site. That impact also detracts from the ability to appreciate the hedgerow itself which is a key feature of the local landscape.

64. I am not satisfied that impact could be adequately mitigated by additional planting due to the proximity of the buildings to the boundary of the site. Moreover, the arrangement within the site is unregulated at present which provides an ad-hoc appearance in contrast to the layout shown on the plan where the caravans and associated fencing and landscaping would be carefully situated.
65. As I have already explained, the required changes to make the existing layout conform to the site layout plan submitted with the application would go beyond what could be considered to fall within the scope of the ground (a) appeal. Effectively, the layout considered in relation to Appeal E is a different scheme. Given my conclusions in that regard, no workable alternative plan is before me to demonstrate how the adverse impact could be adequately mitigated. In the absence of such a plan it would be difficult for the Council to monitor and enforce any changes in layout that may occur in future if caravans were moved to different locations on the site.
66. Consequently, having regard to the harm caused to the character and appearance of the area and the surrounding landscape I find that the current layout is contrary to the aims of policy DM15 and DM23 of the LPP2, particularly with regard to the visual intrusion and proximity to the hedgerow which is a key characteristic of the landscape. The failure to maintain visual amenity is also contrary to one of the criteria set out within policy CP5 of the LPP1.

***Whether the development is contrary to the relevant policies of the development plan***

67. Whilst I am satisfied that there is an established need for the development and that the principle of developing a gypsy and traveller site within the countryside is acceptable, it is clear that the currently unregulated layout has caused harm to the character and appearance of the area, contrary to relevant policies of the development plan. In addition, whilst not a point raised by the Council, the current layout fails to provide the play space shown on the proposed layout, contrary to one of the requirements of policy CP5.

***Whether any conflict with the development plan is outweighed by other material considerations to the extent that planning permission should be granted***

68. As above, the personal circumstances and best interests of the children are matters that weigh in favour of the development. Nonetheless, having regard to my conclusions in relation to Appeal E those needs could be met equally well if the site was laid out such that it did not cause harm to the character and appearance of the area, as put forward in the proposed site layout plan. I have resolved to approve that scheme and the appellant and the other families on site would have the option to implement that development. They have

indicated a willingness to do so. In those circumstances, I see no justification in approving the current layout.

69. I am also mindful of the fact that the site was occupied immediately following the refusal to grant planning permission. Having regard to the Written Ministerial Statement of December 2015 intentional unauthorised development weighs against a grant of planning permission because the development took place without an opportunity to limit or mitigate the harm caused.

***Conclusion in Relation to Appeal A on ground (a)***

70. For the reasons set out above, I conclude that the balance of material considerations weighs strongly against the grant of planning permission for the development. I am not satisfied that the harm caused to the character and appearance of the area can be adequately mitigated by conditions and, having regard to my decision in relation to Appeal E, I can see no justification for approving a harmful layout when the needs of the families could be met through the development of the site in accordance with a scheme that would not cause harm. Thus, the harm caused would significantly and demonstrably outweigh the benefits of granting permission and I conclude that the appeal should not succeed.

**APPEALS A, B, C AND D ON GROUND G**

71. The time periods for compliance with the requirements of the notice were phased such that the use should cease and the caravans be removed within 6 months, all buildings and fences, hard surfaces etc were to be removed within 7 months and the land restored to its former condition within 8 months. At the Hearing, and as agreed subsequently within the SoCG, the Council indicated a willingness to extend those periods to 12 months, 18 months and 24 months.
72. The reason for that change of position was due to the personal circumstances of the families and their need to find alternative accommodation. That circumstance will not arise as a result of my decision in relation to Appeal E. Under the terms of section 180(1) of the Town and Country Planning Act 1990, if planning permission is granted for any development carried out before the grant of that permission, a notice shall cease to have effect so far as inconsistent with that permission. In other words, the notice would not take effect in relation to the use of the site but would continue to take effect in regard to those elements of the development that are inconsistent with the approved scheme. Thus, the buildings, fences, hardstandings, decking areas and drainage arrangements that are not consistent with the planning permission granted would need to be removed.
73. In effect, the question for consideration under ground (g) is what amounts to a reasonable period for that to occur. The agreed position between the parties allowed for a 12 month period between the cessation of the use and the reinstatement of the land to its former condition.
74. Prior to implementing the approved scheme the appellants would need to submit details to the Council with regard to a number of conditions and have those details approved. It seems likely that they would wish to have those details agreed before removing the unauthorised elements of the scheme so that work on complying with the enforcement notice and implementing the planning permission could be carried out simultaneously such that they

wouldn't be faced with a long delay without day rooms, hard surfaces or drainage arrangements. Consequently, I find that 12 months would be a reasonable period of time to require the unauthorised elements of the scheme to be removed because that period would also enable the relevant conditions to be discharged in relation to the approved scheme.

75. Therefore, the appeals on ground (g) succeed to that extent and I shall vary the terms of the notice to extend the period for compliance with steps (ii) to (vii) to 12 months.

**Overall Conclusion in Relation to Appeal A**

76. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice with variations and refuse to grant planning permission on the deemed application.

**Overall Conclusion in Relation to Appeals B, C and D**

77. For the reasons given above I conclude that a reasonable period for compliance with steps (ii) to (vii) would be 12 months. I will vary the enforcement notice accordingly, prior to upholding it. Appeals B, C and D under ground (g) succeed to that extent.

*Chris Preston*

INSPECTOR



## **APPEARANCES**

### FOR THE APPELLANT:

Dr Angus Murdoch BA(Hons) MSC MA PhD MRTPI	Planning Consultant
Mr Rhodri Crandon	Landscape Architect
Mr Tony Keet Jnr	Son of Mr T Keet Snr (appellant)

### FOR THE LOCAL PLANNING AUTHORITY:

Mr Stephen Cornwell	Planning Officer
Mr Steve Opacic	Strategic Planning Projects Officer
Mr Stuart Dunbar-Dempsey	Landscape Officer

### INTERESTED PERSONS:

Ms Hazel Richardson	Local resident
Mr Toby Ross	Local resident
Mr Sam Charles	Local resident and Chair of Durley Parish Council
Mr David McLean	District Councillor

## **Documents Submitted at the Hearing**

- 1) Winchester District: Gypsy, Traveller and Travelling Showpeople Development Plan Document 'Traveller DPD', Publication (pre-submission) version, January 2018

### **Appendix: Conditions in Relation to Appeal E**

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The site shall not be occupied by any person other than gypsies and travellers as defined in Annex 1 of the Planning Policy for Traveller Sites dated August 2015 (or its equivalent in replacement national policy).
- 3) The development hereby permitted shall be carried out in accordance with the detail shown on the approved drawings: TDA drawing entitled Site Location Plan drawing number TDA.2219.03 dated September 2016; TDA drawing entitled Site Layout & Detailed Landscaping Proposals drawing number TDA.2219.05 revision A dated September 2016; TDA drawing entitled Proposed Semi Detached Day Rooms (Plans Elevations) drawing number TDA.2219.06 dated September 2016; and TDA drawing entitled Tree Survey Plan drawing number TDA.2219.01 dated September 2016.
- 4) No more than 4 pitches shall be formed on the site. A maximum of 8 caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 (as amended), of which no more than 4 shall be a static caravans / mobile homes, shall be stationed on the site at any time, the dimensions of which shall not exceed those shown for the mobile homes on the TDA drawing entitled Site Layout & Detailed Landscaping Proposals drawing number TDA.2219.05 revision A dated September 2016.
- 5) The internal layout of the site including the subdivision into the four pitches, the siting of the mobile homes and the touring caravans, the day rooms, hard surfaces, boundary treatment, parking and the provision of the play area shall conform with the details as shown on the TDA drawing entitled Site Layout & Detailed Landscaping Proposals drawing number TDA.2219.05 revision A dated September 2016.
- 6) Any day room or amenity building shall only be used for ancillary purposes to the main caravan/mobile home on the respective pitch or caravan they are associated with and intended to serve. They shall not be used to provide permanent, temporary or occasional residential overnight accommodation by any person who is a resident occupier or visitor to the pitch or site.
- 7) Excluding the single tree identified to be removed on TDA drawing entitled Tree Survey Plan drawing number TDA.2219.01 dated September 2016 all the remaining perimeter vegetation ranked A, B & C on the above plan and annotated as "existing trees retained" on TDA drawing entitled Site Layout & Detailed Landscaping Proposals drawing number TDA.2219.05 revision A dated September 2016 shall be retained hereafter.
- 8) Within the first available planting season following the residential use of any of the mobile homes hereby permitted the site shall be landscaped in accordance with the details shown on the Site Layout & Detailed Landscaping Proposals drawing number TDA.2219.05 revision A dated September 2016, unless an alternative timetable for implementation is agreed in writing by the Local Planning Authority. Prior to the implementation of that planting, a schedule setting out the seed mix and

proposed seed coverage for the wildflower margins, the area of ruderal vegetation and the proposed ornamental grass areas shall be submitted to and approved in writing by the local planning authority.

- 9) If, within a period of 5 years after planting or seeding, any seeded area or tree or plant is removed, dies or becomes, in the opinion of the local planning authority seriously damaged, defective or diseased, new seed of the same variety or another tree/plant of the same species and size as that originally approved shall be sown or planted (as appropriate) at the same place, within the next sowing or planting season, unless the local planning authority gives it written consent to any variation.
- 10) Prior to the commencement of any work involved in the construction of any of the buildings or hard surfaces hereby approved, details of a scheme for the installation of bird and bat boxes on trees within the site shall be submitted to and approved in writing by the Local Planning Authority. The details submitted for approval shall include details of the materials, size and design of the bird & bat boxes, the identification of the trees where the boxes will be located, the height above ground, the orientation of the box, how the box will be attached to the tree and a timetable for the installation of the boxes. Thereafter, the boxes shall be installed in accordance with the details so approved.
- 11) Prior to the commencement of any work involved in the construction of any of the buildings or hard surfaces hereby approved, details for the installation of a surface water interceptor to be located at the entrance to the site shall be submitted to and approved by the local planning authority. The submitted details shall include details of how the intercepted water will be disposed of, measures relating to the treatment of the access into the site to ensure that the operation of the interceptor is not inhibited by loose material, and a timetable for implementation. Thereafter, the interceptor shall be installed in accordance with the approved details.
- 12) No commercial activities, including the storage of materials, shall take place on the land.
- 13) No more than 4 commercial vehicles shall be parked, stationed or stored on the land for use by the occupiers of the caravans hereby permitted, and they shall not exceed 3.5 tonnes in weight.
- 14) Within the first available planting season following the commencement of the residential use hereby permitted the play area as shown on the on the TDA drawing entitled Site Layout & Detailed Landscape Proposals drawing number TDA.2219.05 revision A dated September 2016 shall be created and seeded with grass. Thereafter, that area shall be retained in accordance with the details shown on the approved plan.
- 15) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order) no other means of enclosure shall be erected within the site other than those sections of post & rail fencing shown on the TDA drawing entitled Site Layout & Detailed Landscape Proposals drawing number TDA.2219.05 revision A dated September 2016. The lower rail shall be fixed to offer a minimum unrestricted clearance to the ground of 300mm.

- 16) No external lights, fixed or freestanding, shall be installed on the site unless details of their number, position and power have first been submitted to and approved by the local planning authority. The submitted details shall include the provision to minimise light spillage and all lighting must be directional, downward facing and away from natural features.
- 17) Prior to the commencement of any work involved in the construction of any of the buildings or hard surfaces hereby approved an environmental management plan shall be submitted to and approved in writing by the local planning authority. The submitted details shall include an updated walk over report on the presence of badgers on the site prepared by a competent person. In the event that badgers are found to use or occupy the site then a methodology for undertaking any work shall be submitted to and agreed in writing by the local planning authority including details of the formation of roadways or hard surfaced areas, concrete bases, laying of pipes or installation of septic tanks) within 30 metres of the badger sett and specifying the time of year the work will be undertaken (avoiding December through to June inclusive). Thereafter, the works shall be undertaken in accordance with the details so approved
- 18) No vegetation clearance work shall be undertaken during the bird nesting season (April -September inclusive) unless the proposed work has been assessed by a competent person and a report submitted to and approved in writing by the local planning authority. In that event only the approved work shall be undertaken.
- 19) Within 12 months following the first use of any of the caravans hereby permitted (unless consent for a different period is first granted in writing by the local planning authority) waste and recycling bins and storage areas shall be provided in accordance with details that have first been submitted to and approved in writing by the Local Planning Authority.
- 20) Within 12 months of the first use of any of the caravans hereby permitted (unless consent for a different period is first granted in writing by the local planning authority) a scheme for the disposal of foul and surface water generated from the development shall have been implemented in accordance with details that have first been submitted to and approved in writing by the Local Planning Authority.
- 21) The access track as shown on the approved plan shall be constructed of permeable material. Before its construction through any root protection area as shown on TDA drawing entitled Tree Constraints Plan drawing number TDA.2219.02 dated September 2016, details of the proposed method of construction to ensure no harm occurs to the tree roots shall be submitted to and approved in writing by the local planning authority. Any construction shall then be undertaken in accordance with the approved details.
- 22) Before the development hereby approved is first brought into use, visibility splays of 2.0 metres by 43 metres shall be provided at the junction of the access and public highway. The splays shall be kept free of obstacles at all times.