Appeal Decisions

Hearing held on 23 July 2013
Site visit made on 23 July 2013

by Jean Russell MA MRTPI

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

Decision date: 6 September 2013

Appeal A: APP/J0405/C/13/2193582
Land at Willows Park, Horton Road, Slapton, Buckinghamshire

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (the 1990 Act) as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Edward Doherty against an enforcement notice issued by Aylesbury Vale District Council.
- The Council's reference is EN2/2013.
- The notice was issued on 21 January 2013.
- The breach of planning control alleged in the notice is failure to comply with conditions nos. 4 and 7 of planning permission ref: 95/0571/APP, granted on 22 February 1996.
- The development to which the permission relates is the siting of five mobile homes and two towing caravans for residential use, with laying of hardcore on access drive.
- Condition no. 4 states that: the site shall not be occupied except by Mr Peter Smith, Mrs Caroline Smith, their offspring and the spouses and dependants of those offspring.
- Condition no. 7 states that no more than five mobile homes and two towing caravans shall be present on the site at any one time, and they shall not be located elsewhere than within the area edged red on the attached plan [to the decision].
- The notice alleges that the conditions have not been complied with in that the land is occupied by persons other than those permitted by condition no. 4 and more than five mobile homes are present on the land referred to in condition no. 7.
- The requirements of the notice are to:
  (1) Cease the use of the Land by all persons other than those who are gypsies and travellers as defined in Annex 1 of the Department for Communities and Local Government Planning Policy for Traveller Sites 2012; and
  (2) Reduce the number of mobile homes on the Land to no more than five; and
  (3) Reduce the number of towing caravans on the Land to no more than two.
- The period for compliance with the requirements is 6 months.
- The appeal is proceeding on the ground set out in section 174(2)(a) of the 1990 Act as amended. Since the prescribed fees have been paid within the specified period, the application for planning permission deemed to have been made under section 177(5) of the Act as amended also falls to be considered.

Summary of Decision: The appeal is allowed, the enforcement notice is quashed and planning permission is granted in the terms set out below in the Formal Decision.

Appeal B: APP/J0405/C/13/2193601
Land adjacent Willows Park, Horton Road, Slapton, Buckinghamshire

- The appeal is made under section 174 of the 1990 Act as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Edward Doherty against an enforcement notice issued by Aylesbury Vale District Council.
- The Council's reference is EN3/2013.
- The notice was issued on 21 January 2013.
- The breach of planning control as alleged in the notice is: without planning permission,

the change of use of the Land from an agricultural use to use for the siting of caravans in residential use.

- The requirements of the notice are to:
  (1) Cease the use of the Land as a residential caravan site; and
  (2) Remove the mobile homes, caravans, commercial and other vehicles, portable buildings and other ancillary items, including, but not limited to, domestic paraphernalia associated with the unauthorised use from the Land; and
  (3) Cease bringing onto the land hardcore, concrete, stone, brick and any other such materials associated with the unauthorised development; and
  (4) Break up the hardcore surfaced private driveway and hard standings on the Land and remove all debris and materials arising therefrom [sic] from the Land; and
  (5) Remove from the Land any concrete, hardcore, stone, brick and any other such materials stored on the land; and
  (6) Remove the waste disposal units, septic tanks, drainage works and any other service equipment or media from the Land; and
  (7) Restore the Land by the laying of topsoil and reseeding with grass in accordance with the manufacturer's instructions.
- The periods for compliance with the requirements are 6 months in relation to steps (1)-(6) and before the end of the first following grass growing season in relation to step (7).
- The appeal is proceeding on the grounds set out in section 174(2)(a), (c) and (f) of the 1990 Act as amended. Since the prescribed fees have been paid within the specified period, the application for planning permission deemed to have been made under section 177(5) of the Act as amended also falls to be considered.

Summary of Decision: The appeal succeeds in part and permission for that part is granted, but otherwise the appeal fails and the enforcement notice as corrected is upheld as set out in the Formal Decision.

Preliminary Matters

1. As implied above, the land subject to Appeal A is a residential caravan site known as Willows Park. I refer to the planning permission granted for the use of that site as the '1996 permission'. Appeal B concerns adjoining land that is alleged in effect to be used as an extension to Willows Park.

Appeal B

2. During the course of the appeal, the appellant withdrew the appeal on ground (f) and substituted ground (d). At the hearing, ground (f) was re-introduced with the Council's agreement.

3. Under s176(1) of the 1990 Act, I may correct any error, defect or misdescription in the enforcement notice if there would be no injustice to the appellant or the Council. It was agreed at the hearing that the site address should be written as 'Land adjacent *to* Willows Park' with the postcode being LU7 9DD. The notice should also be corrected to allege 'the *making of a material* change of use…'

4. I raised concerns at the hearing regarding requirements 3 and 5 of the notice. As discussed below, a notice directed at a material change of use of land may require the removal of works integral to and undertaken to facilitate the use. However, a notice cannot seek to prohibit possible future breaches of planning control and yet step 3 is to cease *bringing* materials onto the land. Step 5 is problematic in that it requires the removal of items stored when no storage use is alleged. The Council confirmed that it does not consider the land to be in use for storage.

5. The parties agreed that, in order to remedy the breach, it would suffice for the notice to require, after steps (1) and (2), removal of associated physical works and materials and restoration of the land to its previous condition. I have corrected the notice so that steps 3, 4 and 5 are merged and simplified and steps 6 and 7 are re-

numbered. The parties also agreed that it is unnecessary to require top-soiling and re-seeding 'in accordance with the manufacturer's instructions'. The time for compliance is re-worded to reflect the reduced number of steps and expressly incorporate an informative relating to the grass-seeding season.

6. For the purposes of this appeal, the land subject to the notice is considered in three parcels. 'Area 1' is to the south east of Willows Park. 'Area 2' is land to the south and south west of Willows Park and Area 1; it was subject to a grant of planning permission on 3 January 2007 (ref: 06/00659/APP) for 'extension to existing gypsy site to accommodate 3 residential pitches, including the laying of hardstanding and landscaping'. I refer to this as the '2007 permission'. 'Area 3' comprises land between Area 2 and the Horton Road boundary of the appeal site.

7. The appellant confirmed at the hearing that Area 1 is subject to the appeals on grounds (d), (a) and (f), while Area 2 is subject to the appeals on grounds (c), (a) and (f). Area 3 is not subject to any ground of appeal. The parties agreed that, depending on the outcome of the appeal, that anomaly could be addressed by substituting the plan attached to the notice. The replacement plan could either serve to delete Area 3 or identify the different parts of the site. For reasons given below, I have taken the latter option and upheld the notice in relation to Area 3.

8. The appellant has submitted a planning application (ref: 13/01314) to use the site as an 'extension to existing gypsy caravan site to provide 8 additional pitches… together with the laying of hardstanding and construction of access road'. This application was not determined at the date of the hearing and it is outside of my remit. Where relevant, however, I make reference to it as the '2013 application'.

Appeal A on Ground (a) and the Deemed Planning Application

Main Issue

9. Planning permission is sought for the development as approved without compliance with conditions 4 and 7 but subject to new conditions. The main issue is whether the suggested conditions would address the reasons for taking enforcement action.

Reasons

Condition no. 4

10. Condition no. 4 served to limit occupation of Willows Park to named beneficiaries who were gypsies or travellers. The notice does not require compliance with the condition because the Council does not find it expedient to continue to restrict the use of the land on a personal basis. When the notice was issued, however, the site was occupied by persons who are not gypsies or travellers as defined in *Planning Policy for Traveller Sites* (the Traveller Policy).[1] The Council considers this an unsustainable location for a general residential site – and that the loss of traveller pitches could lead to an under-supply. The notice seeks to ensure the continued use of Willows Park as a gypsy site.

11. As appellant observed, the 1996 permission does not restrict use of Willows Park to gypsies and travellers. The notice cannot serve to impose a new condition on the 1996 permission, but this is effectively what it seeks to do. The Council accepts that, to address the reasons for taking enforcement action, it would be appropriate for me to allow the appeal and grant permission subject to a new condition which restricts occupation of the site to gypsies and travellers only. I agree that such a decision would acceptably ensure retention of Willows Park as a traveller site.

[1] The appellant lives at Willows Park and there is no dispute that he has gypsy status. The question of status is relevant to those who rent other pitches from the appellant. It appears that the current occupiers are travellers.

Condition no. 7

12. There is no dispute that the permitted number of caravans on the land has been increased. The Council suggests that there were 9 mobile homes, some within 1m of each other, at the date of the issue of the notice. This evidence is supported by an aerial photograph taken in 2012. The Council's concern is that allowing an uncontrolled increase in the number of caravans at Willows Park could lead to a cramped layout and harm to the living conditions of occupiers.

13. The appellant proposes that condition no. 7 should be discharged and replaced by a new condition that limits the number of pitches to 5, and the number of caravans per pitch to 2, with no more than 1 being a static caravan. He argues that such a condition would be consistent with an equivalent imposed on the 2007 permission – and would reflect advice in *Designing Gypsy and Traveller Sites: Good Practice Guide* (GPG) that sites should contain pitches able to accommodate families.

14. On the basis that the site would be limited to use by gypsies or travellers, the Council does not object to the appellant's suggestion. I saw that 5 pitches are already laid out with space for the number and type of caravans proposed. The new condition should not give rise to overcrowding. By limiting the number of pitches to 5, rather than caravans to 7, the condition could serve to reduce the number of families able to live on the site. However, since each pitch would be able to accommodate a static and touring caravan, the proposed restriction would render the site as a whole more suitable for traveller families in the long-term.

15. For these reasons, I shall allow the appeal subject to the suggested condition. It shall be worded to qualify the description of development in the 1996 permission, which refers to the original number of caravans approved. It is also necessary, in my view, to impose another new condition to require the submission and approval of a site layout scheme. The Council does not object to the existing arrangement of 5 pitches but caravans may be moved by definition. Condition no. 7 provided a minor degree of control by requiring that caravans are located within the site – but this condition will now be replaced. The site layout is not shown in a plan subject to the 1996 permission or restricted by any other condition.

Conclusion

16. I conclude that the uncontested appeal on ground (a) and application for deemed planning permission should succeed. Where an appeal against a notice regarding a breach of conditions is allowed on its merits but other conditions are required, the old conditions can be discharged and the new ones substituted using powers under s177(1)(b) and s177(4). The deemed planning application also provides for a grant of a fresh permission subject to conditions.

17. The new conditions discussed above must be imposed on the fresh and the 1996 permissions, so as to avoid confusion as to which has been implemented. For the same reason, the undisputed conditions imposed on the 1996 permission will be re-imposed on the permission granted via this appeal.

Appeal B on Ground (c)

18. The appeal on ground (c) is that the matters alleged in the notice do not constitute a breach of planning control. As with ground (d), the onus of proof is on the appellant and the standard of proof is the balance of probabilities.

19. As indicated above, ground (c) relates only to Area 2. The Council suggests that the land has not been developed in accordance with conditions imposed on the 2007 permission and the alleged use for the siting of caravans in residential use is

in breach of planning control. The appellant argues that the permission has been implemented because there has been no breach of any 'condition precedent' and the development was commenced within three years of the date of the permission through works amounting to material operations.

20. A 'condition precedent' is one that goes to the heart of the permission and expressly prohibits development from taking place before a specific requirement is met. A breach of such a condition would mean that the development undertaken is development without planning permission – as is alleged in this case. If a condition that merely requires some action before commencement is not complied with, then the breach of that condition could be enforced against but the development undertaken would not be development without planning permission.

21. The only condition precedent imposed on the 2007 permission was no. 3, which required that no part of the development would begin until visibility splays were provided at the intersection of the site access and Horton Road. The Highways Authority stated in consultation on the planning application that the splays *could* be achieved if the hedge and shrubs within the verge were cut back – but the Council officer's report suggested that the access as *existing* had appropriate splays.

22. I note that the access had served Willows Park for some ten years by the date of the 2007 permission, and it continued to do so afterwards. A separate permission was granted in August 2010 (ref: 10/00935/APP) for the provision of a turning area for service vehicles on land to the north west of Willows Park, again utilising the same access. The officer's report noted that the access is of 'a good standard/visibility' and the Council did not impose a condition relating to visibility splays. On the balance of probabilities, there was no breach of condition no. 3 which would render the 2007 permission incapable of lawful implementation.

23. Conditions nos. 5 and 6 on the 2007 permission, which required the submission of a woodland planting scheme within one month of occupation of the site and the replacement of any trees that die within five years, are not conditions precedent. They do not impose a continuing requirement on the authorised use. Any breach of these conditions could be enforced against as such, but would not render the permission incapable of lawful implementation.

24. The next question is whether the development commenced. To ascertain whether a planning permission is *lawfully* implemented, it is necessary to consider if works undertaken are in accordance with the permission and material in the sense of not being de minimis. This involves analysis of any similarities and differences between the works and approved plans, and the degree to which the works are useable for the development permitted.

25. A related question in this case is that raised by the Council: whether there has been a breach of condition no. 2, which requires that the development is carried out in accordance with the approved plan. This is not a condition precedent, but where a condition requires conformity with plans and works undertaken deviate *significantly*, the development as a whole will be without planning permission.

26. An aerial photograph taken in December 2009 shows that land was cleared if not hardsurfaced before the 2007 permission expired, to facilitate the use of Area 2 as a caravan site. Grass and soil were removed from the areas to be laid out as pitches and used for access from Willows Park and Area 1. Meanwhile, much of the land to be retained as paddock was indeed kept as pasture. The works undertaken reflected the approved plan to a degree.

27. However, land was also cleared from the area proposed for woodland planting – and in a distinct strip through the paddock.[2] The strip appears designed to provide an unauthorised access to the pitches from the shared drive; an access is shown in the same position on the plans submitted with the 2013 application. These works departed significantly from the approved plan. The description of development permitted includes no reference to the creation of any new site access.

28. The aerial photograph also shows a package treatment plant (PTP) installed in Area 2. I find the work material to the 2007 permission.[3] However, the PTP cover is within the area identified as 'pitch 3' on the approved plan. As a matter of fact and degree, the effect of the PTP is that works to clear the land were not useable for the development permitted; the pitches could not have been laid out as approved. I also saw that a pipe stands above ground in the approved access area and would impede vehicular movement. Its location could explain why – or have been made possible because – an alternative site access was formed through the paddock.

29. The appellant suggests that the development could not be rendered unlawful through a breach of condition no. 2 because works were not completed. Even if that is the case, the appellant has not shown that the development commenced. As a matter of fact and degree, it appears that the operations undertaken were intended to facilitate development of a different character to that approved. On the balance of probabilities, the works were not in accordance with the permission such that it was not lawfully implemented and so it lapsed after three years.

30. There is no dispute that Area 2 has been used for the siting of caravans in residential use. Thus, there has been a material change of use of land for which planning permission is required but not granted. I conclude that there has been a breach of planning control as alleged. The appeal on ground (c) fails.

Appeal B on Ground (d)

31. The ground of appeal is that, at the date the notice was issued, it was too late to take enforcement action against the matters stated in the notice. As noted above, this ground of appeal relates to Area 1.

32. Under s171B(1), where a breach of planning control consists of operational development, no enforcement action may be taken after four years from the date of substantial completion. The appellant initially pleaded ground (d) on the basis that the hardstanding on the land has been in situ for more than four years. However, the alleged breach is simply a material change of use of land – not the undertaking of any operational development. The notice requires the removal of hardstanding but whether it should do so falls to be considered under ground (f).

33. The appellant confirmed at the hearing that ground (d) is also pleaded in relation to the alleged use of Area 1. Under s171B(3), no enforcement action may be taken after ten years from the date of a material change of use of land. The notice was issued on 21 January 2013 and so the material date is 21 January 2003.

34. The appellant has submitted an aerial photograph taken in 2003. It must post-date 21 January because it shows trees in leaf. However, it also indicates that Area 1 and Willows Park were hardsurfaced in matching materials. The appellant argues that the hardstanding does not look new and must have facilitated the use of the Area 1 as an extension to Willows Park prior to the material date. It is said

[2] The area proposed for woodland planting was partly outside of the site subject to the 2007 permission.
[3] There was no reference to a PTP in the description of development on the 2007 permission and the PTP was not shown on the approved plan. However, means of foul drainage is not normally incorporated into the terms of a planning permission. It was stated on the application forms that a PTP would be installed.

that Area 1 was likely used for turning into a pitch at Willows Park around an established grassed island. The photograph also shows a static caravan on Area 1.

35. In cases pertaining to a material change of use of land, it is necessary to ascertain the correct planning unit or units, and their primary use or uses over the relevant period. The Courts have held that the tests for determining the planning unit turn on the concept of physical and functional separation.[4] The 2003 aerial photograph indicates no physical or functional separation between Area 1 and Willows Park. The appellant suggests, therefore, that Area 1 has been in residential use in association with Willows Park for more ten years on the balance of probabilities.

36. The appellant's argument is not implausible but I am not persuaded that the 2003 photograph can be used to reasonably date the hardstanding. The 'island' could appear 'established' but still have been recently formed if it was a remnant of the pre-existing field. There is no evidence that Willows Park and/or Area 1 were laid out and surfaced as depicted before rather than after 21 January 2003. The photograph neither confirms that a caravan was in situ or residential use on Area 1 by the material date. It does not show when the alleged use commenced.[5]

37. Furthermore, the 2003 photograph does not demonstrate the continuity of any residential use of Area 1 from prior to the material date. An unauthorised use must continue substantially uninterrupted before it can acquire immunity from enforcement action.[6] This principle applies even at gypsy sites, although the occupiers could be expected to travel and vacate the land at times.

38. The appellant's agent suggests that the use of Area 1 as an extension to Willows Park was continuing when the 2007 permission was granted in respect of Area 2. Paragraph 3.2 of the Council officer's report indicates that the pitches proposed for Area 2 would be 'to the immediate front of the existing (authorised) pitches'. This suggests that the Council wrongly considered Area 1 to be part of Willows Park. However, that is not enough to show that the use of Area 1 had in fact become lawful. The Council may simply have neglected to look beyond the inclusion of Area 1 with Willows Park in the 'site edged blue' on the submitted location plan.

39. The layout plan subject to the 2007 permission does not denote any *existing* residential use of Area 1. The land is not subdivided into pitches whereas five are shown at the 'existing caravan site' and three are 'proposed' on Area 2. A small structure is drawn on Area 1 but, although it is in the approximate position of the caravan shown on the 2003 photograph, its physical nature and use are not identified. It was proposed that Area 2 would only be accessed via Area 1 – but the application was not made on a retrospective basis and the plan does not indicate an existing use of Area 1 for vehicular manoeuvring. In contrast with the 2003 photograph, the plan shows fences between Willows Park and Area 1.

40. Those fences are shown in the 2009 aerial photograph. Area 1 is still accessed from and hardsurfaced in the same material as Willows Park. Nevertheless, there is some physical separation and Area 1 is not likely relied upon for turning into any authorised pitch. The 2009 photograph also shows an increased number of caravans on Area 1, again including static caravans. Caravans were in place and residential use when the notice was issued. However, this is not sufficient to show that the change of use occurred prior to or continued from 21 January 2003.

[4] *Burdle and Williams v SSE and New Forest DC [1972] 1 WLR 1207*
[5] The 2003 photograph also shows numerous caravans in Area 2, including the paddock area, but these appear to have been brought onto the land directly from the drive to Willows Park and not via Area 1.
[6] *Thurrock BC v SSETR & Holding* (CA) [2002] JPL 1278

41. The appellant's agent states that he has always seen caravans on Area 1 since he started to visit Willows Park in 2005. I do not dispute this claim but it is not so detailed that it can carry significant weight. Thus, the appellant has not shown that the alleged use of Area 1 commenced prior to the material date or continued for ten years. The aerial photographs and the 2007 plan indicate that there have been changes to the land over time. I conclude that it was not too late, on the balance of probabilities, to take enforcement action against the matters stated in the notice on the date that the notice was issue. The appeal on ground (d) fails.

Appeal B on Ground (a) and the Deemed Planning Application

Main Issues

42. As indicated above, this ground of appeal relates to Areas 1 and 2. The Council served the notice when and in part because the site was occupied by non-gypsies. However, the appeal is made to use the land as a gypsy and traveller site, with the use controlled by condition. It is proposed that Area 1 would be laid out to include 4 or, in the alternative, 2 traveller pitches. 3 pitches are proposed for Area 2, in line with the 2007 permission. Thus, the proposal is for 5 or 7 pitches in total.

43. It seems that the site occupiers may now be gypsies or travellers, but the land is not laid out as proposed. I saw 8 touring caravans and 5 static caravans on Area 1, plus 2 touring caravans on Area 2. Many of the caravans were occupied but I have no details of the number or composition of families currently on the land.

44. I consider that the main planning issues are: whether the development would represent a sustainable gypsy or traveller site; the general need for and availability of traveller sites in Aylesbury Vale; the provision of sites, including through the development plan; and the overall planning balance, with regard to whether permission should be granted on a permanent or temporary basis.

Planning Policy

45. The *Aylesbury Vale Local Plan* (LP) does not contain saved policies for gypsy and traveller development. The Council prepared a Core Strategy (CS) with Policy CS14 relating to traveller sites, but the CS was withdrawn prior to adoption. The Council has since published a *Planning Policy Position Statement: Providing for Gypsies and Travellers and Travelling Showpeople* (the Position Statement). Appendix 2 of the Position Statement sets out criteria, based on draft Policy CS14, to be used to assess applications for traveller site development.

46. I understand that draft Policy CS14 was not disputed in previous appeals, but the Position Statement has been updated and it does not have the status of a development plan document. I attach weight to it insofar as it is consistent with Government guidance as set out in the *National Planning Policy Framework* (the Framework) and the Traveller Policy. I will consider the weight to be attached to the LP Policies cited by the appellant on the same basis.

Reasons

Sustainability

47. The Framework seeks to avoid isolated new homes in the countryside – which is recognised for its intrinsic beauty and character. The reasons for the enforcement notice suggest that the site is unsuitable for use as a residential caravan site because it is in the open countryside. As noted above, however, this objection was predicated on occupation of the site by people who do not have gypsy status.

48. The Traveller Policy also resists the location of gypsy sites away from existing settlements or areas allocated in development plans. The appeal site is some 800m from the hamlet of Horton, 1.5km from the village of Slapton, 2-3km from the larger village of Cheddington and 5km from the town of Leighton Buzzard. It is in the countryside. However, the Traveller Policy allows for gypsy sites in rural areas, so long as the scale of the development does not dominate the nearest settled community. The Position Statement does not prohibit rural traveller sites.

49. The Council does not object to the use of the land as a gypsy site simply because it is in the countryside. The Council neither objects that the use is unacceptably harmful to the character or appearance of this rural area, since permission has been previously granted for the use of Area 2 as a gypsy site, and Area 1 is a small parcel of land between Area 2 and Willows Park. The Council does not argue that the site, taken with that existing, would dominate nearby communities or lead to a concentration of gypsy sites in the area, in conflict with the Position Statement.

50. The Council's principle objection is that the site lies in such a location that the development would result in unsustainable travel. The Position Statement requires that gypsy sites are at sustainable locations with access to local services, including shops, schools and healthcare – and are well-located on the highway network with safe and convenient vehicular and pedestrian access including public transport. There are no shops in Horton. There are few amenities in Slapton or Cheddington, although there is a school in the latter village. Occupiers of the site would need to travel to Leighton Buzzard to utilise most amenities essential for day-to-day living.

51. The site is served by school bus services but I find that occupiers would rely upon private motor vehicles to reach other amenities. Local public transport services are infrequent – and it would be unpleasant if not hazardous to walk to bus stops in Horton or the railway station in Cheddington when there is no footway on Horton Road, the verge is overgrown and traffic passes at speed. The distances to nearby settlements are such that occupiers would also be unlikely to use bicycles for routine employment or domestic trips.

52. Thus, occupiers of the site would likely drive moderate distances most days – but this would only be one impact of the development and I am not persuaded that it is crucial. Gypsy sites may be permitted outside of villages and towns, and the Framework recognises that opportunities to maximise sustainable transport solutions will vary from urban to rural areas. The Position Statement gives little guidance as to what is a sustainable location, save for advice in Appendix 3 that a site should be within 1 mile of a settlement – which this development is. The site is not unduly far from local services by rural standards and it is not unusual for country dwellers to rely upon the car.

53. The Traveller Policy and the Framework seek to ensure that development is sustainable economically, socially and environmentally. This means considering the effects of development on a broader basis than simply in relation to transport. That is true of all developments – but particularly sites for gypsies, because they have a travelling way of life by definition and this must be factored into the planning assessment. The Traveller Policy does not require gypsy sites to be accessible on foot or by public transport and this reduces the weight that I attach to the Position Statement.

54. The Traveller Policy promotes the provision of settled bases that reduce the need for long-distance travelling. That point is pertinent to this case because, in my reasoning below, I find a lack of alternative sites to this. Dismissing the appeal and upholding the notice would put occupiers at risk of homelessness. A life on the road could entail regular travelling just to find places to stay *as well as* to work and

shop. The development could enable gypsy families to travel less overall – an environmental benefit.

55. The Traveller Policy seeks to ensure that that traveller sites are sustainable by promoting access to appropriate health services, and ensuring that children may attend school regularly. 'Access' in this sense is related to the fact that gypsies may only have the right to register with a GP or obtain education if they have a permanent address. I heard that occupiers of the site send their children to school (via local authority transport) and may be registered with local doctors. By providing the families with a settled base and access to education and healthcare, the development has social and economic sustainability benefits.

56. The Traveller Policy also promotes the provision of settled bases to reduce possible environmental damage caused by unauthorised encampments. This development is unauthorised but it is also well-screened and next to an existing gypsy site. I would not describe the land as previously developed, when parts are still grassed and the lawful use is likely to be agriculture. Nevertheless, an extension to Willows Park with 5 or 7 pitches served by the existing access could represent a more efficient use of land than the development of a new site or sites elsewhere.

57. The final point on the Traveller Policy is that it seeks to promote peaceful and integrated co-existence between gypsy sites and local communities. The distance to nearby villages may be a constraint, but occupiers of the site could still integrate with settled communities via use of amenities such as schools. The Position Statement expects gypsy sites to be to meet the needs of people with an existing significant and long-standing family, educational or employment connection to the area. This requirement is at odds with the Traveller Policy, which expressly states that local authorities should determine applications for sites from any travellers.[7]

58. LP Policies RA13 and RA14 permit developments of up to five dwellings on sites of less than 0.2ha within or on the edge of Slapton or Cheddington. These policies are broadly consistent with the Framework, which encourages the location of housing where it will enhance or maintain the vitality of rural communities. RA13 and RA14 do not allow for gypsy sites or new housing on the edge of Horton. However, new houses built outside Slapton would be scarcely more sustainable in terms of travel implications than an extension to Willows Park. The policies are justified because enlarging villages can enhance their sustainability in broader respects – but that is the case put forward for the appeal development.

59. I have noted that the appellant has made alternative proposals for 2 or 4 pitches on Area 1, and thus 5 or 7 pitches overall. The Council has not raised any specific concerns about either proposal in relation to the question of sustainability. I will therefore adjudge the size of the site when considering the planning balance. The Council suggests that it would be inappropriate to grant permanent permission prior to the adoption of a forthcoming development plan document (DPD) which may identify, following a sequential search, land for gypsy sites that are more sustainable. Again, I address this question later in this decision.

60. In summary, occupiers of this rural site would rely upon private motor vehicles and need to travel moderate distances in order to access shops and services. However, the development is no more unsustainable in travel terms than a small housing scheme that the LP would permit on the edge of Slapton. It also provides social, economic and environmental benefits by providing gypsy families with a settled base. I conclude that the development is not unacceptably unsustainable. It

[7] I heard that planning applications would only be considered against this criterion if personal circumstances are put forward as a material consideration. However, the Position Statement does not say that and whether personal circumstances are relevant may not depend upon local connections.

conflicts with criteria in the Position Statement but it broadly complies with the Traveller Policy and the Framework, which should prevail in my view.

Need for and Availability of Traveller Sites

61. The Traveller Policy requires local planning authorities (LPAs) to set targets which address the likely need for traveller pitches; and to take account of the existing availability of and need for sites when determining applications.

62. The appellant has referred to the *Gypsy and Traveller Accommodation Assessment* (GTAA) for 2006-2011 produced by the Association of the Councils of the Thames Valley Region. The GTAA found that 57 gypsy pitches would be required in Aylesbury Vale by April 2011. Prior to that date, permanent planning permission was granted for 8 pitches, leaving a shortfall of 49. I heard that, since April 2011, permanent permission has been granted for 21 pitches at Burrows Field. The shortfall is reduced to 28 but this still equates to an unmet need for sites.

63. The appellant argues that there is an additional need for sites to accommodate: a) those residing at sites which only benefit from a grant of temporary permission – land adjacent to Dun Roaming Park (10 pitches), Causter Farm (11 pitches) and The Old Stables (1 pitch); b) those living on 13 pitches at New Park Farm where a temporary permission has expired; c) families living on other unauthorised sites; and d) families created through household growth from 2011.[8] Adding a) to d) together, there is a need for 35+ pitches.

64. In relation to c), updated records provided by the Council at the hearing suggest that there are three unauthorised caravans at land at Swan Edge. The appeal site is occupied unlawfully and I heard that there may be two unauthorised caravans at Oakhaven Park. The appellant concedes that some families living on temporary or unauthorised sites will be those created through household growth.[9] Even so, he suggests that the existing shortfall of 28 pitches against the 2011 target could not likely be wholly subsumed into the additional figure of 35+. The unmet need for pitches is said to be within the range of **35+ up to 63+** (28 + 35 + unauthorised sites + household growth).

65. The Council estimates the need for sites on the basis of a 2011 appeal decision pertaining to Causter Farm, rather than the GTAA. The Inspector found that the need to 2016 would be for 66 pitches. I have no reason to dispute his analysis and I also note that it is more up-to-date than the GTAA. However, the Council's latest records suggest that planning permission is only granted for 63 pitches, creating a shortfall of 3. The list includes the 2007 permission for 3 pitches on Area 2 but my findings on ground (c) mean that they should be discounted from the lawful supply and the shortfall thus becomes 6.

66. The Council has also confirmed that, of the permitted pitches, 35 are approved on a temporary basis.[10] I do not accept that those pitches should be considered as part of the supply. The temporary pitches may provide families with somewhere to stay now, but the permissions will all expire before 2016 and the site occupiers in any event need somewhere to live on a permanent basis. That permanent need has to be considered, as well as the need relating to household growth, when calculating future requirements for gypsy sites.[11] Thus, the Council's figures

[8] A planning application has been made to renew the permission pertaining to New Park Farm but it was not determined at the date of the hearing. I heard that officers would only recommend a further grant of temporary permission, so families on the land may still require permanent accommodation in any event.
[9] Some unauthorised pitches have been created by subdividing lawful sites.
[10] New Park Farm is included in the Council's list of temporary permissions, although it has lapsed.
[11] This finding is consistent with that of the Secretary of State in appeal decision ref: APP/C3430/A/10/2127121. He determined that temporary permissions should not be taken into account when calculating unmet need. He

suggest an outstanding need to 2016 for **41+** pitches (6 + 35 + unauthorised sites) to 2016; that figure is within the range estimated by the appellant.

67. In September 2012, the Council authorised the disposal of an existing site at Haddenham subject to a covenant restricting the use of the land to the siting of caravans for residential use by gypsies and travellers. I heard that the land has been sold to a gypsy family who have started to prepare the land for occupation. I agree that Haddenham represents a deliverable site and the 6 pitches here should be factored into the supply. However, they are already identified in the list of existing sites with permission.

68. The Council put it to the hearing that the occupation of the appeal site by non-gypsies could undermine the appellant's case for need. However, the site is likely occupied by travellers now and the appellant's past rental policy does not alter the number of other unauthorised or temporary sites. In this situation, and even if there is some error in my calculations, I find ample evidence of a significant unmet need for gypsy sites.

69. The Council conceded at the hearing that, although there may be 'vacancies' on unauthorised sites, there are no alternative lawful pitches that are currently available to occupiers of the site. I conclude that the development meets an identified need as required by the Position Statement – and it thereby supports the aim of the Traveller Policy to address under-provision of sites. The unmet need for and the lack of alternative sites are factors in favour of a grant of permission.

Provision of Traveller Sites

70. The Traveller Policy aims to promote more private traveller site provision and increase the number of traveller sites in appropriate locations with planning permission. It requires LPAs, in producing their local plans, to identify and update annually a five year supply of specific, deliverable traveller sites to meet their targets. Local plans should also include criteria to guide land allocations and planning decisions.

71. I have found that, notwithstanding the progress to deliver pitches at Haddenham, the Council still has a net shortage of sites. It has no five year supply to meet its target. As noted above, the LP contains no policies or site allocations for traveller sites. I have queried whether some criteria set out in the Position Statement are consistent with the Traveller Policy; I also find that they are not based on an up-to-date assessment of need. The Council is preparing a revised CS, due for adoption in February 2014, but I heard that this will not contain any traveller site policy.

72. The Council intends to set out policies and land allocations for gypsy sites in a DPD to be adopted in 2015. This will be based on an assessment of need set out in an updated GTAA, expected in August 2013. Allocations will be proposed following a sequential search for sites: looking at land on the outskirts of built-up areas or previously developed land before sites in rural or semi-rural areas.

73. I heard that adoption of the DPD is a priority for the Council. However, the revised GTAA will need to be agreed by all the local authorities in Buckinghamshire and it has already been delayed. Meanwhile, the Council has not commenced or even devised a timetable for work to identify and deliver potential allocations. I am doubtful that the DPD will be completed on time – but even if that is too pessimistic, there would be a time lag between adoption and the delivery of sites.

also noted that while temporary permissions have a role to play, they are not an adequate substitute for permanent sites, since they cause uncertainty to the site occupiers and local communities.

There is also no evidence as to whether the search could result in the allocation of sites in more sustainable locations than the appeal development.

74. There are reasons why the Council has faced delays in its development plan programme, but the facts remain that there is a local policy vacuum; travellers and local communities face uncertainty; and the Council has failed to meet the need for sites. I conclude that the Council does not have a five year supply of deliverable sites and work to prepare a gypsy and traveller DPD has not yet commenced. I could not make a realistic assessment as to when the existing need for sites will be met – or whether any allocated sites will be more sustainable than land adjacent to Willows Park. These findings weigh in favour of the appeal.

Planning Balance and Conclusion

75. I have had regard to all the other matters raised. I conclude that, although outside of a settlement, the development represents a sustainable gypsy site. There is a need for more traveller sites in Aylesbury Vale, including for the families currently residing on the appeal site. The development conflicts in some respects with the Position Statement, but it broadly complies with the Traveller Policy and the Framework, which sets a presumption in favour of sustainable development.

76. The Council concedes that there may be a case for a grant of temporary permission because of the shortage of gypsy sites. The Traveller Policy indicates that a lack of a five year supply should be a significant material consideration when considering a grant of temporary permission. But since the development causes no unacceptable harm in any material respects, it would be untenable for me to only allow the appeal on a time-limited basis. That work on the DPD has not begun and more sustainable sites will not necessarily be allocated adds weight to that assessment.

77. I also note that the Council actively considered granting temporary permission in relation to Area 2 in 2007, but approved the development on a permanent basis because there was a need for more gypsy sites **and** an 'absence of objection to the development on other planning grounds'. The changes to national planning policy since 2007 are not such that the site should now be considered unsustainable or that the Position Statement could prevail over the Traveller Policy.

78. Having found the development acceptable in policy terms, it is necessary to adjudge the number of pitches to be allowed on Area 1, given the appellant's alternative proposals for 2 or 4. Clearly, the more pitches that are permitted, the greater the benefit in terms of meeting the need for sites. However, as noted in respect of Appeal A, the GPG advises that pitches should be sized for families. The Position Statement expects sites to be large enough not only for caravans, but also parking, storage, play and landscaping – and to ensure privacy and amenity. The appellant has not shown that there is sufficient space within Area 1 to lay out 4 pitches capable of providing adequate living conditions plus a safe access to Area 2.[12] In this situation, I find that the number of pitches should be limited to 2.

79. I heard representations as to whether the rights of occupiers of the site, with regard to the best interests of the children, under the *Human Rights Act 1998* and Article 8 would be violated if the appeal is dismissed. Article 8 affords the right to respect for private and family life, including the traditions and culture associated with the gypsy way of life. This is a qualified right, and interference may be justified where in the public interest. The concept of proportionality is crucial.

[12] Some of the 13 caravans that I saw on Area 1 appeared closer together than would be permissible under the terms of a site licence. The plan submitted with the 2013 application shows 2 pitches on Area 1.

80. I have decided to grant full planning permission, but there may be more occupiers on the site at present than there would be if just 5 pitches are approved. A refusal to grant permission for 7 pitches could result in families losing their homes – but I cannot be certain of this because the appellant has not given details of the existing occupiers, including numbers of children. Any interference with their rights would also be in accordance with the law and in pursuance of the legitimate aims: to ensure acceptable living conditions and access arrangements. Overall, I find that a grant of planning permission for 5 pitches would be proportionate and necessary.

81. I have had due regard to the Public Sector Equality Duty (PSED) contained in the *Equality Act 2010*, which sets out the need to eliminate unlawful discrimination, harassment and victimisation, and to advance equality of opportunity and foster good relations between people who share a protected characteristic and people who do not share it. Since the appeal is made for the use of the land as a gypsy site and the current occupiers are likely to be travellers, they would have a protected characteristic for the purposes of the PSED.

82. It does not follow from the PSED that the appeal should succeed. However, the shortage of sites and the lack of any development plan policy for travellers may indicate inequality of housing opportunity for gypsies. A refusal of permission for a development acceptable in planning terms would also fail to foster good relations between the site occupants and the settled community. The PSED adds weight to my overall conclusion that the appeal on ground (a) should be allowed and the deemed planning application should be approved.

Conditions

83. To ensure that the development is retained as a gypsy site, it is necessary to impose a standard condition that restricts site occupation to gypsies and travellers. For the reasons given, I shall restrict the number of pitches as discussed, with no more than 2 caravans on each pitch, of which only 1 shall be a static caravan.

84. To protect the character and appearance of the area, I shall require the submission and approval of site layout and landscaping schemes, with details of the boundary treatment and any external lighting. Further conditions shall ensure that no other lighting is installed, and that trees which are planted but die within five years are replaced. Also to protect the character of the area, conditions shall prevent commercial activities and the parking or storage of vehicles over 3.5 tonnes on the land. To avoid pollution and ensure acceptable living conditions, details should be submitted to the Council of foul and surface water drainage schemes.

85. Since the development has commenced, the condition requiring the submission of schemes must set out a time limit for compliance, to ensure that the development is rendered unauthorised and could be enforced against and removed in the event of a failure to submit the schemes in breach of the condition. It was agreed at the hearing that the required details should be provided within three months.

Appeal B on Ground (f)

86. Since the appeal on ground (a) is allowed, the appeal on ground (f) does not fall to be considered in relation to Areas 1 or 2. As noted above, however, the appellant did not seek planning permission for the use of Area 3 for the siting of caravans.

87. Area 3 largely comprises part of an overgrown paddock, but it also includes land that has been cleared back to soil and become colonised with weeds. On this part of Area 3, there may be some hardstanding and building materials associated with works to hardsurface other parts of the site. This indicates that Area 3 has been subject to the alleged material change of use. I find it necessary to uphold the

enforcement notice in relation to Area 3. Amending the plan attached to the notice so as to delete Area 3 could serve to make the notice incorrect – and put the Council in a position where further enforcement action is required.

88. Although the appellant did not actively pursue any ground of appeal in relation to Area 3, he indicated at the hearing that this land should be deleted from the plan attached to the notice. Since I have opted not to do this, I will consider ground (f) in relation to Area 3. This ground of appeal is that the requirements of the notice are excessive. The appellant argues that it is unreasonable to require the removal of hardstanding. As noted above, however, a notice may require the removal of works undertaken to facilitate an unauthorised material change of use, so that the land is restored to its condition before the development took place.[13]

89. The notice alleges a material change of use of land and requires the use to cease. This suggests that the purpose of the notice is to remedy the breach of planning control. In order to achieve that aim, and notwithstanding that steps 3-5 of the notice are to be corrected, it is necessary and not excessive to require that Area 3 is restored to its previous condition. The appeal on ground (f) fails.

Conclusions

90. For the reasons given above, and having regard to all the other matters raised, I conclude that Appeal A should be allowed. I also conclude that Appeal B should be allowed in relation to Areas 1 and 2 but dismissed in relation to Area 3.

91. S180(1) of the 1990 Act as amended provides that where, after the service of a notice, planning permission is granted for any development carried out beforehand, the notice shall cease to have effect so far as inconsistent with that permission. The notice subject to Appeal B will be upheld as corrected but its requirements will only come into effect in relation to Area 3.

FORMAL DECISIONS

Appeal A: APP/J0405/C/13/2193582

92. The appeal is allowed and the enforcement notice is quashed. In accordance with s177(1)(b) and s177(4) of the 1990 Act as amended, conditions nos. 4 and 7 attached to the planning permission dated 22 February 1996, ref: 95/0571/APP granted by Aylesbury Vale District Council are discharged and the new conditions set out in Annex B to this decision are substituted.

93. Planning permission is granted on the application deemed to have been made under s177(5) of the 1990 Act as amended for the siting of five mobile homes and two towing caravans for residential use, with laying of hardcore on access drive without complying with conditions 4 and 7 but subject to the other conditions attached to planning permission ref: 95/0571/APP and the new conditions set out in Annex B to this decision.

Appeal B: APP/J0405/C/13/2193601

94. The enforcement notice is corrected by:

    1) Inserting the word 'to' between 'adjacent' and 'Willows' in paragraph 2;

    2) Inserting 'LU7 9DD' between 'Buckinghamshire' and 'shown' in paragraph 2;

    3) Inserting 'making of a material' between 'the' and 'change' in paragraph 3;

[13] *Murfitt v SSE* [1980] JPL 598

4) Deleting sub-paragraphs 5(3), 5(4) and 5(5) and substituting sub-paragraph '5(3) Remove the hardcore surfaced private driveway and hardstandings on the Land constructed to facilitate the unauthorised residential use and remove any hardcore, concrete, stone, brick, other materials and debris associated with or arising from the works';

5) Re-numbering sub-paragraph 5(6) as 5(4);

6) Re-numbering sub-paragraph 5(7) as 5(5) and deleting the phrase 'in accordance with the manufacturer's instructions';

7) Deleting the reference to '5(6)' and substituting '5(4)' in paragraph 6(i);

8) Deleting the text of sub-paragraph 6(ii) in its entirety and substituting 'with sub-paragraph 5(5) above, before the end of the first grass growing season, defined as 1 March to 31 May and from 1 September to 31 October in any calendar year, to commence following the completion of the steps set out in sub-paragraphs 5(1) to 5(4) above'; and

9) The substitution of the plan attached to this decision for the plan attached to the enforcement notice.

95. The appeal is allowed insofar as it relates to the land shown edged in green and blue, hatched or dotted in black and identified as Areas 1 and 2 on the plan annexed to this decision and planning permission is granted on the application deemed to have been made under s177(5) of the 1990 Act as amended, for the making of a material change of use of land from an agricultural use to use for the siting of caravans in residential use, subject to the conditions set out in Annex B.

96. The appeal is dismissed and the enforcement notice is upheld as corrected insofar as it relates to the land shown cross-hatched and identified as Area 3 on the plan annexed to this decision and planning permission is refused in respect of the making of a material change of use of land from an agricultural use to use for the siting of caravans in residential use on the application deemed to have been made under s177(5) of the 1990 Act as amended.

Jean Russell

INSPECTOR

ANNEX A: LISTS

APPEARANCES

FOR THE APPELLANT:

Mr Philip Brown BA(Hons) MRTPI	The appellant's agent
Mr Edward Doherty	The appellant

FOR THE LOCAL PLANNING AUTHORITY:

Mr Philip Dales BA(Hons) MRTPI	Enforcement Team Leader, AVDC
Miss Jane Law	Enforcement Officer, AVDC

DOCUMENTS

1 The Council's letter of notification regarding the hearing arrangements and list of those notified
2 Planning application ref: 13/01314
3 Planning application ref: 06/00659/APP
4 The Council's list of gypsy/traveller sites in the District – updated July 2013

PLANS

A Blank OS plan of the land subject to the notices (scale not given)
B Plan A as annotated by the Council and appellant to identify Areas 1 and 2
C Plans submitted with application ref: 13/0314

ANNEX B: SCHEDULES OF CONDITIONS

APPEAL A: APP/J0405/C/13/2193582

1) The land shall not be occupied by any persons other than gypsies and travellers as defined in Annex 1 of *Planning Policy for Traveller Sites* (Department for Communities and Local Government, March 2012) or any replacement guidance.

2) Notwithstanding the description of the development hereby permitted, there shall be no more than 5 pitches on the site, and on each of the 5 pitches no more than 2 caravans (as defined in the *Caravan Sites and Control of Development Act 1960* and the *Caravan Sites Act 1968* as amended) shall be stationed at any time, of which only 1 caravan shall be a static caravan.

3) The use hereby permitted shall cease and the caravans, hardcore and any structures, materials and equipment brought on to or erected on the land shall be removed within 3 months of the date of failure to meet any of the requirements set out in (i) to (iv) below:
   i. within 3 months of the date of this decision, details of: a) the internal layout of the site, including the siting of the approved caravans; and b) a timetable for implementation shall have been submitted for the written approval of the local planning authority.
   ii. within 11 months of the date of this decision, the details and schemes submitted in pursuance of (i) above 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 submitted site development scheme shall have been approved by the Secretary of State.
   iv. the approved scheme shall have been carried out and completed in accordance with the approved timetable.

APPEAL B: APP/J0405/C/13/2193601

1) The land shall not be occupied by any persons other than gypsies and travellers as defined in Annex 1 of *Planning Policy for Traveller Sites* (Department for Communities and Local Government, March 2012) or any replacement guidance.

2) There shall be no more than 2 pitches on the land identified as Area 1 and no more than 3 pitches on the land identified as Area 2, and on each of the pitches hereby approved no more than 2 caravans (as defined in the *Caravan Sites and Control of Development Act 1960* and the *Caravan Sites Act 1968* as amended) shall be stationed at any time, of which only 1 caravan shall be a static caravan.

3) The use hereby permitted shall cease and the caravans, hardcore and any structures, materials and equipment brought on to or erected on the land shall be removed within 3 months of the date of failure to meet any of the requirements set out in (i) to (iv) below:
   i. within 3 months of the date of this decision, details of: a) the internal layout of the site, including the siting of the approved caravans and any proposed vehicular parking or manoeuvring areas; b) any means of enclosure; c) tree, hedge and shrub planting including details of species, plant sizes and proposed numbers and densities; d) any external lighting on the boundaries of and within the site; e) the means of foul and surface water drainage; and f) timetables for implementation shall have been submitted for the written approval of the local planning authority.

ii. within 11 months of the date of this decision, the details and schemes submitted in pursuance of (i) above 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 submitted site development scheme shall have been approved by the Secretary of State.

iv. the approved scheme shall have been carried out and completed in accordance with the approved timetable.

4) If within a period of five years from the date of the planting of any tree or hedgerow shrub, that tree or shrub, or any planted in replacement, is removed, uprooted or destroyed or dies, or becomes, in the opinion of the local planning authority, seriously damaged or defective, another tree or shrub of the same species and size as that originally planted shall be planted at the same place.

5) No means of external illumination other than as approved in accordance with condition no. 3 above shall be installed or constructed on the site.

6) No commercial activities shall take place on the land, including the storage of materials.

7) No vehicle over 3.5 tonnes shall be stationed, parked or stored on this site.

The Planning Inspectorate

Plan

This is the plan referred to in my decision dated: 06.09.2013

by Jean Russell MA MRTPI

Land adjacent to Willows Park, Horton Road, Slapton, Buckinghamshire, LU7 9DD

Appeal B: APP/J0405/C/13/2193601

Scale: NTS