



Appeal Decision

Inquiry opened on 8 October 2019

Site visits made on 5 December 2019

by Richard Clegg BA(Hons) DMS MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26th February 2020

Appeal Ref: APP/J0405/W/19/3219596

Land south of The Elms, Radclive Road, Gawcott, Buckinghamshire, MK18 4JB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mr J Botton against Aylesbury Vale District Council.
 - The application, Ref 17/01615/APP, is dated 21 April 2017.
 - The development proposed is described as 'the material change of use of land to use as a residential gypsy caravan site (13 pitches, each containing two caravans, including no more than one static caravan), together with laying of hardstanding and improvement of the existing access'.
 - The inquiry sat for five days: 8 October and 3-6 December 2019.
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Decision

1. The appeal is dismissed.

Application for costs

2. At the Inquiry an application for costs was made by Mr J Botton against Aylesbury Vale District Council (the Local Planning Authority – LPA). This application is the subject of a separate Decision.

Procedural matters

3. The main parties agreed with the suggestion in my pre-inquiry note that the appeal proposal should be described as *the material change of use of land to use as a residential gypsy caravan site (13 pitches, each containing two caravans, including no more than one static caravan), together with laying of hardstanding and alteration of the existing access*. I have considered the appeal on this basis.
4. On the first day of the inquiry, it became apparent that the LPA had not notified the owners and/ or occupiers of neighbouring properties of the appeal. The main parties agreed that the occupiers of Oakhaven Park, many of whom who are associated with the proposal, are aware of the appeal, and Coopers Yard and Woodfield Nursery are further from the appeal site. I expressed concern, however, about the lack of notification to The Elms, which is situated between the appeal site and Oakhaven Park, and the main parties agreed that the inquiry should not hear evidence until notification in respect of nearby properties had been carried out. Accordingly, the inquiry was adjourned to 3

December 2019, and notification of neighbours was undertaken in the intervening period¹.

5. On the appeal form, certificate A has been completed stating that nobody other than the Appellant, Mr J Botton, is the owner of the site. At the inquiry I heard that the Appellant did not own the land, but that the members of the families of prospective occupants had contributed to the purchase of the land, and that it was legally owned by Mr F Ball, Mr A Botton, Mr J Calladine and Mr J Smith. Mr F Ball was present at the inquiry, and statements have been submitted from members and relatives of ten of the households who would occupy the site, including Mr A Botton, Mr J Calladine and Mr J Smith, and these parties are clearly aware of the appeal. Insofar as the other three households who had contributed to the site's purchase are concerned, relatives of two families attended the inquiry and advised that they were aware of the appeal, and a letter was submitted from Ms Butcher to similar effect (Document A5). I am satisfied that no prejudice would be caused to any party with an interest in the land by considering the Appellant's appeal.
6. Proofs of evidence and documents submitted after the inquiry opened are detailed in the lists appended to this decision.

Main Issues

7. The LPA has advised that, if it had been in a position to determine the application, permission would have been refused for reasons concerning the effect on the nearest settled community, the effect on the character and appearance of the area, the loss of ridge and furrow earthworks on the site, and the adequacy of information in respect of flood risk and the personal circumstances of prospective site occupants².
8. Following submission of the appeal, Buckinghamshire County Council, as Lead Local Flood Authority, has reviewed information provided by the Appellant concerning drainage, and has indicated that its concern can be addressed by a condition. The LPA no longer pursues an objection on this matter. In addition to personal need, both main parties have referred to the general need for gypsy and traveller accommodation in their representations. Taking these circumstances into account, I consider that the main issues in this appeal are:
 - (i) The relationship of the proposed development to the nearest settled community.
 - (ii) The effect of the proposed development on ridge and furrow earthworks on the appeal site.
 - (iii) The effect of the proposed development on the character and appearance of the area.
 - (iv) The general need for traveller accommodation in Aylesbury Vale.
 - (v) The personal accommodation needs and circumstances of the prospective site occupants.

¹ The letters of notification and details of the neighbours notified are in Document O2.

² The putative reasons for refusal are set out in the LPA's report on the planning application.

Background

9. The appeal site is situated a short distance to the south of an existing gypsy site known as Oakhaven Park. Planning permission was initially granted for the land at Oakhaven Park on a temporary basis, and then in 2012 permanent permission was granted, with the approved layout showing 21 pitches³. In 2016, a fresh permission was granted on appeal for use of the land as a gypsy site, including the formation of three additional pitches. Oakhaven Park is, therefore, a 24 pitch gypsy site. With two exceptions, the pitches proposed on the appeal site would be occupied by persons currently based at Oakhaven Park.

Planning policies

10. The Development Plan comprises the saved policies of the Aylesbury Vale District Local Plan, which was adopted in 2004. The policy in the Local Plan relating to gypsy and traveller sites was not saved, and is not part of the Development Plan. Policy GP.35 sets out criteria concerning the design of new development, which, amongst other matters, should respect and complement the physical characteristics of the site and surroundings, and the historic scale and context of the setting. Footpaths are the subject of Policy GP.84, which requires that the convenience, amenity and public enjoyment of such routes are taken into account in considering development proposals. Other relevant policies concern the living conditions of nearby residents (GP.8), and trees and hedgerows (GP.39 & GP.40). I note that in its putative reason for refusal concerning the effect on the character and appearance of the area, the LPA refers to Policy GP.38. This policy requires that proposals include landscaping to help buildings fit in with and complement their surroundings, but there are no buildings in the appeal proposal. The supporting text, however, is written in broader terms and refers to development.
11. The LPA is preparing the Vale of Aylesbury Local Plan. Examination hearings in respect of the emerging Local Plan (ELP) took place in July 2018. Following the Local Plan Inspector's Interim Findings⁴, the LPA published main modifications which have been the subject of consultation. Policy S6 provides for allocations for gypsy and traveller sites, and Policy D11 sets out criteria against which proposals for sites should be assessed⁵. The ELP is at an advanced stage. No concerns were raised by the Local Plan Inspector about Policies S6 and D11, and no modifications are proposed (other than the renumbering of Policy D11 from D10). The main parties both expressed the view that these policies carry significant weight, a view which I share.

Reasons

Relationship to the nearest settled community

12. Paragraph 25 of *Planning policy for traveller sites* (PPTS) addresses the relationship between new sites and the settled community. It makes clear that sites in rural areas should respect the scale of, and not dominate, the nearest settled community, and that they should also avoid placing undue pressure on local infrastructure. The ELP reflects this aspect of national policy in Policy

³ The 2012 and 2016 planning permissions for Oakhaven Park are in Appendices 2 & 3 of Document A2. The associated site plans are in Document O9.

⁴ Document L2, Appendix 11.

⁵ Document L2, Appendices 4a & 4b.

- D11: criterion (e) of the policy requires that the size and scale of the site, and the number of caravans, is appropriate to the size and density of the local settled community, and does not dominate it. Additionally, criterion (h) stipulates that sites should remain small in scale, with normally no more than 15 pitches on any one site.
13. The appeal site lies in the countryside to the north of the small settlement of Gawcott. Although the LPA referred to pressure on local infrastructure in Gawcott in its first putative reason for refusal, this matter was not pursued in evidence at the inquiry.
 14. There was debate at the inquiry as to what constitutes the nearest settled community. It was suggested on behalf of the Appellant that this could be the mixture of industrial and commercial uses a short distance to the north on Radcliffe Road, or alternatively Oakhaven Park. Neither of these suggestions is well-founded. A straightforward reading of the term *settled community*, as used in PPTS, conveys a reference to a place or places where a group of people reside rather than work. That does not, however, mean that all places used for habitation are part of the settled community. In paragraph 7(a), PPTS distinguishes between the settled and traveller communities, and it is clear from the evidence before the inquiry that, whilst Oakhaven Park provides a settled base for households on 24 pitches, its purpose is to provide accommodation for the traveller community.
 15. The village of Gawcott is about 0.4km to the south of the appeal site, and it falls within the meaning of the nearest settled community. To the north of the appeal site is a house, known as The Elms, and I agree with the LPA that this property and its occupants, also form part of the nearest settled community.
 16. There is a clear gap along Radcliffe Road between the appeal site and Gawcott. Gawcott is identified as a medium village, and is included in the third tier of the settlement hierarchy prepared for the ELP⁶. The population of 769 is below the average of 1,152 for the medium villages, but it is considerably larger than the number of persons who would occupy the 13 pitches proposed on the appeal site. That number of pitches is below the normal upper limit of 15 specified in criterion (h) of Policy D11. The development would be larger than The Elms, but, although it would be visible from that property, there is an intervening paddock. In any event, given the clear separation between the site and the village of Gawcott, I do not consider that the proposed gypsy site would dominate the nearest settled community, considered as a whole. Taking the existing site at Oakhaven Park into account as well, making a combined total of 37 pitches, does not alter my view in this regard.
 17. That is not the end of the matter, as both PPTS and Policy D11 of the ELP refer to the scale of a proposal. The settled community, with its houses and other buildings, and the gypsy site, comprising caravans on pitches, are physically very different forms of development. However, whether considering the number of residents, caravans or pitches and dwellings, or the size of the appeal site and the form and density of Gawcott, the appeal proposal would not be disproportionate in scale to the entirety of the nearest settled community.
 18. I conclude that the proposed development would not have a harmful relationship to the nearest settled community, and that, in this respect, it

⁶ Extracts of the Settlement Hierarchy Assessment are at Document O5.

would not conflict with paragraph 25 of PPTS or criterion (e) in Policy D11 of the ELP.

Ridge and furrow earthworks

19. It is common ground between the Appellant and the LPA that, until October last year, ridge and furrow earthworks extended across the whole of the appeal site⁷. An area of earthworks on the north-east part of the land was then damaged, but they remain, running north-south across the greater part of the field which comprises the appeal site⁸. It is further agreed by the main parties that the ridge and furrow earthworks are an undesignated heritage asset. Buckinghamshire County Council's Archaeology Officer has explained that ridge and furrow earthworks are the visible remains of the mediaeval open field system⁹.
20. The formation of 13 pitches, including the laying of areas of hardstanding and the construction of an internal access road, would destroy much of the remaining ridge and furrow earthworks. On the site plan a grassed area is shown alongside the southern boundary, separated from the position of the caravans by a post and rail fence. To avoid the total loss of the visible remains of earthworks, the Archaeology Officer has recommended that this part of the site be preserved, and the Appellant has no objection to a pre-commencement condition which would require the approval of proposals for safeguarding the earthworks on this part of the site¹⁰. Indeed, the Appellant argues that granting permission for the appeal proposal would ensure that part of the ridge and furrow earthworks would receive protection.
21. It was suggested on behalf of the Appellant that, if the appeal is dismissed, an extant permission for stables would be implemented. Planning permission was granted for two stable buildings, two maneges, and a new access on part of the eastern side of the appeal site in 2006¹¹. Although most of the appeal site is outside the area covered by this permission, the Appellant argued that the remaining land would be used for the grazing of horses in conjunction with the stables and maneges, and that the land would be levelled to secure its proper management. However, for a fallback position to carry weight, there should be a reasonable prospect of the alternative scheme being carried out. Mr Ball senior, who is a part owner of the site, said in oral evidence that, if the gypsy site could not be developed, the stables would probably be built and the maneges may be put in. There is nothing before me to indicate that that option had been investigated in any detail. In any event, the crucial part of the Appellant's fallback argument is that the field beyond the area of the extant permission would require levelling. The inquiry was told by Mr Humberstone (a relative of one of the prospective occupants) that the appeal site had been purchased about three years beforehand. I heard that, in the intervening period, grass had been cut for silage, using a tractor and baler on the land, and that it had previously been used for grazing sheep and horses. Those uses had

⁷ Document O4, para 2.2.

⁸ The aerial photograph at Appendix 7b of Document L2 shows the ridge and furrow earthworks extending across the appeal site, the paddock adjacent to The Elms and the strip of land between the site and Oakhaven Park, which were then shown as part of the same field. The damaged area of earthworks is shown on the photographs attached to the email of 4 October 2019 from Mr Ray to The Planning Inspectorate.

⁹ Consultation response on a subsequent planning application (18/04555/APP) for a gypsy site on the land. At the date of the inquiry this application had not been determined.

¹⁰ See Documents O10 and A10.

¹¹ The planning permission and approved plans are in Appendix 1 of Document A2.

occurred with the ridge and furrow earthworks in place. Several of the prospective occupants have horses which they keep elsewhere. On the evidence before me, if they were to use the appeal site for the grazing of their horses, with or without the stables and maneges, that would not necessitate levelling of the land and the loss of most of the ridge and furrow earthworks. There is no specific evidence that any alternative agricultural use would be likely to occur. I give little weight to the possible loss of earthworks due to a fall-back position.

22. The County Archaeology Officer has pointed out that there has been a rapid reduction in ridge and furrow earthworks over the past fifty years, and that they are becoming increasingly rare. She advises that, where pockets of earthworks remain, care should be taken to ensure their survival. She further comments that the earthworks on the appeal site are some of the best preserved in the Parish of Gawcott with Lenborough, and that evidence is not disputed by the Appellant.
23. Although damaged, the line of earthworks continues to extend across much of the field, providing a reminder of a former system of agricultural cultivation. The County Archaeology Officer has referred to the quality of the earthworks in this field; I consider that their value is enhanced by their extent in this location. A tall hedgerow restricts views of the field from Radcliffe Road. However from the eastern part of the public footpath which runs alongside the southern boundary of the site, there are clear views of the field, and the extent of the ridge and furrow earthworks on their north-south alignment can be appreciated. A condition could safeguard part of the earthworks, but I am concerned that the reduction in extent would considerably reduce their significance, particularly as retention of a strip across the southern section of the site would foreshorten their characteristic linear pattern. This would not respect the historic context of the development, contrary to Policy GP.35 of the Aylesbury Vale District Local Plan.
24. I appreciate that the ridge and furrow earthworks are currently unprotected. However the protection which would be afforded by means of the suggested condition would be at the expense of the loss of most of this undesignated heritage asset. For the reasons given above (para 21), I give little weight to the prospect of a fall-back position leading to greater loss. I conclude that the proposed development would cause considerable harm to the significance of the ridge and furrow earthworks, which are an undesignated heritage asset. In this respect it would conflict with criterion (d) in Policy D11 of the ELP.

Character and appearance

25. The appeal site is in a countryside location between Gawcott and Buckingham. National policy in PPTS anticipates the provision of gypsy sites in the countryside. Policy H of PPTS makes clear that sites should be very strictly limited in open countryside that is away from existing settlements or outside areas allocated in the development plan. I have already referred to the clear gap between the site and Gawcott (above, para 16), but they are only about 0.4km apart and Radcliffe Road is a direct route from Gawcott to the A421. This is not a location which is away from existing settlements, and as yet there are no allocations for traveller sites in the Development Plan. The principle of developing a gypsy site in this location is not inconsistent with Policy H of PPTS.

26. Notwithstanding my finding in respect of the principle of development, an assessment is necessary of the specific effect of this proposal for a gypsy site on the character and appearance of the area. In the Aylesbury Vale Landscape Character Assessment, the appeal site lies within Gawcott Ridge Landscape Character Area (LCA), an area of higher ground to the south-west and south-east of Buckingham¹². The key characteristics of this LCA include a ridge of generally flat and open higher ground, mixed farming, and strong hedgerows with trees, especially adjacent to roads. To the north of the site are several industrial and commercial premises, which the Assessment refers to as an intrusive element in the LCA. The overall condition of the landscape is adjudged to be poor, and the pattern of elements is strongest to the south of Gawcott, on the opposite side of the settlement from the intrusive features along Radclive Road. The existing gypsy site at Oakhaven Park is situated to the south of commercial premises on the west side of the road, and, opposite to the appeal site, is a solar farm, which extends to the north behind industrial and commercial premises.
27. Development on the appeal site would extend the pattern of encroachment into the countryside which has taken place along Radclive Road. The poor condition of the LCA is in part a consequence of visual detractors, and the use of this 4.3ha parcel, albeit with a grassed strip alongside the southern boundary, as a caravan site would further damage the landscape. The open field would be sub-divided into thirteen pitches, each of which would be expected to accommodate two caravans and parked vehicles. The density of development would be lower than at Oakhaven Park, but the influence of the pitches would extend across most of the site. Although the sensitivity of the LCA is stated as moderate in the Character Assessment and its condition as poor, those factors do not justify development which would materially worsen the character of this part of Gawcott Ridge. The field is an important component of the band of open land between Gawcott and the existing development further to the north on Radclive Road. Although there is a clear gap between the appeal site and Gawcott, it is not extensive, and I am concerned that the loss of the appeal site would significantly weaken the rural character of the landscape on the northern side of the settlement.
28. The proposal would represent a major change to the landscape of the appeal site. A southern strip could be retained in its present condition to safeguard the ridge and furrow earthworks (above, para 23), but there is no suggestion for similar treatment for other areas of grass cover shown on the site plan as being associated with individual pitches. The field boundaries would remain intact and it is proposed that they would be strengthened by additional planting in places, a measure which could be secured by means of a condition. Within those boundaries, the sub-division of the field into a series of pitches on each side of a new roadway would cause major harm to the appeal site. The planned layout of the site and the soft landscaping would not enhance the environment and increase openness as encouraged by paragraph 26(b) of PPTS, and the proposal would not, therefore, be fully consistent with this paragraph.
29. The tall hedgerow along the site frontage would restrict views of the gypsy site from Radclive Road. A public footpath on the southern side of the site, however, affords views across the field. At the inquiry, the Appellant had no

¹² The extract from the Landscape Character Assessment for Gawcott Ridge is at Appendix 7 of Document A2.

objection to a condition requiring a hedgerow to be established behind the southern row of caravans and set back from the southern boundary. Whilst a hedgerow and other planting would soften the form of the development, they would foreshorten the open view from the footpath. It is true that filtered views of caravans at Oakhaven Park are already seen from this position, but their impact is diminished by the presence of the intervening field, a point noted in the appeal decision relating to the three additional pitches there¹³. In contrast, the current proposal would result in the presence of caravans being closer and more apparent, to the extent that they would markedly detract from the view to the north.

30. My attention was drawn to a proposal for 400 houses along the A421 and a allocation in the ELP for housing, both within about 0.8km of Radclive Road. These proposals do not involve development in the immediate vicinity of the appeal site, but on the edge of Buckingham. Buckingham is a much larger settlement than Gawcott, and provides a different context for development proposals to that of the area along Radclive Road.
31. The Appellant argues that it is likely that any new gypsy and traveller site coming forward in the next five years will be in the countryside, and will cause some harm. The ELP includes provision for 10 pitches within the South and South-West Aylesbury Major Development Areas (MDAs). In these cases it is the overall MDA, rather than the gypsy and traveller pitches, which will result in the loss of countryside. In any event, the likelihood of gypsy and traveller sites being situated in the countryside does not avoid the need to assess the effects of individual proposals on their particular surroundings.
32. I conclude that the proposed development would harm the character and appearance of the area: significant damage would be caused to the landscape of the appeal site and to that of the area north of Gawcott, and there would also be a marked adverse effect on visual amenity. As the proposal would not complement the physical characteristics of the site and its surroundings, it would conflict with Policy GP.35(a) of the Local Plan and Policy D11(d) of the ELP. Because of the adverse effect on the visual amenity of users of the public footpath adjacent to the southern boundary, the proposal would also conflict with Policy GP.84 of the Local Plan.

The general need for gypsy and traveller accommodation

33. The Gypsy, Traveller & Travelling Showpeople Accommodation Assessment (GTTSAA) of 2017 considers the need for pitches over the period 2016-2033, and it is part of the evidence base for the ELP. This report identifies a need for eight pitches for households meeting the definition of gypsies and travellers in PPTS¹⁴. An important part of the approach to assessing need involved a survey of traveller households. In Aylesbury Vale, however, the response rate was low: 24 interviews were conducted, but it was not possible to conduct interviews with 87 households, and accordingly the GTTSAA records their status in respect of the definition in PPTS as unknown. ORS, who produced the GTTSAA, explains that data collected from over 1,800 surveys suggest that about 10% of households meet the planning definition. On that basis an additional eight pitches could be required, whereas if all unknown households

¹³ Document A2, Appendix 3.

¹⁴ Aylesbury Vale, Chiltern, South Bucks & Wycombe District Councils GTTSAA, Final Report, February 2017, figure 21.

were deemed to meet the definition the number of additional pitches required could be as high as 76. These figures do not include any need arising from concealed households or older teenagers. In the ELP, the LPA has taken a precautionary approach, seeking to provide sufficient pitches to meet the need arising from both known and unknown households for the first ten years, 2016-2026. On that basis, using the figures from the GTTSAA, the need for this period is 69 pitches¹⁵. In response, Policy S6 of the ELP intends to allocate land for that number of pitches.

34. Criticisms of the GTTSAA by the Appellant refer to the omission of any allowance in respect of concealed households and older teenagers. In addition, it is suggested that there is a significant immediate unmet need, with reference made to the presence of a temporary site, several unauthorised sites and overcrowding on authorised sites, including Oakhaven Park. These sites were visited as part of the survey work for the GTTSAA: no interviews were undertaken at the temporary and unauthorised sites mentioned by the Appellant, and those households are factored into the assessment as unknowns. The position with overcrowding or concealed households is different. No interviews were carried out at Marroway, Weston Turville, or Causter Farm, Great Horwood, and no additional households appear to have been identified. Six interviews did take place at Oakhaven Park, but it is clear from the evidence submitted to the inquiry, and my site visit, that doubling-up occurs on a number of pitches here, and to a greater extent than the three households identified in the GTTSAA in 2016. Most of the households intending to live on the appeal site are currently doubling-up on Oakhaven Park, and evidence submitted to the inquiry indicates that nine of these households have gypsy status (below, paras 40 & 42). Similar information is not before me in respect of the other sites where overcrowding has been identified. Taking all of these factors into account, I consider that it is appropriate for the ELP to seek to meet the accommodation needs arising from both known and unknown households in the period up to 2026.
35. Both main parties have assessed the five years requirement for pitches, taking the figures in the ELP as a starting point. It is common ground that 47 pitches have been provided since 2016. The Appellant's planning witness calculated that a total of about 66 pitches should be provided by the end of the five years period in 2024¹⁶, leading to an outstanding requirement for about 19 pitches. The LPA has approached the assessment differently, but has reached a similar result of 18.8 (rounding to 19) pitches¹⁷.
36. The main parties disagree about the availability of pitches to meet the immediate need and to provide a five years supply of accommodation. The LPA has identified a supply of 19 pitches¹⁸. This supply includes five vacant pitches at Dun Roaming Park, Biddlesdon, and six at Baghill, Haddenham. The Appellant's planning witness acts for one of the families at Dun Roaming Park. He explained that these pitches are being held for the future needs of families on that site, and that they have been unoccupied for some time. Whilst that does not mean that they will remain unoccupied throughout the next five years, it is not known when the owners will make these pitches available. The Appellant's planning witness did not have direct knowledge about Baghill, but

¹⁵ Document L2, Appendix 4a, table 3.

¹⁶ Document A1, para 5.36.

¹⁷ Document L3, pages 2 & 3.

¹⁸ Document L3, table B.

suggested that the site had been unoccupied for many years, and is derelict. On the other hand, the LPA considers that the pitches at Baghill are simply vacant, and pointed out that a covenant restricts use to a traveller site. Given that the land has previously been used for this purpose, it seems to me that there is a realistic prospect that the six pitches at Baghill could be delivered within the next five years. However I am not confident that this would be the case at Dun Roaming Park, and without this site there would not be a five years supply of pitches.

37. There is also evidence of an immediate unmet need. I do not expect the pitches at Baghill to be delivered at the start of the five years' period, given the possible need for some remedial work, and the LPA advised that the remaining three sites making up the supply are already occupied. With the exception of the single pitch at Oakhaven Park, they would not contribute to meeting the need arising from overcrowding at that site. Nor would any need for households meeting the planning definition, and arising from doubling-up at Causter Farm, and lapsed temporary permissions at Wotton Underwood and Ickford be met.
38. I conclude that there is not a five years' supply of gypsy and traveller sites in Aylesbury Vale, and that there is an immediate unmet need for pitches. The general need for gypsy and traveller accommodation is a matter to which I accord significant weight.

Personal need and circumstances

Personal need

39. The Appellant had no objection to a condition restricting occupation of the appeal site to persons complying with the definition of gypsies and travellers in Annex 1 of PPTS¹⁹. A schedule of the intended occupants of the 13 pitches proposed on the appeal site is at Document A8. Details of their occupation and travelling is provided in a series of written statements (Document A3), and in oral evidence at the inquiry by one of the intended occupants, two relatives and a part owner of the appeal site.
40. On the information before me, I am satisfied that persons within eleven of the households intending to occupy the site travel to seek work²⁰, and on that basis they comprise for the most part persons of a nomadic habit of life who comply with the definition of gypsies and travellers in PPTS. There are, however, a few particular circumstances to consider. The first concerns Oliver Bower in household No 2. She is 72 years of age, and her daughter-in-law has explained that, for health reasons, it is impossible for her to travel. However, she is part of household No 2, and it would be inappropriate to suggest that her accommodation needs should be addressed separately from her son and daughter-in-law. A similar consideration applies to the future wives of Tom Ball and Fred Ball (household No 6). Although their fiancées are not included on the schedule of intended occupants, and no details about a travelling lifestyle have been provided, it is the clear evidence of Tom Ball that both he and his nephew are to be married.

¹⁹ The occupancy condition could be modified to permit occupation of the site by persons who do not meet the PPTS definition, but are nonetheless found to have a need for accommodation.

²⁰ Households 1-10 & 12 in Document A8.

41. Household No 11 comprises Rose Moss, an 80 years old widow who travelled until her husband's death, and suffers from several medical conditions. As there is no indication that she has only ceased to travel temporarily, and that she would resume a nomadic habit of life, she does not comply with the PPTS definition. Household No 13 comprises David Smith. He buys and sells scrap, and told the inquiry, that, on all but a few occasions, he travels out from his existing base for the purpose of his work. His travelling for economic purposes appears limited, and he does not refer to this as simply a temporary circumstance. The information about David Smith is insufficient to reach a view that he has gypsy status.
42. Households Nos 1-9 are all currently based at Oakhaven Park where they are doubling-up on existing pitches. The schedule of occupancy at Oakhaven Park (Document A9) shows that there is no spare capacity there, and the pitches where these households are based would remain occupied following their move to the appeal site. There are no alternative available sites at the present time, and I give significant weight to the personal need of these nine households.
43. I turn now to consider the other four households. Household No 10 comprises James & Kelly Birch and their three children. They have their own pitch (No 19a) on Oakhaven Park, and are not doubling-up there, although Mr Birch's brother and his wife sometimes stay. In her statement, Kelly Birch gives the sole reason for moving to the appeal site as the family's requirement for more living space. Whilst the site plan indicates that the pitches on the appeal site would be larger than those on Oakhaven Park, Mr & Mrs Birch's existing pitch is not unduly small, and, as I saw on my site visit, it accommodates a mobile home and touring caravan, in line with a condition restricting the number of caravans to two. At the inquiry it emerged that the vacated pitch at Oakhaven Park would be occupied by Mr Birch's brother and his wife. It is the Appellant's evidence that this couple sometimes stay on the pitch and that they have no base of their own, although the information about them is limited. The intended occupants of the appeal site, however, are James & Kelly Birch and their three children. As they have a lawful pitch, they do not have a personal need for accommodation.
44. I have found that Rose Moss (household No 11) does not have gypsy status (above, para 41). However, she has previously followed a nomadic lifestyle, and is currently doubling-up on Oakhaven Park, where she has relatives. I am satisfied that she has a need for caravan accommodation.
45. Household No 12 comprises William & Emily Laird. Emily has relatives on Oakhaven Park where she lived before marrying, but the couple are not based there. They travel widely: although they have no settled base they keep two horses in Shropshire and at the date of Emily's statement were living on a temporary stopping-place in Market Drayton. Whilst the couple have a need for a settled base, it is not clear that this needs to be in Aylesbury Vale.
46. David Smith (household No 13) has a lawful pitch on a site at Middleton Stoney. His wife and children live on Oakhaven Park, and he wishes to be close by to assist in looking after his sons, a matter to which I refer below (para 49). As Mr Smith already has a pitch, and bearing in mind my finding on gypsy status, he does not have a need for a settled base on the appeal site.

Personal circumstances

47. Four households (Nos 2, 7, 8 & 10) have children of school age: these households all currently live on Oakhaven Park, and mention was made in the representations of attendance at local schools. School attendance provides no support in respect of household No 10, as James & Kelly Birch already have a lawful pitch from where they children can attend school (above, para 43). However, the ability to attend school from a permanent base carries additional weight in support of the proposal in respect of the other three households.
48. Specific health problems have been mentioned in respect of Olive Bower (household No 3), John Calladine, (No 4), and Rose Moss (No 11). The provision of a settled base is of particular importance for these individuals, to assist with the continuity of treatment, and it would also facilitate access to healthcare facilities for all those prospective occupants who need accommodation.
49. Mr Smith (household No 13) has twin sons with autism. They live with their mother on Oakhaven Park, but spend alternate Thursdays, alternate weekends and half the school holidays with Mr Smith. Mr Smith explained that the children are becoming more difficult to manage as they grow older (they were 12 at the date of the inquiry), and he wishes to live close by, on the appeal site, to be able to provide assistance. However Mr Smith acknowledged that there are prescribed times for him to be with his sons, and consequently moving onto the appeal site would not increase his opportunities to help his wife to look after them. In any event, Mr Smith does not live far away from Oakhaven Park: he told the inquiry that it took 35 minutes to reach Buckingham, which is a similar distance to the appeal site from Middleton Stoney. I do not consider that Mr Smith's family circumstances provide a reason for him to move to a pitch on the appeal site.

Other matters

Development Plan policies for gypsy and traveller sites

50. There is no policy in the Development Plan concerned with gypsy and traveller sites. That has been the case since 2007 when the gypsy and traveller policy of the Local Plan was not amongst those which were saved. In the ELP, Policies S6 and D11 are concerned with the allocation of sites for pitches and criteria for the assessment of proposed sites. The ELP is at an advanced stage (above, para 11), and Policies S6 and D11 merit significant weight. The policies are of assistance in bringing forward and guiding the development of new gypsy sites. Nevertheless, the lack of any policy in the Development Plan concerned with the provision of gypsy and traveller sites adds some further weight in support of the appeal proposal.

Policy D11 of the ELP

51. Policy D11 supports proposals for gypsy and traveller sites where there is an identified need, and it also sets out a series of criteria against which proposals are intended to be assessed. There is a general unmet need for gypsy and traveller accommodation in the District. Turning to the criteria, it is common ground between the main parties that there is no objection from the Highway Authority, that there would be no undue effect on the living conditions of nearby residents, that the site is not at high risk of flooding, and that it can be

adequately serviced: consequently criteria (b), (c), (f) and (g) are satisfied. I have already found that there would be compliance with criterion (e) as the development would not dominate the nearest settled community, and it would have fewer pitches than the preferred upper limit of 15 (h). At the inquiry, the LPA accepted that the site would be suitably designed and have enough space. I have no reason to disagree, and the proposal would comply with criterion (i).

52. Criterion (a) is concerned with access to local services and facilities. There are a number of facilities, including a primary school, a public house and a village hall in Gawcott, and the village also provides access to a bus service. Gawcott is only about 0.4km from the site, and is within walking distance. A wider range of facilities and services is available in Buckingham which is about 3km away. As the nearest bus stop is in Gawcott, the bus service is limited, and there is no footway along Radclive Road to the village, it is likely that most journeys to local facilities and services would be made by car. However the distances involved are not great, and I consider that the proposed pitches would have reasonable access to existing local services and facilities, in accordance with criterion (a).
53. I have found that the proposal would have a significant adverse effect on the local landscape and that it would cause considerable harm to the ridge and furrow earthworks which are a feature of the historic environment. In consequence the proposal would fail to meet criterion (d) in Policy D11.

Conclusions

54. Due to its harmful effect on the ridge and furrow earthworks and on the character and appearance of the area, I have found that the proposed development would conflict with Policies GP.35 and GP.84 of the Local Plan. A condition could be imposed to ensure the retention of trees and hedgerows on the perimeter. Accordingly the proposal would comply with Policies GP.39 and GP.40. I note that in its putative reason for refusal concerning the effect on the character and appearance of the area, the LPA refers to conflict with Policy GP.38. This policy requires that proposals include landscaping to help buildings fit in with and complement their surroundings, but there are no buildings in the appeal proposal. The supporting text refers to development, not just buildings: taking this wider interpretation, the landscaping proposed would not help the development to fit in with and to complement its surroundings. There are nearby residents to the appeal site on Oakhaven Park and at the dwelling on Radclive Road known as The Elms. Having regard to the proposed site layout and the separation of the appeal site from existing residents by a grassed strip and a paddock, I do not consider that the gypsy site would have any material effect, due to loss of privacy or disturbance, on the living conditions of neighbours. Consequently there would be no conflict with Policy GP.8. However due to its effect on the ridge and furrow earthworks and on the character and appearance of the area, the appeal proposal would conflict with the Development Plan considered as a whole.
55. Due to the conflict with the Development Plan, the appeal should be dismissed unless material considerations indicate otherwise. I turn next, therefore, to the presumption in favour of sustainable development set out in paragraph 11 of the National Planning Policy Framework (NPPF). Sub-paragraph 11(d) explains that where there are no relevant development plan policies, or the policies which are most important for determining the proposal are out-of-date,

permission should be granted unless policies in the NPPF that protect areas or assets of particular importance provide a clear reason for refusal, or any adverse impacts would significantly and demonstrably outweigh the benefits when assessed against the policies in the NPPF taken as a whole.

56. In this case there are several relevant Development Plan policies, against which I have already assessed the appeal proposal (above, para 54). The next step is to determine whether the policies which are most important for determining the proposal are out-of-date: if that is the case the tilted balance in limb (ii) of sub-paragraph 11(d) would apply as protective policies in the NPPF are not relevant to the circumstances of this appeal.
57. The Appellant argues that two circumstances lead to the tilted balance: firstly that the gypsy policy in the Local Plan is the most important for determining this appeal, but was not saved and is out-of-date; and secondly that footnote 7 of the NPPF makes the point that where a five years' supply of deliverable gypsy sites cannot be demonstrated the Plan is deemed to be out-of-date. A straightforward reading of the first part of sub-paragraph 11(d) indicates that the reference to out-of-date policies is to policies in the Development Plan. The former gypsy policy from the Local Plan was not saved and is not part of the Development Plan. It does not come within the scope of this part of sub-paragraph 11(d). Turning to the argument in respect of footnote 7, it is not the case that it mentions gypsy sites. Footnote 7 refers to proposals involving the provision of housing, and includes a cross-reference to paragraph 73 of the NPPF. Footnote 36 to that paragraph makes it clear that a five years' supply of sites for travellers should be assessed separately, in line with PPTS, and footnote 25 makes the same point. Accordingly, I do not agree that the absence of a five years' supply of traveller sites provides a gateway to the tilted balance.
58. The most important policies for determining this appeal are Policies GP.35 and GP.84 which are fundamentally related to the main issues. Whilst Policies GP.39 and GP.40 have a bearing on the issue concerning character and appearance, their relevance in this case is essentially to do with the use of conditions, and Policy GP.38 specifically refers to buildings. Both Policies GP.35 and GP.84 are consistent with the objective stated in the NPPF to protect and enhance the natural and historic environment, and with the policies in paragraph 170(b) to recognise the intrinsic character and beauty of the countryside. The criterion in Policy GP.35 to respect the historic scale and context of the setting does not introduce a prohibition against development which would harm a heritage asset, and it is not inconsistent with the approach to the historic environment in chapter 16 of the NPPF. I have reached the view that the most important policies for determining this appeal are not out-of-date, and accordingly the tilted balance does not apply in this case.
59. There is not a five years supply of gypsy pitches in Aylesbury Vale, where there is an immediate unmet need for sites, and the general need for gypsy and traveller accommodation is a matter to which I accord significant weight. I also give significant weight to the personal need of 10 of the households intending to occupy the appeal site (Nos 1-9 & 11), and moderate weight to the need of household No 12, bearing in mind the information available. Access to education carries additional weight in respect of three households (Nos 2, 7 & 8), and, whilst access to healthcare facilities is important to all prospective

occupants with a need for a pitch, it is of particular importance to three individuals (in households Nos 3, 4 & 11).

60. There are children in five of the households with a need for a pitch, and the best interests of the children are a primary consideration in this appeal. A settled base is of particular importance for children, not just to enable those of school age to maintain continuity of education, but to provide all of them with security and stability.
61. The absence of any alternative sites to the Appellant's land, which is available now, and the lack of any policy in the Development Plan concerned with the provision of gypsy and traveller sites, add some further weight in support of the proposal.
62. The Appellant points out that the proposal would comply with paragraph 13 of PPTS, and refers to the absence of flooding and highway concerns. The absence of harm in respect of these matters does not equate to benefits of the proposal, and has a neutral effect on the planning balance. I also agree that the land is in a sustainable location for a gypsy site.
63. I have considered the public sector equality duty. The Appellant argued that this is a material consideration in support of the proposals, having regard to the supply of sites for the settled and the gypsy and traveller communities. I heard that there is a five years' supply of housing for the settled community, whereas I have found that this is not the position in respect of gypsy and traveller pitches. Section 149(1) of The Equality Act 2010 requires me to have due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it. Race is a relevant protected characteristic, and the evidence is that prospective occupants of the appeal site are Romany Gypsies. Granting planning permission for the appeal proposal would improve the availability of accommodation for this group, and supports the general need for gypsy and traveller accommodation.
64. The proposed development would have a damaging effect on the landscape of the appeal site and the area north of Gawcott, and on visual amenity, harm which merits significant weight. The proposal would result in the loss of much of the ridge and furrow earthworks on the site, greatly detracting from the significance of this undesignated heritage asset. The evidence is that these earthworks are some of the best preserved in the Parish and that these features are becoming increasingly rare. Having regard to paragraph 197 of the NPPF, I give substantial weight to the harm which would be caused to the earthworks. I conclude that the harm identified, which leads to conflict with the Development Plan, would clearly outweigh the benefits of the appeal proposal, taking into account the importance of the best interest of the children in the households concerned.
65. I have considered the possibility of a temporary permission. The Appellant suggested a period of five years in this circumstance, whereas the LPA took the view that a period of three years would be sufficient for the prospective occupants to find alternative sites and for further planning permissions to be granted. Although the harm to the character and appearance of the area would be less over a temporary period, the loss of much of the ridge and furrow earthworks would still occur, and I consider that the harm caused by the development would still clearly outweigh the benefits of the appeal proposals.

66. Representations were made to the effect that there would be an interference with the human rights of the intended occupants of the appeal site, involving breaches of Articles 8 and 14 of the European Convention on Human Rights, as incorporated by the Human Rights Act 1998. Dismissal of the appeal would prevent the prospective occupants using the site as a settled base on which to station their caravans. This would represent an interference with their rights under Article 8 of the European Convention on Human Rights. However, taking into account all material considerations, I am satisfied that the legitimate aims of protecting the countryside and safeguarding the existing extent of the ridge and furrow earthworks can only be achieved by dismissal of the appeal. Interference with the human rights of the households intending to move to the site is, therefore, necessary and proportionate.
67. Article 14 is concerned with the right to freedom from discrimination. The only comparative situation referred to is that concerning five years land supply, which exists in respect of accommodation for the settled community, but not for the traveller community. Discrimination means treating persons in relevantly similar situations differently, and without an objective and reasonable justification. Whereas dismissal of the appeal would not contribute to improving the supply of gypsy and traveller accommodation, the importance of protecting the character and appearance of the area and safeguarding the ridge and furrow earthworks justify this decision. No discrimination against the prospective site occupants and no breach of Article 14 arises.
68. For the reasons given above, and having regard to all other matters raised, including the suggested conditions, I conclude that the appeal should be dismissed.

Richard Clegg

INSPECTOR

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Mr A Greaves of Counsel	Instructed by Mrs L L Briggs, Solicitor with Aylesbury Vale DC.
He called	
Mr D Ray BA(Hons) MSc	Principal Planning Officer, Aylesbury Vale DC.

FOR THE APPELLANT:

Mr A Masters of Counsel	Instructed by Mr Brown
He called	
Mr H Humberstone	Brother of prospective occupant of the appeal site.
Mr P Brown BA(Hons) MRTPI	Managing Director, Philip Brown Associated Ltd.
Mr F Ball senior	Part owner of the appeal site.
Miss S Butcher	Sister of prospective occupant of the appeal site.
Mr D Smith	Prospective occupant of the appeal site.

THE LPA'S DOCUMENTS

- L1 Mr Ray's proof of evidence.
- L2 Appendices to Document L1.
- L3 Letter dated 20 November 2019 from Mr Ray to The Planning Inspectorate concerning gypsy & traveller accommodation in the District, possible conditions, and the emerging Local Plan
- L4 Mr Greaves's opening statement.
- L5 Plans of public rights of way in the vicinity of the appeal site.
- L6 Mr Greaves's closing submissions and extract from the Town & Country Planning (General Permitted Development) (England) Order 2015.

THE APPELLANT'S DOCUMENTS

- A1 Mr Brown's proof of evidence.
- A2 Appendices to Document A1.
- A3 Bundle of statements from owners and prospective occupants of the appeal site.
- A4 Revised location plan.
- A5 Letter dated 3 December 2019 from Ms D Butcher concerning the appeal.
- A6 Costs application.
- A7 Mr Masters's closing submissions.
- A8 Revised schedule of prospective site occupants.
- A9 Revised schedule of Oakhaven Park occupants.
- A10 Email dated 23 January 2020 from Mr Brown in response to Document O10.

OTHER DOCUMENTS

- O1 Extracts from the Local Plan.
- O2 Notification of resumption of the inquiry.
- O3 Inspector's inquiry note.

- O4 Statement of common ground.
- O5 Extracts from Settlement Hierarchy Assessment for the emerging Local Plan.
- O6 Planning permission ref 14/02293/APP for a solar farm at Gawcott Fields Farm, and the LPA's report on the planning application.
- O7 Heritage assessment relating to the proposal for a solar farm at Gawcott Fields Farm.
- O8 Design and access statement relating to the proposal for a solar farm at Gawcott Fields Farm.
- O9 Site plans of Oakhaven Park.
- O10 Regulation 2(4) notice concerning possible pre-commencement conditions.