



Appeal Decision

Inquiry Held on 23 November 2021

Site visit made on 25 November 2021

by Frances Mahoney MRTPI IHBC

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

Decision date: 7 March 2022

Appeal Ref: APP/P3420/W/21/3268816

Land at Blackbrook Nursery, Newcastle Road, Blackbrook,

Newcastle-under-Lyme

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr D and T Clee, J Wilson and M Lee against the decision of Newcastle-under-Lyme Borough Council.
 - The application Ref 20/00368/FUL, dated 22 May 2020, was refused by notice dated 20 August 2020.
 - The development proposed is change of use of land to mixed use for the stabling/keeping of horses and as a residential caravan site for 4 gypsy families, together with the erection of a stable building, erection of 4 no amenity buildings and laying of hardstanding.
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Decision

1. The appeal is allowed and planning permission is granted for the change of use of land to mixed use for the stabling/keeping of horses and as a residential caravan site for 4 gypsy families, together with the erection of a stable building, erection of 4 no amenity buildings and laying of hardstanding at land at Blackbrook Nursery, Newcastle Road, Blackbrook, Newcastle-under-Lyme in accordance with the terms of the application, 20/00368/FUL, dated 22 May 2020, subject to the conditions set out at Annex A to this decision.

Preliminary matters

2. The Inquiry sat from the 23 – 25 November 2021 with an accompanied site visit on 25 November 2021.
3. For the avoidance of doubt, and as agreed with the parties, the proposed Site Layout Plan is that drawn at a scale of 1:500 and included as Core Document 3. However, it was agreed at the Inquiry and was apparent, at the site visit, that the appeal site was already occupied as a four-pitch gypsy and traveller site¹, with a site layout which did not accord with the submitted Site Layout Plan. Therefore, I have considered this appeal based on the Site Layout plan before me, not on the layout as presently exists.

¹ Including a wooden stable block and play equipment (outside of the red-lined appeal site) and close-boarded boundary fencing in the order of 2 metres in height.

Background

4. The appellants as the intended occupants of the four pitches belong to four families who are all related². The appellants work in construction, landscaping as well as furniture sales. In all cases this involves some element of travelling to seek work³. The Council has not taken issue with the gypsy status of the appellants⁴ and from the evidence presented to me I see no reason to disagree.
5. The appellants having pooled their financial resources bought the appeal site in August 2017. At that stage the families were living either at the Within Lane⁵ or Finney sites⁶. In the main, they doubled-up on pitches occupied by friends and family, which resulted in over-crowding and the sharing of basic facilities. These arrangements were never intended as being permanent and in the over-crowded circumstances in which the families lived⁷, it is not surprising, they aspired to have their own dedicated pitches, including ready and exclusive access⁸ to facilities for washing and personal hygiene. Two of the families include children with health issues which made the ambition to secure their own pitch facility even more acute and understandable.
6. Following the purchase of the appeal site, planning permission was refused in June 2019⁹ on grounds relating to the sustainability of the location, highway safety and residential amenity. This decision was not appealed.
7. The appellants did not move onto the appeal site until May 2020. The appellants confirmed that when they moved onto the site, they were aware that planning permission for a change of use had not been given. However, their reasoning for their action centres on the poor conditions in which they had been living, with family members in poor health, on sites where they had no security of tenure. The trigger for their move seems to have been that those controlling the occupancy of some of the pitches asked the families to move on. The appellants explained they had investigated other options but found none other than roadside locations or other further unauthorised parking of vehicles and caravans.
8. The Council secured injunctions in May and June 2020¹⁰ to prevent any further unlawful development or occupation of the site.
9. Planning application, 20/00368/FUL, was submitted in May 2020 which sought to address issues raised in the earlier submission. It was refused in August 2020 and is the subject of this appeal.
10. The reasons for refusal of the Council included matters relating to the suitability of the existing access/visibility splays and whether the proposed development would have an adverse impact on the Public Water Supply (PWS). The appellants have submitted additional information to address these

² Some more distantly than others. The families include 10 children under the age of 18.

³ Which does include some collaborative work on occasions.

⁴ Accord with the definition as set out in Annex 1 of the Planning policy for traveller sites (PPTS).

⁵ Within Lane Stafford.

⁶ Newcastle Road Sandbach.

⁷ In some cases, there being only enough space for families to live in touring caravans.

⁸ Per pitch.

⁹ 19/00332/FUL – change of use of land for the siting of caravans for residential purposes for 4 no gypsy pitches with facilitating development. This followed the withdrawal of an earlier planning application submitted in June 2018 (18/00491/FUL). There was a change in agent from the 2018 application to that in 2019.

¹⁰ Moulton Appendix 6.

concerns. In respect of highway safety, a submitted topographical survey and swept path analysis have satisfied the Highway Authority that the proposal would be acceptable. In dealing with the impact on the PWS a groundwater source protection zone assessment was submitted and accepted by Severn Trent Water, the responsible water undertaker, subject to conditions. Based on this expert advice the Council chose not to defend reasons for refusal 2 and 3.

11. I am aware that interested parties were still concerned in respect of both matters.

Planning Policy

12. The development plan includes 'saved' policies of the Newcastle-under-Lyme Local Plan (LP) adopted in October 2003, the Newcastle-under-Lyme, and Stoke-on-Trent Joint Core Strategy (CS) adopted in October 2009 and the Chapel and Hill Chorlton, Maer and Aston and Whitmore Neighbourhood Development Plan (NP), made in January 2020.
13. In January 2021 the Borough Council resolved to deliver a new Local Plan for the Borough to set a vision and framework for growth to 2040. Adoption is not expected until sometime in 2024 although it was accepted some slippage may occur¹¹. No policies of this emerging Local Plan were promoted to the Inquiry.

Matters for consideration

Highways

14. The concerns raised at the Inquiry centred on the impact of towing vehicles entering and exiting the appeal site on the safety of vehicles using the A53, Newcastle Road, along with the amount of traffic which would be generated by the proposed use.
15. I observed that the A53 is a well trafficked road. The appeal site lies in the close vicinity of the junction of the A53 with the A51 which, as I experienced, is an awkward junction to negotiate when turning in either direction, onto the A51.
16. The current existing authorised use of the appeal site is as a wholesale garden nursery¹². Improvements to the access were carried out when that use was established. As wholesale trade the access would likely have accommodated vehicles of some size including lorries for pick up and deliveries. This appeal has included confirmation of the visibility splays required by the Highway Authority. These were checked at the site visit and found to be achievable being almost exclusively within highway land¹³. The submitted topographical survey and swept path analysis provides evidence that towing vehicles could successfully and safely negotiate the appeal site access.
17. The nursery use would have generated some daily vehicular movement by the operator as well as by customers. The proposed use, on the face of it, with four families living at the site would generate daily movements involving domestic tasks as well as movements associated with the appellants leaving and returning from their work. However, I am also conscious that some business activities would be outside the area when the appellants are travelling

¹¹ Inquiry Doc 5.

¹² N20697 – permitted 1991.

¹³ Agreed between the main parties at the site visit.

for work and away from the site for periods. Further, Gypsy families in living together, also support one another and often share tasks such as taking children to school or shopping trips. This reduces the number of vehicular movements generated. The existing access, benefitting from the required visibility splays, in either direction, would adequately support the level of vehicular movements generated by the proposed use. There is no substantive evidence before the Inquiry that the A51, the A53 or the nearby junction, lacks the capacity to accommodate the traffic generated by the proposed use¹⁴.

18. I am mindful of the views of the Highway Authority in respect of both above concerns and, based on the evidence before me, I have no reason to disagree.

Impact on PWS

19. It is recognised that the appeal site lies close to a public groundwater supply borehole. The interested party concerns were that the appeal proposal could put at risk the PWS as well as pollution to the nearby water course.
20. The submitted Groundwater Source Protection Zone Assessment¹⁵ indicates that the use of the land running down to the water course for grazing would be likely to generate only organic material. Further, grazing would be less likely to be subject to the application of fertilisers than other agricultural uses. Such usage would have the potential for only low impacts.
21. I heard anecdotally that the area of the field close to the small watercourse was sometimes subject to flooding. There was no suggestion that the flooding extended over the appeal site¹⁶ and I do not consider this to be a barrier to the proposal.
22. The proposed residential use would generate foul drainage and contaminated water. This would require mitigation to overcome potential impacts. The responsible water undertaker is satisfied that a means of foul water drainage, to be agreed, but could include a package treatment plant with the discharge outlet location and discharge disposal through a wetland or similar SuDs system, would suitably mitigate the impacts of the proposed use. No evidence was submitted that it would not be possible to mitigate the identified impacts. Therefore, subject to the imposition of a suitable condition to secure an appropriate form of foul water drainage I see no reason to resist this proposal on this ground alone.

Stable and associated grazing

23. The appeal proposal includes a stable block with two loose boxes and a tack room. It would be sited immediately adjacent to the access track and proposed pitches. Concern was expressed that the size of the stables along with the associated grazing area¹⁷ would be insufficient to support more than one horse and that there could be a possibility of a greater number of horses being kept at the site with obvious issues relating to satisfactory standards of animal husbandry and wider environmental impacts.

¹⁴ The appellants have brought to my attention that the A53 could be subject to a long-term road closure/diversion in the close vicinity of the appeal site as part of the HS2 project. At this stage this is not certain, and I have considered it accordingly.

¹⁵ CD 16.

¹⁶ Edged in red on the site location plan.

¹⁷ Outside the red lined appeal site but within the area shown as in the ownership of the appellants.

24. The keeping and trading of horses is a traditional part of Gypsy heritage. The appellants would, on average, have six or seven horses at any one time, but they are kept elsewhere on rented or family land. Horses would only be brought to the appeal site when foaling or in poor health or to prepare them for sale. There was no substantiated evidence that the area of grazing in front of the proposed stables would not be sufficient to support a single horse. The appellants were accepting of a condition restricting the number of horses to be grazed at anyone time to one. In these circumstances I am satisfied that the stables and grazing, in operational terms, would be acceptable.

25. Therefore, the main issues are:

- the effect of the proposal on the character and appearance of the countryside;
- whether the proposed location of the gypsy caravan site would represent a suitable location in respect of accessibility for pedestrians and offers a real choice to residents in respect of sustainable modes of transport; and
- whether any identified harms would be outweighed by other considerations, including the general need for, and provision of sites, the availability of alternatives, and the personal circumstances of the appellants and their families, so as to justify the development.

Character and appearance

26. As previously indicated above I am charged with determining this appeal based on the plans as submitted and considered by the Council, not on the way the site has currently been laid out and developed. Although many of the elements of the proposed change of use are currently accommodated on the appeal site, they do not reflect the layout proposed and certain key components such as boundary treatments differ markedly.

27. I am conscious that in assessing the impact of the proposal on the landscape the views of the Council expressed in evidence at the Inquiry were firmly based on the impact of the change of use and associated development as physically undertaken on the appeal site. This was particularly apparent in the evidence relating to the impact of the boundary treatment which focused on the green painted close boarded fence which encloses the appeal site. This is not the boundary treatment proposed as part of this appeal and I have considered it accordingly.

28. The appeal site lies within an Area of Landscape Enhancement. Within such areas, proposals will be supported which will enhance the character and quality of the landscape, demonstrating that development will not further erode the character or quality of the landscape¹⁸. Borough wide the landscape is varied with each part having its own character and it is this diversity and distinctiveness that the LP seeks to preserve.

29. NP Policy DC2 takes on the thrust of the LP policy but applies it at a local level seeking to maintain and enhance the character and appearance of the landscape, reflecting local character.

¹⁸ LP saved Policy N20.

30. CS Policy CSP7 is a policy which specifically sets out general criteria for consideration in relation to the provision of additional pitches for Gypsy and Travellers. One of the criteria for sites is that wherever possible negative impacts upon local landscapes should be minimised.
31. Whilst these policies originate from planning policy documents of some age, they do reflect the spirit of paragraph 174 b) of the National Planning Policy Framework (the Framework) which requires decisions to contribute to and enhance the natural and local environment by recognising the intrinsic character and beauty of the countryside.
32. When considered on a Borough wide basis the appeal site, in the context of its wider landscape, is identified as being of moderate landscape quality where enhancement will be required. It lies in a predominantly agricultural landscape, including grazing as well as arable farmland, where fields are edged with hedges and trees in a gently rolling landscape. Dwellings and farmsteads are sporadically located. However, immediately to the north of the appeal site are the Maer Hills, which serve as a heavily treed backdrop of rising ground behind the appeal site, in sharp contrast to the wider expanse of open rural countryside.
33. The appeal site is essentially a rather undistinguished field which includes the remnants of the old nursery use being three linked glasshouses and a shed which are visually low key in scale both in terms of size and site coverage and would not be unfamiliar structures in a rural setting.
34. What is proposed is the introduction of four pitches which would each include a mobile home¹⁹, space for a touring caravan which may be on site intermittently, and an amenity building. The stable block is also proposed to be sited facing out onto the open pasture which slopes down to the watercourse. The southern boundary of the site would be delineated by post and rail fencing and tree and hedge planting²⁰. The eastern boundary of the appeal site would include a continuation of the hedge and post and rail fence and then a run of acoustic fencing between the adjoining pitch and the A53.
35. The appeal site forms part of the transition between the lower lying agricultural landscape and the tree covered expanse of the Maer Hills. This view is apparent when travelling from Loggerheads towards the appeal site, along the A53. The extent of the view would be filtered by road-side hedges and trees and its permeability would vary with the seasons. I undertook my site visit in the winter months and the mobile homes, stable block, and boundary fences, which currently occupy the site²¹, were visible at a distance but were more prominent in immediate views close to the site access from the A53. Also, the appeal site is visible in down-slope localised views from the A51. The prominence of the appeal site in these localised views close to the site access and from the A51, I would not anticipate diminishing significantly during the summer months.
36. The proposed caravans, amenity buildings, stable block and associated paraphernalia would stand out particularly in immediate views from the A53 and the A51, in what is essentially a rural location, seen against the backdrop

¹⁹ 3 pitches would have the mobile homes sited at 90 degrees to the southern boundary and with the pitches widely spaced.

²⁰ Species as yet to be agreed but it was agreed these would be indigenous species.

²¹ Although not laid out in accordance with the proposed layout plan.

of the tree covered Maer Hills²². Some attempt has been made to minimise the visual impacts of the proposal. Proposed appropriate hedging and trees around the boundaries would serve to soften the visual impact of the pitches overtime, with sympathetic hedgerow management being an essential part of any integration into the local landscape.

37. The proposed layout in comparison with the layout as installed at the appeal site firstly removes the dilapidated glasshouses and nursery shed, then the unsympathetic close boarded boundary fence, relocates the stable block closer to the pitches and then creates an open layout with the pitches well spaced one from another. This would lessen, to some degree, the visual impact of the Gypsy pitches and stables from that which currently is experienced in the landscape.
38. Nonetheless, notwithstanding that Gypsy sites along with stables are not uncommon in the countryside, I consider that the appeal proposal would not contribute to and enhance the natural and local environment, the intrinsic character and beauty of the countryside being unacceptably eroded. Thereby the terms of the relevant development plan policies, set out above, would be compromised, the character and quality of the landscape being unsatisfactorily undermined. This policy conflict is ascribed considerable weight in the balance of this decision.

Sustainability of the location

39. PPTS does not preclude the location of Gypsy and Traveller sites within rural areas and similarly CS Policy CSP7, in setting out criteria to follow on the location of sites, does not place limitations on specific areas. Instead, the policy sets out criteria to judge proposals against, one of which intends that new pitches should be located, wherever possible, on sites which provide good access to, amongst other things, shops, education and healthcare facilities and provide safe and convenient access to public transport and the highway network.
40. The appeal site lies about 500 metres from the hamlet of Blackbrook, some 2 miles from Baldwins Gate and within 3 Miles of Loggerheads²³. Being a proposed site of just four pitches, on a site in open countryside, it would be of a scale which would respect and not dominate the nearest settled community.
41. Between Loggerheads and Baldwins Gate a full range of local services can be accessed. Just a short distance from the appeal site is a pub/restaurant as well as a farm shop stocking basic items²⁴. Bus stops are close-by on the A51 giving ready access to Newcastle-under-Lyme town centre as well as Market Drayton²⁵.
42. The issue seems to centre on whether these services and public transport can be accessed without reliance on the private motor vehicle. From the appeal

²² I have considered the visual impact of the proposal against that of the existing nursery buildings. However, the nursery buildings are well spread across the site and are of a lower scale and of less site coverage than the use proposed.

²³ PPTS Policy H para 25 - new traveller site development in open countryside away from existing settlements should be very strictly limited. The appeal site lies close to the small cluster of homes which make up the hamlet of Blackbrook. Further it lies roughly mid-point between Loggerheads and Baldwins Gate. Whilst being set in open countryside, that proximity, limits the sense of being isolated to other residential development.

²⁴ There is no suggestion that the residents of the four proposed pitches would place undue pressure on the local infrastructure.

²⁵ Moulton Appendix 9 – Bus timetable.

site along the A53 towards the junction with the A51²⁶ there is no dedicated footpath. It is possible to walk on the road verge, but this is uneven and varies in width and height. The A53 is a busy and fast-moving road. When I walked from the appeal site to the A51 it was neither pleasant nor easy and I was prompted to wear hi vis. I heard anecdotal evidence of one of the appellants jogging along the A53. However, in my view, the lack of a roadside footpath and the A53's generally unlit nature²⁷ would serve as deterrents to walking to and from the bus stops and the other nearby facilities. This would be particularly so for children who might most benefit when seeking some element of independent travel.

43. Cycling might be a means to access the nearby settlements as they are within biking distance, but the nature of the immediate road network²⁸ could similarly dissuade such journeys.
44. Therefore, I am led to the conclusion that a private motor vehicle would be the predominant means of transport for the residents of the appeal site. This was borne out by the evidence of the appellants that they would drive to the farm shop and shared lifts to take the children to school, go shopping and for hospital visits²⁹.
45. Such reliance on a private motor vehicle for transport needs is not uncommon in rural areas and is certainly not exclusive to the Gypsy and Traveller community. I have no doubt it would equally apply to the settled community in the immediate vicinity.
46. Travel to Baldwins Gate and Loggerheads requires only short journeys both in distance and time. As already established the appellants act as a family supporting each other which has the effect of reducing vehicular movements.
47. The location of the appeal site does offer good access to the major road network for those who need to travel widely to look for work.
48. It has already been established that the occupiers of the appeal site would rely upon private motor vehicles for their transport needs. However, travel distances to services are moderate and no different for those in the traveller community to those in the settled community. Nonetheless, there is a qualified tension with the terms of CS Policy CSP7³⁰. Therefore, for the reasons set out above I ascribe only limited weight to that policy conflict.

Other considerations

General need for and provision of sites

49. The Government's overarching aim is to ensure fair and equal treatment for travellers, in a way that facilitates the traditional and nomadic way of life of travellers while respecting the interests of the settled community³¹. National policy recognises that there is a need to increase the number of traveller sites in appropriate locations with planning permission, to address under provision

²⁶ Where there is a hard surfaced roadside footpath.

²⁷ There is some street lighting close to the A53/A51 junction.

²⁸ A52 and A51.

²⁹ Brown Proof para 5.20 concedes that 'in current circumstances the site residents will primarily rely on the private motor vehicle to access services and facilities.

³⁰ The location of the bus stops is convenient, but I do not consider the access along the A53 to the bus stops to be safe for pedestrians.

³¹ Paragraph 3 of the PPTS.

and maintain an appropriate level of supply. The PPTS sets out how Gypsy and Travellers accommodation needs should be assessed.

50. The Borough Council has published the Gypsy and Traveller and Travelling Showperson Accommodation Assessment 2020 (GTAA) dated September 2020³². It identifies an increased need for pitches from that identified in the 2015 version of the GTAA³³. For the five-year period 2020/21 to 2023/24 there is a shortfall of 5 pitches for Gypsy and Travellers and an overall need for 7 pitches over the entire assessment period 2020/21 to 2036/37.
51. The Borough Council accept that since the publication of the 2015 GTAA no sites have been identified and allocated, nor provided through the granting of planning permission. However, in response the Borough Council's intention is to prioritise consideration of Gypsy and Traveller needs with an early review of the GTAA.
52. This, however, does not address the immediate identified shortfall.
53. I am aware that there are two proposals for single pitch sites, but even if permanent permission were to be granted, in both cases, there would still be a shortfall over the assessment period.
54. It is common ground between the parties that there is an unmet need for Gypsy and Traveller sites in the Borough and that the Borough Council cannot identify a five-year supply of deliverable land for the provision of new Gypsy sites³⁴. These factors weigh significantly in favour of the proposal.

Alternatives

55. There is also agreement between the parties that there are no alternative sites that could accommodate the appellants and their families. The appellants had made enquiries for availability of pitches at Cemetery Road, Silverdale³⁵ but there were no vacancies and a long waiting list.
56. I heard of the difficulties the appellants had faced, particularly the Wilson family and that of Thomas Clee living on cramped, doubled-up pitches. A return to such unsanitary conditions where the health of family members would be at risk is not an alternative.
57. Overall, there is a lack of alternative accommodation available. I heard from the appellants that should they have to leave the appeal site they have nowhere else to go other than parking on the roadside or pitching on other unauthorised land. This would interfere with the human rights of the appellants and their families as there is no other lawful home currently available to them. This is a matter of significant weight in favour of the proposal.

Personal circumstances

58. The appellants consist of four families which include 10 children. One child has severe health issues and cannot walk or talk³⁶. Prior to moving onto the appeal site his parents cared for him, along with his two siblings, whilst living in a

³² Brown Appendix 5.

³³ Brown Appendix 4.

³⁴ Statement of Common Ground para 5.7

³⁵ A socially rented site - 19 pitches.

³⁶ On a settled site he is now able to access specialist education provision to meet his educational needs.

touring caravan on a doubled-up pitch with no private facilities. His Mother's statement that having your own toilet, running and hot water, washing facilities, and electricity was often taken for granted by some but treasured by her and her family, was powerful and gave an indication of the difficulties that she had experienced living on over-crowded pitches in trying circumstances.

59. Another of the families has a child whose health would be seriously compromised living in unsanitary conditions³⁷.
60. The support of the extended family group for both the children and their primary carers was promoted as being essential for their long-term well-being and mental health. This was not a disputed point and I have no reason to doubt the compelling evidence of the appellants in this regard.
61. The younger children are either at a local nursery school or attend Loggerheads Primary School. I heard that they had settled in well to school and had friends within the settled community. In the main, the older children are tutored at home³⁸.
62. In this case achieving a safe and secure home base in which all the children can thrive, both in terms of their overall health and educational needs, is a primary consideration. Living on the appeal site, as opposed to a life on the road³⁹, would greatly improve the living conditions of the children and maintain access to education⁴⁰. This does weigh heavily as a primary consideration in the balance of the decision⁴¹.

Whether the proposal represents intentional unauthorised development

63. As already detailed above the appellants did move on to the appeal site in the full knowledge that planning permission was required for the change of use of land from the wholesale nursery to a Gypsy site with four pitches. However, the appellants had owned the old nursery site for nearly three years before they took occupation. During that time, they had tried to engage with the planning system and had made two planning applications, one of which was withdrawn and the subsequent one refused in June 2018. The application the subject of this appeal was submitted around the time the appellants moved on to the appeal site.
64. The appellants made a strong case that their living conditions across two existing sites, in over-crowded conditions, with children with specific health needs had become intolerable. With no security of tenure, they were pressurised to move by others to a point they considered, with no where else to go, they had no choice but to move onto the appeal site. I am mindful that the appellants moved their families onto the site as the Pandemic progressed during 2020.
65. The appellants have carried out works to create a habitable environment but from what I saw at my appeal site visit none of these were such that they could

³⁷ The families are all registered with local doctors and have ready access to specialist health care where necessary.

³⁸ Home schooling is not an uncommon means of education in both the travelling and settled community alike.

³⁹ Which seems to be the only alternative.

⁴⁰ PPTS paragraph 13 c).

⁴¹ The best interests of the child must be considered first - Article 3(1) of the United Nations Convention on the Rights of the Child.

not be relatively easily reversed. I noted that the old nursery buildings were still in situ albeit deteriorating in condition.

66. A stable block was erected after the injunction had been put in place⁴².

However, whilst this is regrettable the wooden sectional structure could be easily removed and has an animal husbandry function associated with the cultural business of many of the Gypsy community.

67. I am satisfied that, considering the circumstances described by the appellants, as well as a lack of readily available Gypsy sites within the Borough, whilst intentional unauthorised development has been carried out, I afford this little weight in the balance of this decision.

Planning balance⁴³ and conclusion

68. At the onset of considering the issues in the planning balance I have borne in mind the duty placed on me within the Public Sector Duty. I have also considered the best interests of the children as a primary consideration.

69. Conflict with development plan policy and that of the Framework has been identified in respect of the impact of the proposal on the character and appearance of the countryside landscape. There would also be a negative impact in terms of shortcomings in respect of the conclusion that the scheme does not offer a real choice to residents to access sustainable modes of transport for the reasons set out above. In combination the total amount of harm would be significant and would weigh against the proposal.

70. On the other side of the balance is the benefit that the proposal would contribute to meeting unmet need and towards achieving a five-year supply of deliverable land for the provision of new Gypsy sites which is a significant material consideration.

71. The four families who have applied for planning permission to establish their homes on the appeal site present as actual need in the context of an agreed position of there being no alternative to facilitate their Gypsy way of life. The likely consequences of the lack of provision would be a serious interference with these individuals' rights to respect for private and family life and the home⁴⁴. This existence would also not be in the best interests of the children or the family units⁴⁵.

72. This settled base offers access to domestic facilities such as private washing and toileting, along with a family pitch and mobile home. This would maintain the traditional Gypsy way of life whilst providing space and facilities to provide care for those members of the family with health issues.

73. All of these matters, in combination, attract substantial weight in favour of the proposal sufficient to outweigh the identified harms. Consequently, for the reasons set out above, permanent permission should be granted subject to conditions. In these circumstances this decision would serve the best interests

⁴² Although like the caravans and sheds on the appeal site it is not in the location as shown on the site layout plan to be considered as part of this appeal, I do not propose to get into an impossible to resolve deliberation as to whether verbal permission was given by the Council for its erection.

⁴³ Hierarchy of weighting used - Considerable (at the lower end) – significant – substantial (at the upper end).

⁴⁴ Article 8 of the European Convention on Human Rights.

⁴⁵ At the onset of considering the issues in the planning balance I have borne in mind the duty placed on me within the Public Sector Duty. I have also considered the best interests of the children as a primary consideration.

of the children and the impact on the home and family life of the appellants and their families would be a positive one.

74. Consideration was given to whether a temporary permission would have been appropriate in this case. However, there is uncertainty about where and when future sites may be allocated⁴⁶. The Borough Council accepted that their estimate of adoption of the Local Plan in 2024 may have been subject to slippage. Albeit that work on the Local Plan had begun and that the review of the GTAA was to be prioritised this, in itself, would not translate into allocated and available sites nor would the final adoption of the Local Plan.
75. In this climate of uncertainty these families require a long term settled base to allow them to care for their children, supporting one another with ready and immediate access to necessary health services and educational facilities, including specialist services. These specific circumstances, in my judgement, tips the balance of this decision to that of a permanent planning permission. That permanence should be tempered by the imposition of a personal condition limiting occupancy to solely the appellants and their dependant families. As the appellants are accepted as having Gypsy status⁴⁷ it is not necessary to impose a condition limiting occupancy to Gypsy and Travellers.

Conditions

76. An agreed schedule of conditions was submitted by the parties and discussed at the Inquiry.
77. As indicated above, a permanent permission should be granted. However, occupation should be limited for the reasons set out above. Means and details of the restoration of the site once occupation ceases should be agreed in the interests of visual amenity. The number and type of caravans to be kept at the site should be restricted to limit the visual impact. As the submitted plan shows specifically the type and number of caravans proposed to be stationed on each pitch (a single static mobile home, one touring caravans and a day/utility room per pitch), a condition restricting the type of caravan should be imposed.
78. A condition requiring that the site be laid out and developed in accordance with the approved plans should be imposed to safeguard the satisfactory development of the site.
79. In the uncertainty of the appropriate means of drainage to ensure a suitable means of foul water disposal and surface water run-off⁴⁸ the submission and agreement of such details are a necessary prerequisite to minimise pollution and in the interests of general amenity.
80. In order to ensure that the appearance and character of the area is safeguarded conditions relating to the submission, agreement and implementation of a landscaping scheme, the limiting of the number of horses to be grazed on the adjoining pasture⁴⁹, the restriction of the use of the site

⁴⁶ Work on the new Local Plan has begun and a priority has been given to reviewing the GTAA but this in itself would not translate into allocated and available pitches.

⁴⁷ Accord with the definition as set out in Annex 1 of the PPTS

⁴⁸ Including details of the hardstanding within the site to be submitted, agreed and implemented in the interest of pollution control. This is also the reason for the imposition of a condition on the exclusion of power generators or fuel storage on the site.

⁴⁹ There is also an animal husbandry reason for this condition.

(no commercial use) and the stationing of commercial vehicles over a specified size limit are imposed.

81. Limitations on external lighting are necessary to minimise visual impacts and the character of the locality as is the control of walls, fences, gates, hardstandings and buildings.
82. The requirement to move the access gates, create a bound surface and maintain the visibility splays are all matters required in the interests of highway safety.

Overall conclusion

83. For the reasons given above and having considered all other matters, I conclude that the appeal be allowed subject to the conditions in Annex A.

Frances Mahoney

Inspector

ANNEX A

SCHEDULE OF CONDITIONS

1. The occupation of the site hereby permitted shall be carried on only by the following and their resident dependants: Dolphus and Leanne Clee, Thomas and Eleanor Clee, John and Dawn Wilson and Mark and Shelby Lee.
2. When the land ceases to be occupied by those named in condition 1 above the use hereby permitted shall cease and all caravans, structures, materials and equipment brought on to or erected on the land, and/or works undertaken to it in connection with the use, shall be removed and the land shall be restored to its condition before the development took place.
3. Within 4 months of the date of this decision details of the scheme to restore the land to its condition before the development took place (or such other restoration as agreed in writing by the Local Planning Authority) at the end of the period of the site being occupied by those permitted to do so, shall have been submitted to and approved in writing by the Local Planning Authority. These details shall include an implementation programme. The restoration works shall be carried out in accordance with the approved details.
4. Within 3 months of the date of this decision the use hereby permitted shall be laid out in accordance with the Site Layout Plan, Stable Building Floor Plan and Elevations Plan, and Proposed Amenity Block Plan, and the acoustic fence shall be erected in accordance with the Fence Detail Plan within the Acoustic Assessment. The existing nursery buildings shall be demolished and the resultant materials removed from the site. The existing close-boarded fence shall also be removed and the permitted post and rail fence erected.
5. No more than 8 caravans of which only 4 shall be static mobile homes as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 shall be stationed on the site at any time in addition to the amenity buildings.
6. The use hereby permitted shall cease and all caravans, structures, equipment and materials brought onto the land for the purposes of such use shall be removed within 3 months of the date of failure to meet any one of the requirements set out in (i) to (v) below:
 - (i) Within 2 months of the date of this decision full and precise details of the means of disposal of foul sewage shall have been submitted to the Local Planning Authority for its approval in writing. If a package treatment plant is to be utilised, the required details include a waste management and maintenance plan; the discharge outlet location and discharge disposal through a wetland or similar SuDs system. The approved foul drainage measures shall be fully implemented and the cesspit that is currently in use shall be decommissioned within 2 months of the approval date of the details. The approved waste management and maintenance plan shall be complied with in full at all times.
 - (ii) Within 3 months of the date of this decision full details of soft landscape works (Landscaping Scheme) shall be submitted to and approved in writing by the Local Planning Authority and these works shall be carried out as approved. These details shall include plans identifying the proposed planting; schedules of

plants, noting species, plant sizes and proposed numbers/densities where appropriate; and an implementation programme. The approved landscaping scheme shall be carried out in the first planting season following the written approval of the scheme. Details of the proposed boundary hedges as located on the Site Layout Plan shall be included within the landscaping scheme and a Hedgerow Management Plan shall be submitted to and approved in writing by the Local Planning Authority including a scheme for the implementation of the Plan which shall be adhered to at all times. The hedgerow should be stocked with indigenous species suitable to its countryside location.

(iii) Within 4 months of the date of this decision the hardstanding within the site shall either be underlain with an impermeable liner or replaced by an impermeable surface in accordance with details that shall have been submitted to and approved in writing by the Local Planning Authority. Such details shall include a surface water drainage plan setting out where the surface water runoff will be discharged to and if directed to a watercourse that it will be discharged through an oil interceptor, wetland, bio-retention feature or similar SuDs system. The surface water drainage plan shall include details for the implementation of the Plan which shall be adhered to at all times.

(iv) Within 2 months of the date of this decision the access gates shall be set back at least 15m from the carriageway edge.

(v) Within 2 months of the date of this decision the access drive shall be surfaced in a bound material for a minimum of 15m from the carriageway edge.

7. No power generator or fuel storage is permitted on site without the prior approval of the Local Planning Authority.
8. The area edged blue on the approved location plan shall be used for the grazing of a maximum of one horse at any time.
9. If within a period of five years from the date of the planting out of the approved soft Landscaping Scheme, any of the trees, hedging or other plants used which are removed, uprooted or destroyed or dies, another plant of the same species and size as that originally planted shall be planted at the same place, unless the Local Planning Authority gives its written approval to any variation.
10. No external lighting shall be installed on the site unless details of the position, height and type of lights have been submitted to and approved in writing by the Local Planning Authority. The external lighting shall be installed and operated in accordance with the approved scheme and no other external lighting shall be installed or operated. Existing lighting which does not form part of the approved scheme shall be removed within 3 months of the date of this decision.
11. The visibility splays as shown on the approved plans shall be maintained free of any obstruction over 900mm in height above the adjacent carriageway.
12. No vehicle over 3.5 tonnes shall be stationed, parked or stored on this site.
13. No commercial activities shall take place on the land, including the external storage of materials.

14. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any other order revoking and re-enacting that order with or without modifications), no sheds or amenity/utility buildings, or other buildings or structures, walls, fences or other means of enclosure other than those shown on the approved plans shall be erected on the site and no areas of hard surfacing installed, other than as hereby permitted.

INQUIRY DOCUMENTS LIST

1	Letter dated 13 November 2021 from Class Teacher Horton Lodge School
2	Appeal decision APP/P3420/W/20/3253033
3	Bundle of Judgements – Case No: HQ11X03539 – Sedgemoor District Council and Marie Hughes & ORS; Case No: CO/3346/2006 – Doncaster Metropolitan Borough Council v First Secretary of State and Angela Smith; [2008] EWCA Civ 1010 – South Cambridgeshire District Council v Secretary of State; (2001) 33 E.H.R.R.18 Chapman v United Kingdom
4	Opening statement for the Council
5	Local Development Scheme 2021-2024
6	Statement of Carolyn Unwin
7	Timeline of Planning Applications submitted
8	Closings of the Council
9	Closings of the appellants
Plan A	Site Layout plan relevant to application 19/00332/FUL

APPEARANCES

FOR THE COUNCIL:

Jack Smyth QC
Instructed by Daniel Dickinson
Head of Legal and Governance
& Monitoring Officer

He called

Elaine Moulton MRTPI	Development Management Team Leader
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Jemma March	Planning Policy Manager
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Paul Layman	Planning Enforcement Officer
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FOR THE APPELLANT:

Marc Willers QC
Instructed by Philip Brown
Associates

He called

Dolphus Clee	Plot 4 Blackbrook Nursery
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Thomas Clee	Plot 3 Blackbrook Nursery
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Mark Lee	Plot 1 Blackbrook Nursery
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Dawn Wilson	Plot 2 Blackbrook Nursery
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Philip Brown	Philip Brown Associates
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INTERESTED PARTIES:

Andrew Mainwaring	Local Resident
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