



Appeal Decisions

Inquiry held on 19-22 July 2022

Site visit made on 20 July

by Simon Hand MA

an Inspector appointed by the Secretary of State

Decision date: 9 August 2022

Appeal A Ref: APP/V3120/C/19/3243884

Greengate Bungalow, Cumnor Road, Filchamstead, OX2 9NT

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by MR FRANK SMITH against an enforcement notice issued by Vale of White Horse District Council.
- The notice, numbered VE17/648/A, was issued on 13 November 2019.
- The breach of planning control as alleged in the notice is without planning permission, the material change of use of the land for the siting of mobile homes used for residential purposes.
- The requirements of the notice are: (i) Stop using the Land for the siting of mobile homes used for residential purposes or for purposes incidental to such use. (ii) Remove from the Land all mobile homes sited thereon. (iii) Remove from the Land all materials arising from or otherwise remaining on the Land following the carrying out of the steps referred to (i) and (ii) above.
- The period for compliance with the requirements is: 6 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (c), (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
- Similar appeals have been made by Mr M McDonagh (B: 3243885) and Mr A McDonagh (C: 3243886)

Appeal D Ref: APP/V3120/C/19/3243889

Greengate Bungalow Cumnor Road, Filchamstead, OXFORD, OX2 9NT

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by MR FRANK SMITH against an enforcement notice issued by Vale of White Horse District Council.
- The notice, numbered VE17/648/B, was issued on 13 November 2019.
- The breach of planning control as alleged in the notice is without planning permission, the erection of a single storey building as a waste storage facility, the installation of a septic tank, the installation of external lighting, and the erection of 2m high gates and fencing to the front of the land facing Cumnor Road.
- The requirements of the notice are (i) Take down and remove from the Land the 2m high gates and fencing referred to in 3 above. (ii) Demolish or as the case may be dismantle the single storey building used as a waste storage facility referred to in 3 above and remove from the Land the materials comprised in its construction. (iii) Remove from the Land the septic tank referred to in 3 above. (iv) Remove from the Land the external lighting referred to in 3 above. (v) Remove from the Land all materials arising from the carrying out of the steps referred to in (i) to (v) above.
- The period for compliance with the requirements is: 6 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

- Similar appeals have been made by Mr M McDonagh (E: 3243890) and Mr A McDonagh (F: 3243891)
-

Appeal G Ref: APP/V3120/X/20/3261353

Greengate Bungalow, Cumnor Road, Farmoor, OXFORD, OX2 9NT

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by MR FRANK SMITH against the decision of Vale of White Horse District Council.
 - The application ref 19/V2509/LDE, dated 8 October 2019, was refused by notice dated 20 February 2020.
 - The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended.
 - The use for which a certificate of lawful use or development is sought is use as a single dwelling.
-

Decisions

Appeals A (3243884), B (3243885) and C (3243886) The Use Notice

1. The appeals are dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeals D (3243889), E (3243890) and F (3243891) The Operations Notice

2. It is directed that the enforcement notice is corrected by deleting "*the installation of a septic tank, the installation of external lighting,*" from the allegation and varied by deleting step (iii) from the requirements. Subject to these corrections and variations, the appeals are dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal G (3261353) The LDC

3. The appeal is dismissed.

Preliminary Matters

4. It was agreed at the opening of the Inquiry that the appellants' flooding evidence was sufficient for the Council to accept the issue could be overcome by conditions. However, they still maintained and in-principle policy objection which I will discuss below.
5. For the first notice that dealt with the mobile homes the ground (c) argument was a Mansi point that permitted development rights to store a caravan within the curtilage of a dwelling could not be removed. This is clearly a ground (f) argument as there is no dispute the use of the land as alleged did require planning permission.
6. For the second enforcement notice that dealt with the operations, there was no ground (d) for the storage building, but there was for the septic tank. It was later accepted by the Council that there was no evidence the tank had not been in place for 4 years and so could be removed from the allegation. There was also no ground (b) for the storage building as it was accepted that nothing

turned on exactly how the building was described. There was a ground (c) for the fences and gates as it was argued they were permitted development and for the lighting which was not development at all.

7. On the ground (a) for both notices it was agreed by the Council that if the number of caravans was limited to two, then there were no on-site amenity, parking, turning etc issues that could not be dealt with by conditions. It was also agreed the issue of need and supply of pitches could be dealt with by way of a round table discussion.

Background to the Appeals

8. The enforcement notices deal with an unauthorised mobile home site that sprang up on a parcel of land known as Eastwick. The LDC appeal is for a dwelling on the adjacent site known as Greengate Bungalow. The sites lie to the east of Farmoor reservoir within a straggle of development in the Oxfordshire green belt. Both sites are owned by Mr Frank Smith, although currently they are managed by Arthur McDonagh, who has an agreement to purchase the land if these appeals are successful.
9. Arthur McDonagh is from a large family of Irish Travellers and has his own gypsy pitch elsewhere in Oxfordshire. That pitch was subject to a now time-expired planning permission the future of which is currently being considered at a planning appeal. However, the intention of this appeal is to secure planning permission on the Eastwick site for a single pitch for his brother Frank McDonagh and his family. Once the notices were issued the Council obtained a court order to prevent more caravans coming onto the land. After that the mobile homes were reduced in number so that now there is just one on the site.
10. The LDC appeal is for the adjacent bungalow which it would seem was never granted planning permission originally and the use of which is under dispute.

Appeal G - the LDC for a Residential Dwelling

11. The building known as Greengate bungalow is of a simple construction, consisting of 4 rooms under a sloping roof. To the rear is a large lean-to, that has been in different states of repair over time, but currently the whole building has been refurbished and turned into a 3 bedroom (at least) dwelling. It has electricity and running water.
12. There is no dispute that Greengate bungalow is a dwelling for the purposes of planning law, in that it contains all the necessary facilities for day to day living, and that it has been in such a condition for many years. The issue is what actual use has it been put to. Again, there is no dispute that after Frank Smith purchased the site in 1976 his parents moved into the bungalow and lived there for many years. His father died in 1979 and his mother in 2013. Mr Smith's evidence was that in the last year or so, his mother was in and out of the bungalow due to ill health, sometimes staying at his brother's house.
13. I have no reason to not take this evidence on face value and a use as a dwellinghouse was established during that period. It is the Council's case that the use was lost because of a material change of use of the building to a communal facility to the mobile home park that was established on Eastwick in

- 2017, and that if the bungalow was originally a separate planning unit it then merged with Eastwick to become a single unit of occupation and use.
14. The history of the bungalow after 2013 is contested, although the appellant's argument is clear. During 2013 Mr Smith rented the bungalow to Jed Denton, who lived there until he went to prison earlier this year. The residential use has thus continued uninterrupted. I agree there is no need for Mr Denton to be there everyday, the use is already established and continuous occupation is no longer necessary, the issue is whether there was a different use in between. The key date is October 2019 as that is when the LDC was applied for. The question before me is whether the building, on that date, had an established use as a dwelling or not. Events after October 2019 might be interesting but are not directly determinative.
 15. The evidence for Mr Denton's occupation is a sworn declaration by him dated 3 October 2019 that he has been living there for more than 4 years up to that date. Frank Smith also gave evidence under oath that Mr Denton lived there, various tenancy documents dated August 2013, August 2014, November 2016 and August 2019 show this, and evidence from Bridget and Arthur McDonagh and Dr Murdoch back it up. Unfortunately Mr Denton himself wasn't able to give evidence as he is in prison and Arthur McDonagh is away travelling.
 16. Bridget McDonagh is Michael's wife and gave evidence at the Inquiry. She said Jed was living in the bungalow while she was on site in a mobile home. However, she and Michael didn't move onto the site until September 2020 and left in December, so she has no first-hand knowledge of the situation prior to 2019. Similarly for Dr Murdoch. His first visit to the bungalow was his second to the site and was sometime in 2020. Mr Denton wasn't there, but on that occasion and later on a third visit in 2021 there were personal possessions around and it appeared to be lived in. Mr Denton was on the site in December 2019 when he first visited, but there is nothing to link him to the bungalow. It would seem therefore that Mr Murdoch has no first-hand evidence of the use of the bungalow from before or on the date of the LDC.
 17. Mr Smith also accepted that due to his illness he hadn't visited the site for many years, though exactly when his last visit was is unclear. Once Arthur McDonagh took over in 2017 or 2018 he was responsible for collecting Mr Denton's rent and there is no evidence Mr Smith went there afterwards. He was clear that in the early years he personally collected the rent from Mr Denton and sometimes went in for a cup of tea with him. Other times Mr Denton was more elusive as he didn't have the cash to pay. So no-one was able to give evidence that Mr Denton was actually living there when the Council visited in 2018 and 2019.
 18. The Council's evidence is rather different. Their council tax records show that Mr Smith paid the council tax until 18 November 2018, when responsibility passed to John and Roxanne Jordan. This agrees with Mr Smith's recollection that he paid council tax until 2018. He didn't know who paid it thereafter. The tax department noted that they never received any actual payments from the Jordans and no-one knows who they are. It was speculated that Jed Denton sub-let the bungalow to them which is why no-one knows them. But this was during the time Arthur McDonagh was in control and as Mr Denton never paid Council Tax in the first place, he is unlikely to have insisted that his sub-tenants took over the burden. Arthur McDonagh said he thought the Jordans

lived in one of the mobile homes but Mr Denton may have sub-let the bungalow to them but that is contrary to his own evidence that Mr Denton lived there all the time. It is also unlikely that Arthur didn't know who was living in each residential unit when he was collecting rent from all the occupants. The issue of the Jordans suggests the whole story of what was going on at the site after 2017 is uncertain.

19. The Council also have photographs from two visits in September 2018 and April 2019. In 2018 the building seems to be empty. There are few personal possessions anywhere and no bed in the bedroom. The lean-to is a mess and contains a dumped mattress. In 2019 again there are few, if any personal possessions, although there is clearly some storage going on. Several white goods are stacked up in the lounge area and there are various other unidentified objects lying around. However, the Council argue the building is being used communally. They point to a dart board in the lounge (and the lack of any furniture), a bike being repaired and a coin operated washer and dryer in the kitchen. The Council officer was also told this by the site manager. It was suggested Mr Denton may have installed the coin-operated washer to help out the residents in the mobile homes (which by now were stationed on Eastwick), or that it may not have worked, or was just stored there, but this all seems either unnecessarily complicated or unlikely to me. There is no suggestion that anyone lived there at all in either set of photographs and a coin-operated washer is strongly suggestive of a communal use.
20. Turning to Jed Denton himself, he appears to be a somewhat unreliable witness. In 2014 there is a report of him going to prison and at that time his address is given as Underhill Circus in Barton, a large housing estate in Oxford. Although by then he is supposed to be living at Greengate. There is also evidence of a short-lived involvement in a company called Charlan Construction where his address is again given at Underhill Circus in early 2019. Previously, in 2018, he was involved with Civils Resourcing Ltd and has an address at Underhill Circus and he is still, apparently, involved with Jed Denton Holdings, again with a home address of Underhill Circus as at 3 December 2018.
21. The only mention of Mr Denton at Greengate is an extract from the newspaper website from April 2022 about Mr Denton's most recent imprisonment saying his address is Cumnor Road, Filchampstead, which I accept is bound to refer to the appeal site; and Arthur McDonagh's comment to Mr Murdoch that he was bailed to Greengate, but this long after the 2019 date.
22. Pulling this altogether, the only evidence for Mr Denton living at the site after 2017 is a single tenancy agreement, his own statement and that of Arthur McDonagh. On the contrary there is photographic evidence of a lack of anyone living there, alternative addresses and other people paying the Council Tax. There is nothing to suggest he wasn't there up to 2017, when Mr Smith says he actually visited him there, but otherwise the evidence suggests to me that on the balance of probabilities he didn't live at Greengate once Arthur McDonagh took over at least until after 2019. This also throws into doubt the veracity of the testimony of those who did say he was living there the whole time.
23. I now need to look at the question of the planning unit and what was happening on Eastwick. After the two sites were purchased by Mr Smith, there is actually no evidence of them having a separate existence. He says Eastwick was used as a wood yard and run by one of his brothers, who died and another

- brother took over but was not up to the task, hence the desire to sell it to Arthur McDonagh. When Mr McDonagh took over he cleared the detritus of the woodyard away and installed, eventually, nine mobile homes, occupied by people who were not necessarily travellers. There is a suggestion they were east European workers, possibly employed by Mr McDonagh in his building company, but there is little evidence either way.
24. Aerial photographs provided from 2006 and 2009 show the Eastwick site filled with vehicles, structures and piles of stuff. There is little change between the photographs and no evidence of any demarcation between the bungalow and the yard. Photographs from 2018 appear to show one large yard with a pile of old furniture outside the bungalow which looks as if it has been cleared out. The yard is full of mobile homes including one in front of the bungalow and another right next to it. The same is true of 2019 photographs.
25. The evidence therefore suggests that at least from 2017 onwards the two sites were operated as a single planning unit. If the bungalow had an established use as a dwelling on its own plot in the past, by now this had become a mixed use of dwelling and mobile home site. However, what really seems to have happened is the residential use ceased and the use as a communal building and store linked to the mobile homes began. So the whole plot was a single planning unit in a single use which was not a dwelling. This is the closest fit to the evidence and explains why a coin-operated washer was installed along with a dart board and also explains why the site manager told the Council's enforcement officer that it was in communal use.
26. A brief look at the more recent history of the site supports this view. In September 2021 the whole site was used for car sales. A single mobile home remained on the site and this is now lived in (but possibly not then), but again no-one is sure who by. The bungalow has a large AA flag outside advertising insurance. The Council did not visit the bungalow, but neighbours said it was used as an office for the car sales. What little evidence can be gleaned from the photographs suggests this is more likely than as a dwelling, but then in June 2022 it was completely refurbished and it seems Mr Denton was back in residence in time to go to prison.
27. Pulling all this together I consider that on the balance of probabilities the Council were correct not to issue an LDC in October 2019 as the use as a dwelling had ceased, the planning unit had changed and a new use across both the enforcement notice sites had been introduced.
28. There is no enforcement notice action against the bungalow so there is no right to revert to the last lawful use. The appellant suggested this was somehow a weakness in the Council's case and that they were trying to have it both ways, but they are not obliged to enforce against a use and their explanation that the communal use would cease once the mobile home use ceased is credible. The Council's case has always been the dwelling use ceased once the mobile homes came onto the land and the building was then used a communal facility ancillary to the mobile homes. There is thus no need to enforce against the use of building as any ancillary use will cease once the primary use ceases. No-one is arguing the building isn't immune from enforcement but it now does not have a lawful use.

29. The appellant also argued because the bungalow was not included in the enforcement notice then s173(11) applies and it is granted planning permission by default. However, as is well known, s173(11) only applies to matters that the Council could have enforced against and that is limited to matters in the allegation. The fact that the bungalow is mentioned in the officer's report recommending enforcement action is really quite irrelevant and s173(11) does not apply.

Appeal A - Outstanding Matters on the First (Use) Enforcement Notice

30. The 'Mansi' argument falls away as there is no dwellinghouse so there are no permitted development rights to be trampled on. I shall deal with the ground (a) and (g) below.

Appeal D - The Second (Ops) Enforcement Notice

31. It was agreed the septic tank should be removed from the notice and the storage building could remain if planning permission was granted for the gypsy site. I agree that the stringing of a single light in a tree is not development. There was mention of other lights but I have no evidence for them. However, the lighting facilitates the use as a mobile home park and so while it should be removed from the allegation can remain in the requirements.
32. The fences and gates front the site next to the highway. Class A of Part 2 of the GPDO allows the construction of a fence or gate up to 2m tall as long as it is not adjacent to the highway. For those that are adjacent to a highway the maximum height is 1m. It was suggested the fences were 2m tall but the gates were taller and could be reduced to 2m if it were found they were not adjacent to a highway.
33. There is no dispute the road is a highway, the question is whether the fences and gates are adjacent to it. They are set back from the road edge by a metre or so and separated from the kerb by grass or gravel. Whether something is adjacent to a highway is a matter of fact and degree. In this case the fence and gates clearly are adjacent to the highway, there is nothing intervening and they are relatively close to it. Therefore they are not permitted development and require planning permission.

The Ground (a) appeal

34. The ground (a) appeal is for a single pitch gypsy site to be occupied by Michael McDonagh, his wife Bridget and four children, aged 19, 15, 12 and 7, the latter two still being at school. I shall discuss their specific personal circumstances later. It was disputed by the Council that they meet the definition in Annex 1 of PPTS so the first issue is whether they are gypsies or not.

Gypsy status

35. Annex 1 defines gypsies and travellers, amongst other things, as "*persons of a nomadic habit of life....including such persons....who have ceased to travel temporarily*". Paragraph 2 of the annex suggests consideration should be given to whether they were previously nomadic, the reasons for ceasing travelling and whether they intend to return to travelling in the future, if so how soon and in what circumstances.

36. The Council pointed out that Michael McDonagh's mental health issues meant he couldn't travel at the moment. His attempts to set up a grab hire business had foundered because he couldn't get an HGV licence due to his illness and was unlikely to be able to do so in the future. The fact that he said he wanted to resume travelling was all well and good, but he clearly couldn't.
37. There is no dispute that Mr McDonagh did travel in the past but had to stop travelling when his health issues mounted after the death of his father. Bridget McDonagh's testimony is that the family lived in a house for 6 years after that and travelled only for social and health reasons. Following several suicide attempts they went to Eastwick in September 2020. They were forced off that site as the mobile home they were in was leaking and the court order prevented any new caravans from being brought onto the site. They are currently now doubling up on a site in Hampton Poyle owned by James Smith.
38. Mrs McDonagh's evidence was that during the stay at Eastwick Michael bought the grab hire lorry and got his HGV licence. That licence was subsequently taken away by DVLA because of his health issues. She did not know what happened to the lorry. It was at this time Michael created the company 'Oxfordshire Grab Hire Ltd', helped by Mr Denton as Michael can't read or write. This is not quite what the documentary evidence suggests. Oxfordshire Grab Hire was incorporated on 1 January 2021 and registered to Greengate Bungalow, although the paperwork could well have been completed while the McDonagh's were briefly on the site. The letter provided from the DVLA is headed "medical enquiry into your fitness to drive" and says that an application for a lorry licence has been made and rejected due to health problems, as a result Michael's car licence is also revoked. This suggests he never got an HGV licence in the first place. But the letter is dated March 2022, so long after the grab hire business was set up.
39. All-in-all, and regardless of the actual dates, I have no reason to doubt that a grab hire business was set up and then abandoned due to health problems. Whether Michael can return to that business or travelling generally would seem to be entirely down to his health. It is speculation that he won't ever recover sufficiently to work again, but there is clearly a potential for him to get better over time and so be able to return to a nomadic way of life. I do not think there has to be concrete evidence of a definite date in the future, as long as there is the potential and the will to do so it would seem to me to be difficult to argue the cessation in travelling is not temporary. In my view therefore the proposed occupants of the site are gypsies for the purposes of PPTS.

CP27 and sustainability

40. The pertinent local plan policy for gypsy sites is CP27. The policy sets criteria to meet the identified need of 13 pitches. The later Part 2 Plan (adopted in 2019) updates the number of pitches required following the 2017 GTAA and the Council now only need to find 1 pitch. They are therefore not looking to allocate any sites for Gypsies and Travellers but rely on windfalls and use the criteria in CP27 as a guide.
41. I accept that the Part 1 Local Plan was adopted in 2016 after the publication of PPTS and no arguments were raised at the local plan inquiry concerning its conformity with the policies of the PPTS. Similarly no criticism was made at the part 2 local plan inquiry. Nevertheless, it is oddly worded. It does appear to at

- (iv) to introduce a blanket ban on sites in the green belt, whereas national policy is as outlined below. Despite the very strict controls on development in the green belt it can be allowed where there are very special circumstances.
42. More relevantly at (vii) it requires any sites to be within “*reasonable walking distance of key local services including a primary school, a local shop and a public transport service*”. I agree that it is sensible to encourage development that is close to services and this fits with paragraph 13 of PPTS that requires sites to be sustainable. However, this kind of specific locational restriction is not a reasonable way to deal with rural gypsy sites. There is a considerable raft of decisions by Inspectors and the Secretary of State that accept rural sites may not be within walking distance of any services, never mind a ‘reasonable’ walking distance. Sustainability in the PPTS has three legs, economic, social and environmental and should be considered in the round.
43. The site is not within walking distance of any services, although it is next door to a private nursery, but is close (within a mile and a half) to Farmoor where there is a shop and a bus stop. The two youngest children are in 2 different schools, and I note the nearest is 7.5 miles away and the other a further 3.5 miles on. It is not therefore a particularly well located site but nor is it contrary to any of the criteria in paragraph 13 of PPTS. Nor do I think the site is in “open countryside that is away from existing settlements”. It is within the gappy straggle of buildings that make up Filchampstead and no argument was made that this was not a settlement. It is not therefore contrary to paragraph 25 of the PPTS. It is strictly speaking contrary to criterion (vii) of CP27, but I shall give that little weight due to the overly restrictive wording of the policy.

The Green Belt and the local area

44. The site lies in the green belt and is inappropriate development. This should only be allowed if very special circumstances can be identified. The lawful use of the site would seem to be agriculture, or at least there are no lawful uses for Eastwick that allow for buildings or structures. Therefore the stationing of 2 caravans, one a mobile home and associated domestic infrastructure, including the retention of the storage building that is already on the site would harm openness. The NPPF states that great weight should be given to any harm to the green belt.
45. Policy CP27 requires gypsy sites not to have an adverse impact on the character of the area. Filchampstead is a hamlet consisting essentially of a single road of houses and a straggle of development on the west side of Cumnor Road beside Farmoor reservoir. In between the developments is plenty of open space with fields on the opposite side of the road and an area occupied by vehicles and farm machinery. To the north is a nursery, and more open fields sandwiched between the reservoir and the road, with a car park for visitors to the reservoir, a boat park and further north a sewage works, discretely hidden by trees. In other words this is typical of a cluster of small developments within the open countryside. Adding to the straggle of development would merely help to consolidate it and, albeit in a small way, reduce the attractiveness of the countryside. This is contrary to CP27(vi).

Supply and need for gypsy sites

46. The Council rely on the 2017 GTAA undertaken by ORS. This was a joint project with a number of other Oxfordshire authorities. For the Vale of White Horse it covered 2017-2032 which is one year longer than the local plan period and found there was a need for only one pitch within the plan period. This updates CP27 which found a need for 13 pitches. The findings were adopted in the Local Plan Part 2. This was endorsed at the local plan inquiry and at an appeal in 2018¹.
47. The appellants are unhappy with the GTAA for a number of reasons, but their overriding issue was that their criticisms of methodology had in fact been taken on board by ORS and more recent GTAA's therefore produced a higher figure for need for gypsy sites in any particular location. This was supported by detailed evidence from the Havering GTAA where the local plan inspector was not satisfied as to its robustness and when re-considered a year later in 2019 the numbers of policy compliant gypsy households discovered increased from 82 to 136. A 2019 South Oxfordshire² appeal decision was also produced where the GTAA was criticised by the Inspector.
48. I have considerable sympathy with the appellants criticisms of the GTAA. Some of this centred on the vexed issue of identifying policy compliant gypsies. It did seem the wording of the questionnaire was likely to exclude some whose travelling was primarily to fairs, which is acknowledged to be part of the nomadic way of life. It also seems that taking 10% of the unknowns and assuming they are policy gypsies leads to an underestimate. 30% would seem to be the more accepted figure. The Council argued that either way a 30% increase on 1 (which is the figure of pitches required) would not even lead to a second pitch being required, but that does not seem to me to be correct. Out of 38 gypsy households identified in the District, the policy status of 25 were unknown. The original 10% uplift would make that 5. Whereas 30% of 25 is 7.5 giving a total of 10.5 households who are policy compliant. If the original 5 households gave rise to a future need for 2 pitches, then 10.5 must at least double that to 4.
49. Other criticisms were based on the lack of information about incoming gypsies from neighbouring authorities. Given this was a joint GTAA there was a missed opportunity to analyse this. Frank McDonagh's family for example are currently living in a neighbouring District but also do not seem to have been picked up by the GTAA at all. In 2017 they were in bricks and mortar in Oxford but wanting to get out. Dr Murdoch's opinion that there were three unauthorised sites in the district that also do not appear in the figures was unchallenged. There was also the fact the GTAA does not plan for non-policy gypsies. Setting aside the issue of their desire to live in a caravan still being a protected characteristic it was true that by not including them the vacancy figures were skewed. By assuming all vacancies were available for policy gypsies it ignored the fact that they were equally available for non-policy gypsies. The effect of that is there are likely to be less vacancies for the policy gypsies than the GTAA assumes.
50. Finally, the GTAA is now more than 5 years old. The final report is dated June 2017 but relies on fieldwork from earlier in the year. The Council have

¹ APP/V3120/W/17/3181653 Hearing March 2018

² APP/Q3115/W/16/3156409 etc. Inquiry June 2019 South Oxfordshire are part of the consortium that produced the same GTAA used by VoWH DC

commissioned an updated GTAA but that has been held up by Covid and by the need to fit in with the Local Plan cycle. It is hoped it will be published in the Autumn. How likely it is that this timetable will not be delayed is unclear but, in my experience, it is almost certain.

51. Taking all this together it does seem to me the Council have been unduly complacent in relying on a figure of one pitch for their entire need up to 2032. There is clearly a greater demand from gypsies than for 1 pitch. This and the lack of an up-to-date assessment does suggest that the Council cannot currently demonstrate a 5 year supply of sites to which I shall give weight.
52. There was some discussion about a planning application by a Michael McDonagh for a pitch at a site in Hampton Poyle. It turns out this is a younger cousin, Michael Francis McDonagh, whereas our Michael has Paul as his middle name. Passports were provided to demonstrate this. This confusion was compounded as our Michael is nicknamed 'Francie', and when Jed Denton helped fill out the forms for the short lived grab hire company it was in the name of Michael Francis McDonagh. This does seem to be an honest mistake as the date of birth and address is correct for Michael Adam and there is no suggestion that Michael Francis has ever had a connection with Greengate bungalow. Consequently, and regardless of the policy issue, it was agreed there was no alternative site that could be identified for Michael McDonagh's family so they will have nowhere else lawful to go if the appeal is dismissed. This also carries considerable weight.
53. Nevertheless, the Council pointed out only 12% of the District was green belt. There was therefore no pressing need to develop this particular green belt site.

Personal circumstances

54. There are four children on the site, the eldest is 19 and according to Mrs McDonagh suffers from mental health problems, the next is 15 and is not at school as she suffers from ADHD and is home tutored as they cannot get help without an address. The younger two are 12 and 7 and go to different schools in Oxfordshire. Michael McDonagh suffers from depression and has tried to commit suicide, at least twice. The family are currently on a plot owned by James Smith in Hampton Poyle, as he is away travelling but cannot stay there when he returns.
55. Although I have no doubt the outline of this true there is very little documentary evidence. There are letters from the two younger children's schools confirming their attendance and a list of medical issues produced by Hedena Health, a local group of health centres in North Oxfordshire. However, the references to mental health issues are most recently from 2013. A recent letter from the DVLA references health issues, but that is concerned more with the effect of medication on his ability to drive rather than the illness itself. The lack of any supporting letters from a doctor is unusual, especially given the apparent seriousness of his illness. There is no information about the older two children. I also note that Michael McDonagh is registered with a GP and does receive treatment for his various ailments despite the lack of a permanent base.

Other matters

56. The appellants argue the site is previously developed land. To be clear the site we are talking about here is Eastwick, as this is the land to which the ground (a) appeal relates and not the site of the bungalow. The definition of previously developed land is quite clear in that it has to have been occupied by a permanent structure which Eastwick was not. It may have been occupied by a railway caravan in the distant past but even if that was a permanent structure, which is unclear, there is no trace of that now and where the remains of any previous structure have blended into the landscape that land is excluded. In my view therefore the site is not previously developed land.
57. The Council accepted the flood risk could be dealt with by condition but argued that even so there was a failure to abide by flooding policy. This was because the appellant did not carry out the sequential or exception tests. Given their agreement that flood risk could be dealt with this was a surprising claim. The sequential test is clearly passed as there are no alternative sites that are "reasonably available" to use the phrase from paragraph 162 of the NPPF. Given that, the exception test is two-fold, firstly are there wider sustainable benefits to the community and secondly if there are will the development be safe for its lifetime. The wider sustainable benefits test would be met by a finding that planning permission ought to be granted and the use of conditions make the development safe for its lifetime. There is thus no conflict with flooding policy that needs to be taken into the planning balance.

The planning balance

58. The best interests of the children must be taken into account as a primary issue and clearly a stable base would be of benefit to them, although I note the two younger ones are in school, despite the family's recent travails. Michael McDonagh would also obviously benefit from the reduced stress of having somewhere permanent to live. I accept they have nowhere lawful to go if they cannot stay at the Hampton Poyle site. However, as the Council point out that does not mean they need to stay in the green belt. The history of the site here is instructive. Arthur McDonagh seems to have been in control of the site since 2017 but did not offer his brother a place there, despite the evidence suggesting that Michael and his family were not happy living in the house in Barton. In fact Arthur filled the site with mobile homes that he rented out to anyone. It wasn't until after the court order was obtained that the site was more or less cleared and Michael and his family moved in. That does raise a question as to how much in need of a pitch they were in the first place. Neither Arthur nor Michael gave evidence at the Inquiry so what actually happened at the site remains somewhat of a mystery.
59. Nevertheless, the proposed occupiers' human rights under Article 8 are engaged and I recognise they have a right to a private life and a home. Any interference with this right would have to be proportional. Similarly the prospective occupants have protected characteristics that trigger the Public Sector Equality Duty and I am aware of the need to have due regard to this.
60. To sum up, I must weigh the harm to the green belt, both in policy terms and harm to openness which attracts great weight and to the character of the area to which I attach lesser weight. Balanced against that are the personal circumstances outlined above, the lack of a 5 year supply of pitches and the

lack of an alternative site. However, as explained above, I have some doubts as to some of the evidence provided and to the immediacy of the needs of the proposed occupiers that require them to stay in this particular sensitive location. Consequently, despite taking into account the best interests of the children, the McDonaghs' human rights, their right to a home and a family life, their right to pursue a travelling lifestyle and the Public Sector Equality Duty, I do not find there are very special circumstances in this case that outweigh the serious harm to the green belt and the other harms I have identified and the interference with their human rights is proportional.

61. Conditions were discussed in detail, and the permission would be a personal one for Michael McDonagh and his family, but that was the basis on which the whole appeal has been made. No case was made that might be a suitable site for a general gypsy site and it is on the basis that it would be personal to the occupying family that I have considered the evidence above. The potential for the imposition of conditions therefore does not affect the outcome and the appeal on ground (a) fails.

The appeals on Ground (g)

62. The large scale mobile home use has already ceased. A single unit remains on site and is apparently rented out to a person or persons unknown. No evidence has been provided about their circumstances so I have no reason to assume that the 6 months provided for in the notice would be insufficient for them to find somewhere else to live. As to the fence and gates, lighting and the jerry-built storage building, they should all be easily removed within 6 months. There is no case to extend compliance period. The appeal on ground (g) fails.

Simon Hand

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Alan Masters – of counsel
He called
Frank Smith
Bridget McDonagh
Dr Angus Murdoch

FOR THE LOCAL PLANNING AUTHORITY:

Robert Green – of counsel
He called
Ryan Hunt
Jeremy Peters

DOCUMENTS

1. Statement by Arthur McDonagh
2. Statement by Bridget McDonagh
3. Council's opening
4. Appeal Decision APP/C1435/C/18/3196889 etc
5. Cutting from Oxford Mail
6. Suggested conditions
7. Aerial photographs from 2006 and 2009
8. Letter from DVLA
9. List of site visits undertaken by the Council
10. local planning authority's closings
11. Appellants' closings