



Appeal Decision

Inquiry held between 2 and 8 August 2022

Site visit made on 5 August 2022

by Louise Crosby MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17th August 2022

Appeal Ref: APP/W0340/W/22/3292939

Land at Ermin Street, Lambourn Woodlands, RG17 7TR

- The appeal is made under section 73A of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr R Clark against the decision of West Berkshire District Council.
 - The application Ref 21/02045/FUL, dated 22 July 2021, was refused by notice dated 26 January 2022.
 - The development proposed is the change of use of land for the siting of 1 mobile home and 1 touring caravan.
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Decision

1. The appeal is allowed and planning permission is granted for the proposed change of use of land for the siting of 1 static caravan and 1 touring caravan at land at Ermin Street, Lambourn Woodlands, RG17 7TR in accordance with the terms of the application, Ref 21/02045/FUL, dated 22 July 2021, subject to the conditions in the schedule attached to this decision:

Applications for costs

2. It was agreed at the Inquiry that applications for costs by both parties could be made in early September, in writing. These applications will be the subject of separate decisions.

Preliminary Matters

3. The appellant has submitted a signed Unilateral Undertaking (UU) which would secure a contribution of £10,963.00 towards the installation and management/maintenance of off-site ecological compensation measures. As a result, the Council are not defending their fourth reason for refusal which relates to the lack of an extended Phase 1 ecology habitat survey to determine the impact of protected species and any necessary avoidance or mitigation measures. This study was provided as part of the appeal process and led to the agreement of the UU.
4. This reason for refusal also refers to a lack of information to demonstrate that an integrated water supply and drainage strategy can be provided for the site. It is now agreed that this can be overcome by a planning condition. I am satisfied that the fourth reason for refusal can be resolved through the combination of a condition and the UU.

5. It is agreed by both main parties that the appellant's family unit meets the definition of 'Traveller' as set out in Annex 1 of Planning policy for traveller sites (PPTS) and I agree.
6. The change of use has already taken place and when I visited the site there was a static caravan and a touring caravan on the site. Additional development has also taken place at the appeal site that did not form part of the planning application which is the subject of this appeal. I shall deal with the appeal based on what was applied for by the appellant and considered by the Council when determining the planning application.
7. The main parties agree that the site constitutes previously developed land and based on the information before me I concur. I shall refer to the mobile home in my decision as a static caravan.

Main Issues

8. The main issues are:
 - i) whether the appeal site is a suitable location for the proposed development, having regard to local and national policies;
 - ii) the effect on the living conditions of the occupants of the site as a result of noise disturbance;
 - iii) the effect of the proposal on the character and appearance of the area and whether it would conserve and enhance the landscape and scenic beauty of the North Wessex Downs AONB;
 - iv) whether there are material considerations which exist that outweigh the conflicts with the Development Plan and any other identified harm resulting from the appeal proposal.

Reasons

Sustainable Location

9. The site is located alongside Ermin Street, approximately 2.1km from Baydon and around 3.7km from Lambourn. The site is not within walking distance of public transport stops. Ermin Street and the road network between the site and these 2 nearest settlements consists of country type roads with no public footpaths alongside them. Whilst cyclists will use these roads, they are not very wide and would not be safe for children to cycle on.
10. In many places the speed limit is 50mph, but traffic tends to drive slower because of the nature of the roads. Having driven on these roads I find that it is highly likely most trips from the site to access services are likely to be by private car albeit the distances to the nearest settlements are relatively short. However, there is a good public footpath network which is accessible from the site and could be used for recreational purposes.
11. Whilst paragraph 25 of PPTS advises that local planning authorities should very strictly limit new traveller site development in open countryside that is away from existing settlements, it is quite usual for gypsy and traveller sites to be located away from settlements to some degree. Land within or next to settlements is rarely available or affordable to gypsies and travellers, especially

in high value areas such as West Berkshire. The ability to access public transport and get about on foot or by bicycle varies, but in my experience this site is similar to many gypsy and traveller sites in terms of its accessibility.

12. West Berkshire Core Strategy (2006-2026) (CS) policy CS7 sets out several criteria to be used in determining planning applications. Some of these are relevant to the consideration of this issue, in particular criterion 1 which seeks to ensure that sites have safe and easy access to major roads and public transport services and criterion 2 which requires easy access to local services including a bus route, shops, schools and health services.
13. The site does have safe and easy access to major roads, including the local road network and the M4 motorway, but as set out above it does not have access to public transport without first driving to a bus stop or train station. The site also has easy access to local services, but this would require a car journey to get there. The common issue here is the lack of access to public transport without first undertaking a car journey. As such the proposal only partially meets the relevant criteria of policy CS7.
14. Turning now to policy TS3 of the Housing Site Allocations DPD (2006-2026) (DPD) which in my view is applicable in relation to allocated sites and windfall sites, such as this one given the supporting text at paragraph 3.19. Also, the DPD was adopted in 2017 and so after the current version of PPTS, unlike the CS. The most relevant criterion of this policy seeks to ensure that measures are included to improve accessibility by, and encourage use of, non-car transport modes.
15. It also requires that these measures should be set out in a Travel Plan for the site and that internal walking routes are identified along with ways in which they can be linked to existing routes, including the Public Rights of Way network. In addition, there is a requirement to improve external routes to services and facilities. Because of the lack of public footpaths (other than across fields or along green lanes), and public transport within walking distance of the site the proposal fails to accord with policy TS3.
16. Overall, I find that the site is not in the most sustainable location such as on the edge of a settlement, but for the reasons set out above the likelihood of gypsy and traveller sites being in such a place is very slim. In terms of gypsy and traveller sites the location of this site is usual, although access to a bus service within walking distance of the site would be preferable. Whilst the children would need to be driven to anywhere they wished to go beyond the site this is not unusual for children living in rural areas in the settled community due to a lack of regular public transport services in such areas. I attach modest weight to the lack of access to sustainable modes of transport within walking distance of the site and the conflict with relevant CS and DPD policies.

The effect on the living conditions of the occupants of the site as a result of noise disturbance

17. It is the noise from the M4 motorway that concerns the Council. Dealing first with the outdoor amenity space, both acoustic experts agree that the best which can be achieved is 59dB LAeq 16hr without additional acoustic screening; at the side of the caravan away from the motorway, where the door into the

caravan is located and the family has a table and chairs for sitting out. This is 4dB above the "upper guideline of 55dB in section 7.7.3.2 of BS8233:2015.

18. When I visited the appeal site it was a Friday morning. The motorway was extremely busy with normal daytime traffic as well as people driving to their summer holidays. I observed that external noise within the site and particularly beyond the acoustic shadow of the caravan was loud and would not be pleasant to spend long periods of time outside in. That said I probably heard it at its worst and there will be times when it is much quieter, particularly during the evenings and at night.
19. Turning to consider the internal noise levels, the appellant's static caravan pre-dates 2015 and so is unlikely to have been constructed to a standard that would meet BS3632:2015. The appellant is in the process of purchasing a new BS3632 compliant static caravan, but no information was available about when this would be delivered. It was agreed that it would be very expensive and impractical to adapt the existing one to meet BS3632.
20. When I visited the site, I went inside the existing 'non-compliant' static caravan and sat in the lounge area. There were no other sources of noise at the time inside the caravan such as a TV, music playing or activities taking place such as cooking. I could hear the motorway road noise with the windows closed. In my view the noise levels were not unduly harmful for a short period however it would become quite difficult to tolerate for long periods of time, especially if trying to carry out a quiet activity. This would reduce to a more acceptable level when the appellant has his new static caravan and particularly if there were internal noise of some sort.
21. With the windows open the noise increase was very noticeable but still far less than when outside and this would become less noticeable when people are talking or a television is on, for example. This noise level could also be reduced by opening windows on the side of the caravan away from the motorway.
22. The most difficult situation would be on a hot evening when trying to sleep with windows open, but at such a time it is highly likely that the traffic levels on the motorway would be significantly less than on a Friday morning in the height of summer and hence far less noisy. Indeed, I have observed many new housing developments being constructed as close or closer to motorways in recent years. Whilst they will have measures to reduce noise to acceptable levels in habitable rooms and provide some ventilation, many people choose to sleep with windows open, particularly during hot weather.
23. It was agreed at the Inquiry that the noise could be reduced to provide a better acoustic environment for the static caravan and the amenity space with the introduction of a 2.4m high acoustic fence system which would be wrapped around the rear and part of 2 sides of the site, as shown in figure 1 of the Council's rebuttal proof on noise. This could achieve an acoustic attenuation of approximately 15 dB. The current non-acoustic fence is around 2m high. Because of the site's location in the AONB the suitability or otherwise of such a fence in visual amenity terms needs careful consideration. I shall deal with this under my relevant main issue.
24. Noise levels inside the touring caravan would be far more harmful due to it being constructed of more lightweight materials. However, it was agreed that

a planning condition could be used to control the use of the touring caravan for sleeping purposes. I am satisfied that the new 3 bedroom caravan could accommodate all of the appellant's family for sleeping purposes.

25. Overall, I am satisfied that the new static caravan along with an acoustic fence would provide adequate noise attenuation in the static caravan with the windows open or closed as well as outside in the amenity space and that a condition would not be necessary or reasonable to require mechanical ventilation with both of these measures in place. That would not prevent the appellant buying such equipment if he felt it necessary, however that would be his personal choice.
26. The acoustic fence would in theory be contrary to PPTS paragraph 26 d) which discourages the use of high fences and walls to enclose a site, giving the impression that the site and its occupants are deliberately isolated from the rest of the community. However, a fence up to 2 metres high could and has been erected here in any event and trees and hedges could be grown up to any height. Indeed, the site is already well enclosed in some places by mature boundary trees and hedgerows.
27. So, with a new static caravan and a 2.4m high acoustic fence I am satisfied that the proposal would provide suitable living conditions for the appellant and his family and accord with CS policy CS7 in so far as it seeks to ensure provision is made for adequate levels of residential amenity. Without the acoustic fence, that would not be the case. I shall consider the acceptability of the fence in visual amenity terms next and in the overall planning balance.

The effect of the proposal on the character and appearance of the area and whether it would conserve and enhance the landscape and scenic beauty of the North Wessex Downs AONB

28. It is common ground between the main parties that the appeal site lies within the North Wessex AONB and within open countryside for planning policy purposes. It is also agreed that the AONB covers around 74% of the district.
29. Dealing first with the character of the area, the site is located around 160m from the M4 motorway which is set at a higher level than the appeal site. Not far from the site is a large concrete footbridge/bridleway over the motorway. Closer to the site is Zoe's Farm which is located on lower ground than the appeal site and comprises of a number of equestrian related buildings, including a large L-shaped stable building, a lunge ring and grass paddocks.
30. To the north of the appeal site, close by, is another large L-shaped stable building. In the wider area, there are numerous isolated dwellings with domestic curtilages, farms and substantial equestrian uses. On the opposite side of the motorway is Membury solar farm and slightly further afield is Membury motorway service area and Membury communications mast. So, the surrounding area does contain development of varying types and scales which define the character of the area.
31. Indeed, part of the Council's description of the condition under the category of appeal site character in their LVIA appendices is as "part of paddocks, horsey culture has been identified as degrading character of landscape within WBLCA 2019". The site lies within or on the edge of a number of national and local landscape character areas. The site is on the boundary of two landscape types

- in the North Wessex Downs AONB Integrated Landscape Character Assessment 2002 which also describes the M4 as having a major visual and noise impact (para 9.41).
32. Within the West Berkshire Landscape Character Assessment, the site lies within LCA WD1 Shefford Wooded Downland where one of the main detractors is described as the noise and pollution created by the M4. So whilst the site and the surrounding area has many positive attributes described in the various landscape character assessments, the area along the M4 corridor, where the site is located is seen as being of lower value due to the presence of the motorway and other development such as the motorway services. The Council's evidence acknowledges that the AONB in this area is degraded by the M4 noise and equestrian culture.
33. In addition, the appeal site lies within 'LCA 4 – Ermin Street' in the Landscape Character Appraisal used to inform the Lambourn Neighbourhood Development Plan. This relatively small LCA is described in the appraisal as an area that 'can potentially contain and hold more development than other parts of the NDP as landscape impacts would be less sensitive than elsewhere'.
34. The main views into the site from public areas are glimpsed views from the M4 motorway, but these are limited by trees and are fleeting given the speed one is travelling at. Whilst the motorway is elevated above the appeal site the views of the site are across of distance of at least 160m.
35. From the motorway footbridge views are available at certain points through breaks in mature trees. However, having walked across the footbridge during my site visit and experienced the very loud noise there from the passing cars below I am sure very few people would be lingering to take in the views here. In any event despite the difference in land levels between the appeal site and the array of built development at Zoe's Farm, they are viewed in the same context from the footbridge. The appeal site is certainly not experienced as an isolated site in the open countryside.
36. The other main vantage point is where the entrance to the appeal site has been created by taking out a section of the hedgerow. These views are predominantly as you turn into the site or as one travels in a southerly direction along Baydon Road to meet the junction of Baydon Road and Ermin Street. In these views the caravans can be seen due to their light colour in contrast to the green trees and fields.
37. In terms of the introduction of a 2.4m high acoustic fence as set out above, this would be mainly visible in public views from the motorway and the footbridge over it. it would also be visible from neighbouring land, especially as some of this is at a lower level already. As set out above the site is already contained by a 2m high fence to afford the appellant and his family some privacy.
38. A 2m high fence does not require planning permission when sited away from a public highway, as is the case here. The difference in height between the existing fence and an effective acoustic fence would be 40cm and its design could be controlled unlike the existing one. Moreover, planning conditions could be imposed to require landscaping to act as a screen to the fence. Whilst this would take some time to mature and become fully effective, I am satisfied that until that were the case the fence would not appear unduly harmful given

the location of the site and the limited places where it would be mainly viewed from.

39. Clearly the change of use has changed the appearance of the site through the introduction of caravans and hardstanding as well as domestic paraphernalia such as a large trampoline and paddling pool. The caravans are visible in the landscape from several viewpoints. Many of these views are glimpsed views with the caravans seen in the context of other existing built development. As set out above, this part of the AONB is regarded in relevant Landscape Character Assessments to be degraded by the M4 and equestrian culture and more able to absorb development than some areas.
40. Nevertheless, the site is within the AONB and as such there is a requirement that development conserves and enhances the landscape and scenic beauty of the AONB. Indeed paragraph 176 of the Framework advises that great weight should be given to conserving and enhancing landscape and scenic beauty in AONBs. It also advises that the scale of development should be limited which I consider this proposal is.
41. The change of use fails to conserve and enhance the landscape and scenic beauty of the North Wessex Downs AONB and but causes only modest harm to the character and appearance of the area given the scale of development (a single pitch), its proximity to other development of greater scale and mass and its proximity to the M4 motorway which is elevated above and more visually prominent in the landscape than the appeal proposal. The addition of an acoustic fence with appropriate landscaping would not materially increase the harm given the presence of a fence already, the design of which cannot be controlled. Given the identified harm there is conflict with CS policies CS7, CS14, CS19 & ADP policy 5.

Other Material Considerations

Previously Developed Land

42. PPTS paragraph 26 a) advises that weight should be attached to effective use of previously developed (brownfield), untidy land or derelict land. As set out above the main parties agree that the site is previously developed. The site is for one family and although it is in the countryside it would not dominate the nearest settled community. I attach modest weight to the fact that the site is previously developed as the previous use was equestrian related and the site did not contain any built development.

Need for and supply of gypsy sites

43. The Council carried out a Gypsy and Traveller Accommodation Assessment (GTAA) in 2019 and then updated it in 2021 as part of its evidence base for its emerging local plan. The 2019 GTAA concluded that there was a cultural need for 51 pitches and a PPTS need for 48 pitches over the plan period 2018/19 to 2035/36. Taking into account how the need could be addressed the final conclusion was that 22 pitches would need to be found to meet the cultural need and 19 pitches to meet the GTAA need.
44. The report recommended that this be done through a future local plan and that the future plan should acknowledge this range of need. The survey work for the 2019 GTAA was undertaken when the only public site in the district, known as Four Houses Corner (FHC), had been partially cleared in advance of it being

completely cleared for redevelopment. Only 7 pitches were occupied at the time.

45. By the time of the 2021 update the FHC site had been completely cleared and no assessment of need was made as a result of household formation on the previous 16 pitches at this site. This 2021 GTAA found that there was a residual cultural need after potential pitch development was considered of 22 pitches and a PPTS need of 12 pitches. It also identified a 5-year authorised pitch shortfall for cultural need of 13 pitches and for PPTS need, 9 pitches. Once the FHC site is reoccupied a full assessment of the future needs of these families will need to be undertaken and this need could then increase further.
46. On the basis of there being 16 pitches re-provided it was agreed between the parties that there was a shortfall of 1 PPTS need pitch. However, the Council during the course of this appeal increased the number of pitches to be provided on this site by 1 to a total of 17. There is a lack of certainty about when this site will be redeveloped and open again. I consider the Council's proposed timescale of March 2023 to be overly ambitious. In my view, it is likely to be available in the next 5 years. This would meet the current identified 5 requirement if the current assessment of need is accurate. This is difficult to know given the lack of up-to-date information regarding previous occupants of the FHC site. For the benefit of this appeal, I shall assume the Council have a 5-year supply of pitches.
47. There is an overall general unmet need however for PPTS and cultural gypsies even taking account of the planning applications currently before the Council. The only way this is likely to be met is through the emerging plan, but the Regulation 18 version of the plan does not seek to allocate any sites for gypsies and travellers. No suitable sites were identified through the call for sites process. The Council have recently written to the would-be developer of a site allocated in the emerging plan for 2,500 homes asking if they would be willing to accommodate between 12 and 21 gypsy and traveller pitches on the edge of their site. At the time of the Inquiry no response had been received.
48. My experience is that developers do not do this willingly. Even if they were to agree to this, the plan is not due to be submitted until Spring next year at the earliest. Adoption of the plan, following examination, is unlikely to be until 2024 at the earliest and then it would take time for the site to come forward. Moreover, it is a concern that the Council have waited until such a late stage in the plan preparation process to look at alternative ways of accommodating the unmet need following the lack of sites that came forward at the call for sites stage. Indeed, it seems the Council only wrote to the developer a few weeks prior to this Inquiry.
49. Moreover, there is a long-standing failure to allocate land to meet gypsy and traveller needs in the district. There has been a requirement to allocate land for gypsy and traveller sites since 1994 and since then no sites have been allocated in a development plan except for Paices Hill in the current adopted DPD. However, this permits the change from 8 transit pitches to 8 permanent pitches, it is not a new site allocation. Moreover, according to the appellant this is for a specific family rather than to meet general need. This was not disputed by the Council. This is despite CS policy CS7 saying that the Council will make appropriate provision for gypsies, travellers and travelling

showpeople pitches through the allocation of sites within the Site Allocations and Delivery DPD.

50. At present there are a number of unknown factors that will affect the Council's ability to meet the general need for both cultural and PPTS gypsies, but in my view it is highly likely that the need for both will be greater than that established in the 2 most recent GTAA's and at the same time there is great uncertainty about when the FHC site will reopen, as set out below, and whether there will in fact be any spare capacity on that site despite its increase in pitches by 1. There is also little comfort at present that the emerging plan will allocate any sites given the stage it has reached in the plan preparation process without any sites allocated for gypsies and travellers and the constraints of the district such as flood risk and the AONB.
51. To conclude, I consider that there has been a persistent and woeful failure by the Council to meet the needs of the gypsy and traveller community both historically and potentially going forward. I attach significant weight to this matter.

Alternative sites

52. The FHC site was a Council run gypsy and traveller site until 2021. Although it contained 16 pitches there is an historic planning permission for 20 pitches. From around 2019 it was gradually cleared and sealed with residents being moved into temporary accommodation. Many were moved to bricks and mortar accommodation in the absence of culturally suitable accommodation being available.
53. Some families who previously resided on the FHC site have now been in bricks and mortar accommodation for around 3 years. The appellant was brought up on this site and as an adult doubled up with his family on his mother's pitch for many years. He left the site prior to it being closed down due to the poor sanitation conditions and the problems with drugs and crime there. The Council themselves said at the Inquiry that the site had serious quality issues.
54. The site has been cleared and is surrounded by security fencing and is protected by security guards. The Council say that it is their intention to reopen the site by March 2023 and that the site will provide 17 pitches. Indeed, there is evidence of funds being available in the capital expenditure programme for the works. However, before the site can reopen there will need to be a tendering process for the design of the site and a contract awarded. Following that the site will need to be designed and a planning application prepared and submitted.
55. Assuming planning permission is granted, the approved works will then need to be put out to tender, and a contract awarded and finally the works will need to be completed and new homes provided etc. This process has not yet begun, and the Council could not say when this was going to happen. I cannot see that even with the best will in the world this site will be open to residents by March 2023.
56. Certainly, this site does not provide alternative accommodation at the present time for the appellant and his family, and it is unclear if there will be a pitch available for him when it does re-open as he did not have a tenancy agreement on the previous site. If everyone that moved off moves back on then in theory

there will be one pitch remaining, but the current need for both cultural and PPTS pitches is not at all clear and it could be that over time that need for PPTS pitches and cultural pitches has shifted as more of the previous residents cease to travel due to old age. So, it cannot be assumed that the appellant and his family would be successful in getting a pitch there. The Council were also unable to say how the crime and drugs problems on the site in the past will not be allowed to take place when the site is reopened. This is an understandable concern of the appellant, particularly given he has a number of children.

57. Policy TS1 of the adopted DPD allocates a site at Paices Hill for 8 permanent pitches to replace 8 existing transit pitches. The policy requires that the occupants of the site meet the PPTS annex 1 definition of gypsy and traveller. A planning application is currently with the Council, and it is expected to be determined in the Autumn. The appellant advised that these pitches will not be available for general use, but for a specific family group. The Council did not dispute this but said that the planning permission will not restrict the occupants.
58. The appellant explained at the Inquiry that he and his family had lived in bricks and mortar accommodation for a few years in the past, but he could not sleep upstairs so he would either sleep on the sofa downstairs or in a shed he built in the garden. The only alternative accommodation the Council are able to offer at present is bricks and mortar accommodation. Based on the information in the appellant's proof of evidence and what he told the Inquiry I find that this would not be suitable alternative accommodation for the appellant.
59. The lack of a suitable alternative site for the appellant and his family attracts significant weight.

Personal circumstances and accommodation needs

60. The appellant lives at the appeal site with his wife and 3 of their children who are minors. Their adult daughter lives there too with her baby son. The appellant's young son attends school locally. He is settled there and enjoys it. If he were move to somewhere else in the district or worse still forced into a roadside existence this would disrupt his education.
61. None of the site occupants have any specific health issues, but clearly having a settled base is beneficial in terms of being able to access routine healthcare and this is particularly important for the 4 children.
62. Case law establishes that the best interests of the children are a primary consideration. There are four children on the site ranging in age from a baby to 15 years old. A settled base is clearly in the best interests of the children, rather than the alternative of doubling up on other pitches and having to keep moving around. A settled base would allow for the appellant's younger child to continue attending Lambourn School and for all residents to access health care provision on a consistent basis. I give the best interests of the children substantial weight.

Intentional unauthorised development

63. It is Government planning policy that 'intentional unauthorised development' is a material consideration to be weighed in the determination of planning applications and appeals. The reason behind the policy is that the Government is concerned about the harm caused where the development is undertaken in

advance of obtaining planning permission, such that there is no opportunity to appropriately limit or mitigate harm that is caused.

64. The appellant knew that he did not have planning permission when he changed the use of the land and began living on it, but then sought to regularise it through the planning application that is the subject of this appeal. The appellant's reason for developing the land without waiting to obtain planning permission is that he and his family had nowhere else to live. I have found there are no suitable alternative sites.
65. Nevertheless, the appellant carried out works beyond what was needed to create a habitable environment and for which he is not seeking planning permission, including a large timber day room built on a concrete pad close to a mature oak tree and hedgerow.
66. Taking all the above into account I have attached moderate weight to this harm.

Other matters raised by the interested parties

67. I note that there is concern by local residents that not only have works been carried out without planning permission but that the planning application form was not filled in accurately. As part of the planning application process and then the appeal process, I am satisfied that all the evidence I have based my decision on is correct, despite these inaccuracies.
68. In terms of the concerns about the precedent that would be set if this appeal is allowed, each planning application or appeal is considered on its own merits having regard to the particular set of circumstances. In my experience it is rare that 2 sites are identical in terms of the relevant circumstances.

The overall planning balance

69. The change of use that has taken place and the works necessary to make the living conditions acceptable would fail to conserve and enhance the landscape and scenic beauty of the North Wessex Downs AONB and result in moderate harm to the character and appearance of the area. There is also the modest weight from the lack of access to public transport directly from the site and the intentional unauthorised development of the site attracts moderate weight. Consequently, there is conflict with the relevant development plan policies and the Framework.
70. Considerations weighing in favour of the appeal, are the general need for gypsy and traveller pitches in the district, the lack of suitable alternatives, the personal circumstances of the appellant and his family who have a pressing need for a settled base so the appellant's son can continue to regularly attend school, the long standing and ongoing failure of the Council policy to address the needs of the gypsy and traveller community and thus the unequal approach when compared to the settled community and the fact that the site is previously developed land. Given the weight I have attributed to each of these considerations in this particular case, the harm would be clearly outweighed by these considerations, including the harm in relation to my third main issue caused by the acoustic fence which would be necessary to provide satisfactory living conditions.

71. Since I have included in the overall planning balance the appellant's personal circumstances it is necessary for me to grant a personal planning permission. I have considered whether a time-limited permission could be granted, but I am not convinced that in 3 or even 5 years there will be a suitable alternative site for the appellant and his family.
72. In reaching this decision I have had regard to the rights of the appellant and his family under Article 8 of the European Convention on Human Rights as incorporated into the Human Rights Act 1998. Article 8 affords the right to respect for private and family life and home, including the traditions and culture associated with the Romany Gypsy way of life and the best interests of the children. It is a qualified right, and interference may be justified where that is lawful and in the public interest. The concept of proportionality is crucial. Dismissing the appeal or granting a time-limited permission would interfere with the appellants' rights under Article 8, since the consequence might be that the family is rendered homeless at some point.
73. Given the circumstances overall, I find that a grant of personal permission would be proportionate and necessary to protect the best interests of the children. It would avoid a violation of the appellants' rights to a private and family life and home. The protection of the public interest cannot be achieved by means that are less interfering with their rights under Article 8. Since the appellants are Romany Gypsies, they share the protected characteristic of race for the purposes of the Public Sector Equality Duty (PSED) under s149 of the Equality Act 2010.
74. As such, it is necessary and proportionate to permit the development on a personal basis to eliminate discrimination against and advance equality of opportunity for the appellant. For these reasons, I conclude that the appeal should be allowed, and a personal planning permission granted subject to the other conditions discussed further below.

Conditions

75. I have imposed a number of planning conditions based on the suggested conditions submitted by both main parties which were discussed at a round table session. I have amended some of the conditions slightly, in line with those discussions.
76. Given the nature of the case and the weight attributed to the personal circumstances of the appellant and his family in the overall balance and a need for a pitch for the family the permission needs to be made personal. Accordingly, a restoration condition is needed to ensure the site is returned to its former condition once the use as a gypsy site ceases.
77. It is also necessary to control the number of caravans, ensure the site is developed in accordance with the submitted plan, restrict commercial vehicles and uses in the interests of visual amenity and to preserve the AONB.
78. Since the change of use has taken place retrospectively, I have imposed a condition to ensure various matters are dealt with in a timely manner that are important for a number of reasons including living conditions of the residents and to protect the character and appearance of the area, including the AONB. Whilst I appreciate that the PPG advises that conditions which remove permitted development rights may not pass the tests of reasonableness and

necessity, I consider it is imperative to do so in this case due to the location of the site in open countryside and the AONB. Finally, it was agreed by both main parties at the Inquiry that the noise levels inside the touring caravan could be harmful due to the noise from the M4 motorway. I have imposed a condition to prevent the touring caravan being used as overnight accommodation to protect the health and amenity of the residents of the site.

Conclusion

79. For the reasons given above I conclude that the appeal should be allowed.

Louise Crosby

INSPECTOR

APPEARANCES

FOR THE APPELLANT: Mr T Jones, of Counsel

He called:

Mr R Clark	Appellant
Mr B Woods	WS Planning and Architecture
Mr R Billingsley	DJOGS Ltd
Mr Fernleigh	dBA Acoustics Limited

FOR THE LOCAL PLANNING AUTHORITY: Ms N Byrd, of Counsel

She called:

Mr J Brown	Principal Planning Officer, West Berkshire Council
Mr M Bullock	arc4 Ltd
Ms L Allen	Landscape Consultant
Mr Haddad	Environmental Health Solutions and Training Ltd
Mr G Ryman	Ecologist

INTERESTED PARTY:

Lady C McCoy – Local Resident

DOCUMENTS SUBMITTED AT THE INQUIRY

1. Council's opening submissions
2. Council's Capital expenditure spreadsheet
3. Minutes of Council Committee, held on 3 March 2022
4. Paices Hill Planning Application documents
5. Revised suggested planning conditions
6. Copies of High Court Judgements

Schedule of conditions

- 1) The occupation of the site hereby permitted shall be carried on only by the following: Mr Roy Clark and Ms Samantha Harper, Ms Chardonnay Clark and their resident dependants.
- 2) When the site 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) No more than 2 caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 as amended (of which no more than 1 shall be a static caravans shall be stationed on the site at any time.
- 4) The development hereby permitted shall be carried out in accordance with the following approved plans, except where details are to be submitted under condition 5: J003925-DD-03.
- 5) 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 28 days of the date of failure to meet any one of the requirements set out in i) to iv) below:
 - i) Within 3 months of the date of this decision the following schemes shall be submitted to and approved in writing by the local planning authority and the scheme must include a timetable for their implementation:
 - a scheme for the means of foul and surface water drainage of the site;
 - proposed and existing external lighting on the boundary of and within the site;
 - the internal layout of the site, including the siting of caravans, plots, hardstanding, access roads, parking and amenity areas;
 - hard landscaping and a 2.4m high acoustic fence;
 - tree, hedge and shrub planting including details of species, plant sizes and proposed numbers and densities and the management and maintenance of that landscaping. Any trees, shrubs, plants or hedges planted in accordance with the approved scheme which are removed die, or become diseased or seriously damaged within 10 years of completion of the approved scheme shall be replaced within the next planting seasons by trees, shrubs or hedges of a similar size and species to that originally approved;
 - Evidence that the replacement caravan meets or exceeds the sound insulation requirements of BS3632:2015 and a timetable for its installation on the site;
 - the restoration of the site to its condition before the development took place, at the end of the period for which the site is occupied by those permitted to do so, (hereafter referred to as the site development scheme) shall have been submitted

- for the written approval of the local planning authority and the scheme shall include a timetable for its implementation.
- (hereafter referred to as the site development scheme) shall have been submitted for the written approval of the local planning authority and the scheme shall include a timetable for its implementation.
- ii) If within 11 months of the date of this decision the local planning authority refuse to approve the scheme or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
 - iii) If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.
 - iv) The approved scheme shall have been carried out and completed in accordance with the approved timetable.
 - v) Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter be retained, maintained and remain in use for the duration of the planning permission.
 - vi) In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.
- 6) Any future static caravan placed on the site shall meet or exceed the sound insulation requirements of BS 3632:2015 Residential Park Homes.
 - 7) No vehicle over 3.5 tonnes shall be stationed, parked or stored on this site.
 - 8) No commercial activities shall take place on the land, including the storage of materials.
 - 9) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (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 approved under condition 5 above.
 - 10) No external lighting other than that approved under condition 5 shall be provided without prior written planning permission of the Local Planning Authority.
 - 11) The touring caravan shall not be used as overnight accommodation at any time whilst located on the site.