



Appeal Decision

Hearing held on 3 November 2022

Site visit made on 3 November 2022

by David Wyborn BSc(Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 December 2022

Appeal Ref: APP/D0840/W/21/3267255

Land north of Higher Rosewarrick, Lanivet, Bodmin, Cornwall PL30 5JS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission
 - The appeal is made by Mrs T Orchard against Cornwall Council.
 - The application Ref PA20/09223, is dated 22 October 2020.
 - The development proposed is the change of use of land to a private Gypsy site.
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Decision

1. The appeal is allowed and planning permission is granted for the change of use of land to a private Gypsy site at land north of Higher Rosewarrick, Lanivet, Bodmin, Cornwall PL30 5JS in accordance with the terms of the application, Ref PA20/09223, dated 22 October 2020, subject to the conditions in the attached schedule.

Application for Costs

2. An application for costs was made by Mrs T Orchard against Cornwall Council. This application is the subject of a separate decision.

Preliminary Matters

3. The appeal is made against the failure of the Council to determine the application within the statutory period. The Council has explained that were it to have determined the application it would have been refused, in summary, because of the detrimental visual impact upon the character and appearance of the countryside and its intrinsic character, and due to the unsustainable and inaccessible location away from any defined settlement, community and infrastructure facilities.
4. The scheme proposes a Gypsy and Traveller site including with two pitches, a shared day room, parking and the stationing for two touring caravans. The application to the Council was not advanced on the basis of any identified occupants of the pitches. However, since about 12 months ago, a mobile home has been stationed on the site and the accommodation is occupied by the appellant's son, his wife and their two children.
5. It is agreed that these occupants of the site are ethnic Romany Gypsies and that the adult occupants of the site meet with the definition of a Gypsy and Traveller in the Annex 1: Glossary in the Planning Policy for Traveller Sites (August 2015) (the PPTS).

6. Consequently, with the occupation of the site by the present occupiers, the proposed use as a Gypsy and Traveller site is already taking place. In that sense the scheme is retrospective, albeit that there is only one pitch and the position of the mobile home does not accord with the submitted plan.
7. Another important matter is that the site falls within the catchment of the River Camel Special Area of Conservation (the River Camel SAC). Within this river catchment, Natural England has raised concerns that phosphates from new development could adversely affect the integrity of the River Camel SAC. The appellant has sought to demonstrate that the scheme would be nutrient neutral and I will consider this matter later.

Main Issues

8. The main issues are:

- whether or not the development plan and national policy would support the proposal in this location having regard to whether the site would have reasonable access to services and facilities by a range of transport modes, and
- the effect of the proposal on the character and appearance of the area.

Reasons

Whether or not the development plan and national policy would support the proposal in this location

9. Policy 11 of the Cornwall Local Plan Strategic Policies 2010-2030 (the Local Plan) provides the main policy criteria against which development proposals for Gypsies, Travellers and Travelling Showpeople are to be considered.
10. There is no dispute between the main parties that the criteria of Policy 11, with the exception of criterion 3, would be met. The scheme would, in particular, provide sufficient residential amenity and play area to meet the needs of residents of the site, promote healthy lifestyles and with two pitches would be of a scale that would not dominate the nearby settled community.
11. A key issue in this appeal is whether the scheme would comply with criterion 3 of Policy 11 of the Local Plan. This provides the main locational test for the provision of Gypsy and Traveller sites. This criterion, in summary, explains that proposals for permanent sites should be located so as to ensure reasonable access (defined as less than 3 miles) by a range of transport modes. The criterion goes on to explain that where possible including walking, cycling, public transport and car sharing to services including GP and other health care provision, education facilities, shops and public transport.
12. The site lies in a countryside area. The nearest settlement is Lanivet to the broadly east. The evidence in the Statement of Common Ground is that the distance by road from the site to Lanivet is about 2.4km (1.5 miles). Lanivet is a village with a range of services and facilities. These include a convenience store, post office facility, primary school, two churches, public house, fish and chip shop, hairdressers, and a community centre.
13. Additionally, medical facilities, such as a GP surgery and local hospital, are located within the southern part of Bodmin and are about 4.5km (2.8 miles) from the site. The Statement of Common Ground explains that the nearest

secondary school/community college is located on the south east edge of Bodmin and this is about 7.5km (4.6 miles) by road. With the exception of the secondary school/college there is a satisfactory range of services and facilities which are less than 3 miles from the site.

14. The proposed Gypsy and Traveller site would, therefore, meet with the distance requirement of Policy 11 of the Local Plan. In these terms, because the site meets this locational requirement in terms of distance, it should not be considered for a Gypsy and Traveller site in Cornwall to be located away from existing settlements. As a consequence, the scheme would not conflict with the policy approach in paragraph 25 of the PPTS that new traveller sites in the open countryside away from existing settlements should be very strictly limited.
15. It is also necessary to determine whether the other part of criterion 3 would be met, namely whether access to the site could be achieved by a range of transport modes. The site is located in a countryside location accessed by rural single width lanes in the vicinity of the site. These roads then link with Old Coach Road, that leads towards Lanivet. Along this road is the Waste and Recycling Centre which the Council highlighted generates a noticeable level of traffic movements to the area. Past the Waste and Recycling Centre it is then possible to access Lanivet either by continuing down Old Coach Road to the A389 or by dropping down via the more curving Clann Lane.
16. Outside Lanivet itself, the roads to and from the site do not have footpaths or street lighting. Furthermore, quite a long section of the route from Lanivet to the site is uphill, with a fairly steep slope.
17. The nature of the route to and from Lanivet with the lack of footpaths, the likely level of passing traffic and the fairly steep slope from the village would not make walking a reasonable prospect for occupants of the site to access the village or beyond. While the distance in itself would not be unreasonable for a cyclist, the length and steepness of the slope and the general road conditions would not be an attractive proposition, even for a cyclist with an electric bicycle. Cycling to Bodmin and back to access those services and facilities along the A389, which appears a reasonably busy road, and would entail the same slope nearer the site, other than for the most committed cyclist or on the very odd occasion, would not be likely to be a realistic option.
18. In terms of public transport, there is a reasonable number of bus services that pass through the settlement of Lanivet and which also stop at the Innis Downs roundabout, near the A30. These services link with surrounding towns. However, Lanivet, as mentioned above, is about 1.5 miles from the site and the Innis Downs bus stop is about 1 mile south and accessed along minor country roads with no footpaths or street lighting. Neither bus stop would be reasonable nor convenient to access by foot, especially at times when it may be dark.
19. One of the "where possible" transport modes which is referenced in criterion 3 of Policy 11 includes car sharing. The site proposes two pitches with a shared dayroom. It is therefore probable that members of the same family would occupy the site. At the present time, the occupants of only one pitch are known and therefore the opportunities for car sharing are somewhat uncertain. In any case, car sharing would not be an alternative to accessing the site by the private vehicle.

20. Drawing all these matters together, the elevated and rural location of the site, the surrounding roads with their width, slope and condition, the location of the nearest settlement and bus stops, all combine such that there would be no reasonable alternative to access the site other than by the private vehicle for the vast majority of movements. As a consequence, the site would not be located to ensure that occupiers could achieve access by a range of transport modes and this requirement of criterion 3 of Policy 11 of the Local Plan would not be met.
21. Both main parties referenced the appeal decision at land at Rookery Farm, Porthtowan, Redruth¹ which also examined whether that proposed two pitch Gypsy and Traveller site would meet with the locational and range of transport modes requirements of Policy 11 of the Local Plan. This was a very recent decision and also one that I had determined. The site at Rookery Farm, while further from the nearest settlement, did have some options in terms of cycling, bus travel and a clearer potential for car sharing to be a credible option in these respects than the present site. I found that, while finely balanced, that site had sufficiently reasonable access to services and facilities by a range of transport modes. The present site would not be as well served and therefore I am satisfied that my finding against the proposal in this appeal in respect of the lack of range of transport modes is reasonable and consistent with the decision at land at Rookery Farm.
22. The appellant has also included a number of appeal decisions which are argued provide similar types of circumstances as the present appeal site and that highlight that it is fairly standard for the occupants of Gypsy and Traveller sites in the countryside to be largely dependent on the private vehicle to access services and facilities.
23. In the case of Sand Pit Lane² in Wiltshire, the commentary explains that the proposed Gypsy site would be within reasonable reach of local shops and the primary school (about 2km away) and a similar distance to primary health facilities. It was explained that these could be reached by public footpaths although there was an intervening stretch of highway. The Council agreed that these locational aspects met with the related development plan policy criteria in that case. Consequently, the locational circumstances and the ability to walk in the case at Sand Pit Lane are different from the present appeal and I afford it limited weight.
24. With the Littleton Stables³ appeal, the acceptability of the location for a gypsy site was not in dispute. The Inspector acknowledged that realistically most journeys would be made by car, although the site was close to the main road network which gave rapid links to a good range of services and facilities in the neighbouring settlements. Furthermore, that site was less than 1km to a village with a primary school and it was possible to walk from the appeal site by a public footpath over fields to the village and to regular bus services to main towns. It appears that this site had better access, some with sustainable transport modes, to access services and facilities than the present appeal site. I therefore attribute the Littleton Stables appeal limited weight in support of the present appeal.

¹ APP/D0840/W/21/3282303 - Land At Rookery Farm, Porthtowan, Redruth TR16 5UG - dated 27 October 2022

² APP/Y3940/A/13/2192339 - Land between railway line and Sand Pit Lane, Dilton March, Wiltshire

³ APP/Y3940/A/13/2196160 - Littleton Stables, Littleton, Semington, Trowbridge, BA16 6LF

25. With the site at Poplar Tree Lane⁴ in Wiltshire, the Inspector in those appeals comments that the site was only a short distance from the adjoining village, which contained a number of local services and was on a regular bus route along the A361. It was also about 2 miles from the centre of Trowbridge, a large town with a comprehensive range of shops, services and schools. It was on this basis that the Inspector found the land was not in an unsustainable location, distant from services. Again it appears that these circumstances are somewhat different from the present appeal and the ability to access services and facilities. This appeal at Poplar Tree Lane therefore merits limited weight in support of the present proposal.
26. The appeals at Knowle Lane, Cranleigh⁵ are also argued to support the present appeal location. That appeal decision comments that Cranleigh has a wide range of services, including supermarkets, other shops, schools, medical, community and recreational facilities. It was explained that the absence of footways would discourage walking to Cranleigh but that Inspector considered that the 1.8km distance would not preclude cycling, although it was acknowledged that most journeys to and from the site would be by car. The circumstances differ from the present appeal situation, in particular, because cycling was an option in the Knowle Lane decision. Again, I attribute this appeal decision limited weight.
27. It seems to me that these four appeal decisions submitted by the appellant in support of the present appeal scheme have material differences compared with the present proposal. For instance, with three of these appeal sites there appears to be a reasonable alternative to access services and facilities other than by the private vehicle on some occasions.
28. Furthermore, these sites are not in Cornwall and therefore they do not directly assist with examples of the application of Policy 11 of the Local Plan. Consequently, these other appeal decisions do not convince me that for this appeal site the scheme would meet the policy test which relates to the range of transport modes.
29. In conclusion on this main issue, notwithstanding the distance to services and facilities, it would not be realistic for occupants to be able to access the site other than by the private vehicle and, consequently, there would not be a range of transport modes available. Therefore, the proposal would fail criterion 3 and thereby would conflict with Policy 11 of the Local Plan which provides the main policy approach to the consideration of Gypsy and Traveller sites.
30. The indicative reason for refusal states that the proposal would also be against the aims and intentions of Policy 7 of the Local Plan. Policy 7 sets out the circumstances when the development of new homes could be permitted in the countryside. The policy wording references new dwellings and the limited circumstances when they may be acceptable. However, a Gypsy and Traveller proposal involves the stationing of a caravan which is a use of land rather than the construction of a new dwelling. Furthermore, Policy 7 makes no reference to the provision of Gypsy and Traveller sites which, if the policy was applicable, would be at odds with Policy 11 of the Local Plan which can allow such residential accommodation in the countryside. Consequently, as I concluded in

⁴ APP/Y3940/C/12/2178840, 2178841 and 2178838 – Land at Poplar Tree Lane, Southwick, Wiltshire BA14 9NB

⁵ APP/R3650/W/15/3132089 and 3132084 – Land west of Knowle Lane Cranleigh, Surrey, GU6 8JW

the land west of Trevoole Farm⁶ appeal decision, which considered the same issue and was raised by the appellant, it seems to me that Gypsy and Traveller sites are addressed by Policy 11 and that Policy 7 is not directly relevant. As referenced in that decision, even if that was not to be the case, I attach greatest weight to Policy 11 as it is the specific and detailed policy which sets the criteria against which Gypsy and Traveller development is to be considered.

31. Consequently, while I have found conflict with Policy 11 of the Local Plan for the reasons explained above, I do not consider that Policy 7 is directly relevant and therefore do not find that the proposal would conflict with this policy.

Character and appearance

32. The land lies within the Landscape Character Area 33 (LCA33) as identified in the Cornwall and Isles of Scilly Landscape Character Study. The site and the adjoining land displays some features which are typical of LCA33, such as the location within the open plateau with a mix of improved pasture and arable land within a medium scale field pattern of prominent Cornish hedges with few trees.
33. The site forms the northern part of a linear and overgrown parcel of land running parallel with the boundary with the field to the east. This stretch of land was previously part of the wider field to the west and was subdivided sometime after 2001. A golf course was subsequently provided on the land to the broadly west and south west although this area in the vicinity of the site consists mainly of rough grass with occasional bushes.
34. The northern boundary of the appeal site, where it bounds the single width road, has a Cornish hedge consisting of a bank with a well-established hedge. Other than through the access gates, there are only glimpsed views through the hedging into the site from the road. The boundary with the field to the east is also very well-established with a verdant line of overgrown hedging and small/medium height trees. This established planting extends to the south and continues around the bottom part of the field near the stable building.
35. To the west of the appeal site itself there is another good boundary screen of vegetation. Further to the south along this western boundary there is less boundary planting and the land is more open. Nevertheless, there are limited longer distance views towards the site because of the plateau form of the land, the screening provided by the vegetation to the south and by the mix of bushes and small/medium height trees in the land to the broadly west and south west.
36. The site itself has a high bund within a central area. The plans show that this would be removed and this would allow the site to be more visible from the very broadly south and west. However, as the site and the surrounding land is on the plateau area, with the established boundary treatments and mix of trees and bushes in the surroundings, the site would still be fairly well softened by vegetation within closer, medium and longer distance views.
37. The proposed development would introduce two mobile homes, a fairly sizeable day room, two touring caravans, parking of vehicles and the paraphernalia associated with the residential use of the site. However, for the reasons I have explained, the site would be well contained by the existing boundary

⁶ APP/D0840/W/19/3242850 – Land west of Trevoole Farm, Botetoe Hill, Trevoole, Cornwall TR14 0RN – dated 11 January 2022

treatments and this could be supplemented by localised planting along the southern boundary of the red lined site to further soften any medium and longer distance views. The site levels at the present time also appear lower where the existing mobile home and hardstanding area are located. This would assist with ensuring that the development was not unduly prominent. With a suitably worded planning condition as part of any approval, ground levels could be agreed to ensure that the dayroom and mobile homes were constructed from a suitable base level in relation to the surroundings.

38. In the past the land appears to have been used as an informal builder's store and this had a localised and untidy appearance. There is no evidence that this was an agreed lawful use and this activity has now been replaced by the single pitch Gypsy and Traveller site. This new use, with the associated mobile home and residential presence, has a minor and localised visual impact on the area and realistically can only be clearly seen in views through the gateway.
39. The proposed two pitch site would have a broadly similar localised impact but the screening, both existing and what could be achieved along the southern boundary, would satisfactorily soften the appearance of the site from the general east, south and west. Again, with the two pitch proposal, there would be some partial views of the site through the entrance way from the road, but these would be glimpsed and quite limited.
40. Nevertheless, there would inevitably be some character change to the immediate surroundings from the two pitch proposal. However, it is a fairly common occurrence to see Gypsy and Traveller sites within the countryside. Also, the PPTS and Local Plan does not prevent such uses in rural locations as a matter of principle and thereby, in my view, accepts some effect upon an area is likely to occur with the introduction of a Gypsy and Traveller site.
41. The use of the site would not be directly experienced in the context of other development, although there are a scattering of buildings including dwellings in the general area. However, grouping a Gypsy and Traveller site with other development is not a stated requirement of the relevant policies. In this case, the effect of the development on the landscape would be minor and localised. With the retention of the existing characteristic boundary treatments and with planting along the southern boundary there would be an acceptable impact on the character and appearance of the area and the scheme would not detract from the recognised characteristics of LCA33.
42. It follows that I conclude that the scheme would have an acceptable impact on the character and appearance of the area. In particular, it would comply with Policies 2, 12 and 23 of the Local Plan which seek, amongst other things, to maintain and respect the special character of Cornwall, recognising that all urban and rural landscapes are important. As a consequence, the scheme would not conflict with the approach in the National Planning Policy Framework (the Framework) to achieve well-designed places or those policies in the section concerning the need to conserve and enhance the natural environment.

Habitats Issues

43. Natural England has issued advice that it considers the interest features of the River Camel SAC to be unfavourable, or at risk, from the effects of eutrophication caused by excessive phosphates entering the river catchment. As a consequence, Natural England advises that the scope for permitted further

- development that would add additional phosphate either directly or indirectly is necessarily limited unless mitigation measures are designed to avoid an adverse impact and form part of the development proposal.
44. The Council has explained that in the light of the concerns from Natural England it has paused determining planning applications that may give rise to additional phosphates entering the catchment area of the River Camel. The types of development include new residential units and that a planning application should only proceed with a positive recommendation if the proposed development is able to demonstrate it is phosphate neutral or there is identified mitigation that can be secured.
 45. This scheme, with the addition of two units of residential accommodation and without suitable mitigation, would be likely to add phosphates into the River Camel SAC and thereby could adversely affect the integrity of this habitat site.
 46. A planning application for two pitches on this site had subsequent to the appeal scheme been submitted to and refused by the Council. That proposal sought to address the phosphates issue with the provision of a package treatment plant, which would drain to a sealed vessel with a filter media, and then that outflow would drain to a reed bed area. This was supported by a technical report which advised the scheme would be phosphate neutral. Natural England in its letter of 5 July 2021 was satisfied that, if this drainage scheme was secured, it would be acceptable in terms of phosphate neutrality.
 47. Since that time, Natural England has given further advice and set out the requirements for the use of a Nutrient Neutrality Methodology. This is a national generic methodology which Natural England recommend that proposals should use to demonstrate the phosphorous and nitrogen inputs into affected catchments.
 48. The appellant has explained that the present appeal proposal could incorporate a similar, self-contained, foul drainage scheme as previously proposed and further calculations and discussions have taken place on this issue with the Council and its consultants. This updated information has been shared with Natural England and it has confirmed that it is satisfied that the scheme could be delivered to achieve phosphate neutrality.
 49. The drainage scheme to achieve a phosphate neutral development would be able to be constructed within the appellant's land ownership in an area close to the proposed caravans. The precise technical details could be approved as part of a condition and I am satisfied that the requirement to implement and retain the approved drainage proposal could also be secured by a planning condition in any approval.
 50. In these circumstances I am satisfied that the proposal, either alone or in combination with other schemes, would not have a significant or adverse effect on the integrity of the River Camel SAC. Consequently, when undertaking an appropriate assessment, I am satisfied that the scheme would accord with the requirements of the Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations). The scheme would also meet, in this respect, with the associated requirements of Policy 23 of the Local Plan.

51. While this matter could be satisfactorily resolved, it is not a benefit of the scheme and therefore would be a neutral matter in the overall considerations for and against the proposal.

Other Considerations

52. The appellant has identified a series of other considerations which are argued weigh in favour of approval and I will consider these below.
53. *Existing level of provision and unmet need* – Policy 2a of the Local Plan sets a requirement to provide 318 permanent pitches in the plan period up to 2030 to meet the identified need. It is understood that 118 pitches have been permitted within the plan period to date. Consequently, there is still a substantial unmet need for permanent pitches in Cornwall against the Local Plan requirement. This unmet need should be attributed great weight in favour of approval.
54. *Five year supply of pitches* - the Council accept that it is unable to demonstrate and up-to-date five year supply of deliverable sites for Gypsies and Travellers. The PPTS explains that this should be a significant material consideration in any subsequent planning decision when considering applications for the grant of a temporary planning permission. Given the unmet need, that the Council do not allocate sites in the development plan, and that any updating of the Gypsy and Traveller site policies, and potentially allocating sites, is unlikely to deliver pitches in the near future, I consider the lack of a five year supply should also carry significant weight when considering this application for a permanent planning permission.
55. *Failure of policy* - it is agreed by the main parties that there has been a longstanding failure of policy since 1994 to meet the need for pitches in Cornwall (and its former districts) through the plan led system and this is contrary to national planning policy. This longstanding failure of policy should afford substantial weight in its own right.
56. *Available, suitable, acceptable and affordable alternative sites* - it is common ground that there are no alternative sites, either public or private, available for the existing occupiers of the site or other Gypsies and Travellers that would provide culturally appropriate housing. As the Council do not allocate any sites in the Local Plan to help meet the accommodation needs of Gypsies and Travellers, and therefore rely on individuals to identify sites and make individual planning applications, the lack of alternative and available sites is a matter that should afford substantial weight in favour of the scheme.
57. *Personal circumstances* - the proposed occupants of one of the pitches were, prior to moving into the mobile home on the site, living in a small touring caravan on the drive of a relative. They had to share facilities in the main house. The arrangement resulted in cramped and unsatisfactory living accommodation. While the two children still attended school the nature of the accommodation did not aid their studies.
58. The appellant's son and his wife have always lived in a caravan and living on the site for the past 12 months in the mobile home has provided suitable accommodation for both of them and their children. The children continue to attend their schools and all are registered locally at a GP surgery.

59. If permission was refused, and the family was required to vacate the site, it is likely that there would need to return to the touring caravan on the drive of the relative. This would again provide unsatisfactory living conditions. I therefore attach the personal circumstances of the existing occupiers of the site, who would occupy one of the mobile homes in the appeal scheme, substantial weight.
60. *Best interests of the children* – in considering these matters I am conscious that the best interests of the child shall be a primary consideration in all actions by public authorities concerning children. Given the need for suitable accommodation and a stable base to assist with schooling and health care, the interests of the two children would be best served by their continued occupation of the site. This is a matter to which I attach substantial weight.
61. *PPTS* - one of the Government's aims set out in the PPTS is to promote more private traveller provision and the site would accord with this aim. In terms of the matters in paragraph 26 of the PPTS, to which weight should be attached, the site would not make effective use of previously developed or derelict land, but was previously untidy land. The untidy appearance of the builder's yard materials have been replaced by a residential presence and therefore any visual improvement is modest.
62. The site, with the retention of the existing boundary planting and the provision of suitable planting along the southern boundary, and with the removal of the fairly sizeable bund located centrally within the site, could be considered to be well planned and soft landscaped. In this limited way it could be considered to positively enhance the environment and increase openness. The site would be sufficient in size to allow for healthy lifestyles, and would not be enclosed with so much hard landscaping that the impression was given that the site and its occupants were deliberately isolated from the rest of the community. Where the site would provide a benefit in relation to the above, those benefits would be quite modest in extent and I attribute them limited weight.
63. *Other Issues* - I have had regard to the letters of objection to the scheme at the application stage together with those of the Parish Council. In terms of the main issues raised, I am satisfied that the two pitches would be of a scale that would not dominate the nearby settled community. In respect of the adequacy of the access roads to the site, they are in the vicinity, minor country lanes. However, they are already used to access the limited number of other properties nearby. The increase in traffic to and from the site, in the circumstances where no commercial use is planned, would not lead to an unacceptable increase in the vehicle movements. There has been no highway safety issue raised by the Council and I have found no reason to disagree in that respect.
64. I note the concerns raised regarding the future potential expansion of the site were permission to be granted. Such a larger scheme is not before me for consideration and would require planning permission in its own right. It is necessary for me to determine the appeal based on the merits of the case made for the two pitches and, if permitted, any future scheme would need to be determined on its effects to the area and the policy situation at that time.
65. There are also concerns raised that the dayroom could be used as a dwelling. However, the application is based on the use of the site for two caravan pitches and by occupation by Gypsies and Travellers. Dayrooms are a common

occurrence as part of a Gypsy and Traveller site. There is no evidence that the occupants on this site would wish to occupy the dayroom as a dwelling especially when the occupation of a caravan is a traditional part of the Gypsy and Traveller way of life. If permission was granted and the dayroom was subsequently occupied as a dwelling then it would be open for the Council to take action if it was expedient to do so against any breach of planning control.

Planning Balance

66. Planning law requires that applications for planning permission be determined in accordance with the development plan unless material considerations indicate otherwise⁷.
67. The scheme would be located less than 3 miles from an adequate range of services and facilities and this would meet the distance aspect of criterion 3 of Policy 11 of the Local Plan. However, the occupants of the two proposed two pitches would not be able to realistically access those services and facilities by a range of transport modes. This would not accord with that aspect of criterion 3. It would be such that criterion 3 of Policy 11 would be failed and thereby the scheme would not comply with Policy 11 as a whole.
68. On the other hand, I have found that the scheme would not cause unacceptable harm to the character and appearance of the area. This results in no conflict with the related Policies 2, 12 and 23 of the Local Plan. If it were to be considered that the scheme, with the tidying of the builder's yard material and additional planting, would result in an improvement to the visual appearance of the site, this would be minor because of the visual presence of the two residential pitches. While the lack of harm to the character and appearance of the area is important, any limited visual improvement is not a matter that contributes materially in favour of the scheme.
69. Consequently, I give greatest weight to the conflict with Policy 11 of the Local Plan, which sets the main policy approach for considering Gypsy and Traveller sites, than to the compliance with policies concerning the character and appearance of the area. It follows that the scheme would not comply with the development plan when considered as a whole.
70. In terms of the benefits of the scheme, I attach great weight to the existing level of provision and the corresponding unmet need, significant weight to the lack of five year supply of deliverable sites, substantial weight to the longstanding failure of policy and substantial weight to the lack of alternative and available sites to accommodate the needs of present occupiers. The contribution of two pitches to meeting targets is worthwhile and attracts moderate weight in support of the scheme. I attach limited weight to the aspects of the PPTS which support the proposal. All these benefits and arguments in favour of the scheme collectively should be attributed substantial weight.
71. I have explained the personal circumstances of the present occupiers of the site who would occupy one of the proposed pitches. The other pitch is anticipated to be occupied by other members of the extended family. The personal circumstances and the best interests of the two children occupying the

⁷ Section 38(6) of the Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990.

site, and which help provide an additional justification for one pitch, add substantial weight in favour in that respect.

72. The conflict with the development plan, which results from the ability to access the site being effectively limited to the private vehicle, is important. Nevertheless the occupants of many Gypsy and Traveller sites in the countryside are often quite dependent on the private vehicle. Furthermore, the distance to and from Lanivet in this case is not excessive such that the additional private vehicle miles to access those services and facilities would be fairly limited. I am also conscious that the Framework advises that opportunities to maximise sustainable transport solutions will vary between urban and rural areas, and this should be taken into account in decision-making. This policy advice should be considered in the light of there being no alternative pitches for Gypsies and Travellers, and therefore no other locations of pitches which would provide better sustainable transport solutions.
73. The range and weight of considerations that support the scheme are substantial and the harms and conflict with the development plan as a whole are reasonably specific and limited. Accordingly, in the particular circumstances of this case, other material considerations are of such weight in favour of the proposal that they indicate that a decision should be made other than in accordance with the development plan. It follows that I conclude that the appeal should succeed.
74. In this respect, with the ability for the present occupiers of the site to remain, subject to compliance with any attached planning conditions, there would be no interference with their human rights. Furthermore, this outcome would have due regard to their protected characteristics as ethnic Romany Gypsies in terms of the Public Sector Equality Duty contained in section 149 of the Equality Act 2010.

Conditions

75. I have had regard to the conditions suggested by the Council, and those other conditions which were discussed at the hearing. The land is already in use as a Gypsy and Traveller site and therefore in that respect the change of use has commenced, albeit not with the layout or number of pitches which are proposed in the appeal scheme. I have borne this in mind when considering the triggers that would engage the requirements of the various conditions.
76. The standard commencement time condition is not necessary because the use of the site has already commenced. A condition specifying the approved plans is necessary in the interests of certainty. These plans show that the foul drainage would be via a septic tank. However, to ensure that the scheme would be nutrient neutral the revised drainage details are required and therefore Condition 1 cross references to the drainage condition.
77. Conditions covering levels, landscaping and a Landscape and Ecological Management Plan (LEMP) are necessary in the interests of the character and appearance of the area. Additionally in respect of the LEMP, the condition is necessary to accord with the recommendations of the Preliminary Ecological Appraisal that was submitted with the planning application.
78. The planning case is made on the basis that the site would be occupied by Gypsies and Travellers. Consequently, an occupancy condition is necessary. I

am aware of the conclusions reached by the Court of Appeal in the recently issued *Smith v SSLUHC [2022] EWCA Civ 1391* judgement. The occupiers of the site meet with the 2015 PPTS definition of a Gypsy and Traveller and there would be no discrimination to them with the use of that definition at the present time. However, there is no certainty that their present circumstances that enable them to continue to travel for work would remain or that Gypsies and Travellers who had permanently ceased to travel would not wish to occupy the other pitch. The removal of the allowance from the 2012 PPTS definition that allowed Gypsies and Travellers who had permanently ceased to travel to meet that definition has been identified by the Court of Appeal as an element which is discriminatory and unlawful. Consequently, to ensure the fair treatment of all Gypsies and Travellers, I intend to attach a condition that would allow Gypsies and Travellers to occupy the site, including those who because of their own or their family's or dependants' educational or health needs or old age have permanently, as well as temporarily, ceased to travel.

79. In the interests of the character and appearance of the area, conditions are necessary to require the siting of the mobile homes to accord with the submitted plan, to limit the number of caravans on each pitch, to limit the size of vehicles on the site, that no commercial activities take place and that external lighting is agreed.
80. Condition 10 is necessary to ensure that the development is phosphate neutral to comply with the requirements of the Habitats Regulations. A condition is necessary for parking and turning to be provided in the interests of highway safety. There is no need for a condition to specify the external materials to the day room as these are shown on the approved plan.
81. Conditions 2, 3, 4 and 10 are worded to ensure that the required details are submitted, approved and implemented so as to make the development acceptable in planning terms. There is a strict timetable for compliance because permission is being granted retrospectively, and so it is not possible to use a negatively worded condition to secure the approval and implementation of these matters before the use commences.
82. These conditions will ensure that the development can be enforced against if the required details are not submitted for approval within the period given by the condition, or if the details are not approved by the local planning authority or the Secretary of State on appeal, or if the details are approved but not implemented in accordance with an approved timetable.

Conclusion

83. For the reasons set out above, and subject to the schedule of conditions, I conclude that the appeal should be allowed and planning permission granted.

David Wyborn

INSPECTOR

APPEARANCES

FOR THE APPELLANT

Dr Simon Ruston MRTPI	Ruston Planning Ltd
Mrs Tina Orchard	Appellant
Mr David Orchard	Appellant's husband

FOR THE LOCAL PLANNING AUTHORITY

Mr Jim Lee	Cornwall Council
Mr Samuel Fuller	Cornwall Council

INTERESTED PARTIES

Cllr Jennifer Cruse	Cornwall Council
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DOCUMENTS SUBMITTED AT THE HEARING

1. Signed and dated Statement of Common Ground

Schedule of Conditions

- 1) Subject to the requirements of condition 10 below, the development hereby permitted shall be carried out in accordance with the following approved plan: Combined Plan – Drawn September 2020 DWG No 2.
- 2) 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 iv) below:
 - i) Within 3 months of the date of this decision a scheme with full details of the finished levels, above ordnance datum, of the ground floor of the proposed dayroom and the slab for the stationing of the mobile homes/caravans, in relation to existing ground levels, 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.

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.

- 3) 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 iv) below:
 - i) Within 3 months of the date of this decision a scheme of landscaping, including the finished levels across the site, shall have been submitted for the written approval of the local planning authority and the scheme shall include a timetable for its implementation. The scheme shall include indications of all existing trees and hedgerows on the land, identify those to be retained and set out measures for their protection throughout the course of development. All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of either mobile home shown in the positions on Combined Plan – Drawn September 2020 DWG No 2; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.

- 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.

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.

- 4) 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 iv) below:
 - i) Within 3 months of the date of this decision a Landscape and Ecological Management Plan (LEMP) shall have been submitted for the written approval of the local planning authority and the scheme shall include a timetable for its implementation. The LEMP shall incorporate the recommendations of the Preliminary Ecological Appraisal – September 2020 Version 1– Land north of Higher Rosewarrick undertaken by Ecological Surveys Ltd.
 - 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.

Upon implementation of the approved LEMP those elements which shall be maintained on a permanent basis, shall thereafter be retained.

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.

- 5) The site shall not be occupied by any persons other than Gypsies and Travellers, defined as persons of nomadic habit of life whatever their race or origin, including such persons who on grounds only of their own or their family's or dependants' educational or health needs or old age have ceased to travel temporarily or permanently, but excluding members of an organised group of travelling showpeople or circus people travelling together as such.
- 6) The static mobile homes/caravans shall be sited in accordance with Combined Plan – Drawn September 2020 DWG No 2.

- 7) There shall be no more than 2 pitches on the site and no more than 4 mobile homes/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 2 shall be a static caravan) shall be stationed on the site at any time.
- 8) No vehicle over 3.5 tonnes shall be stationed, parked or stored on this site.
- 9) No commercial activities shall take place on the land, including the storage of materials.
- 10) 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 iv) below:
 - i) Within 3 months of the date of this decision a scheme for the disposal of sewage to serve the development hereby permitted shall have been submitted to and approved in writing by the local planning authority. The submitted details shall demonstrate that the scheme for sewage disposal shall deliver a phosphate neutral development.
 - 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 sewage disposal scheme shall be fully implemented and operational prior to the first occupation of any caravan positioned in accordance with drawing Combined Plan – Drawn September 2020 DWG No 2 and thereafter the sewage disposal system shall be retained and maintained thereafter.

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.

- 11) No caravan, in the positions shown on drawing Combined Plan – Drawn September 2020 DWG No 2, shall be occupied until space has been laid out within the site, in accordance with drawing Combined Plan – Drawn September 2020 DWG No 2, for vehicles to be parked and for vehicles to turn so that they may enter and leave the site in forward gear and that space shall thereafter be kept available at all times for these designated purposes.
- 12) Prior to the first occupation of any caravan on site in the positions shown on drawing Combined Plan – Drawn September 2020 DWG No 2, details of any external lighting shall be submitted to and approved in writing by the local planning authority. The details shall include siting, angles, levels of illumination and any shields. The installation of any external lighting shall be carried out in accordance with the approved details. No external

lighting shall thereafter be installed other than in accordance with the approved details.

End of Schedule