



Appeal Decisions

Hearing held on 7 February 2023

Site visit made on 7 February 2023

by Elizabeth Pleasant BSc(Hons), DipTP, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8 March 2023

Appeal A Ref: APP/D3125/C/21/3274091

Land west of 66 Over Norton Road, Chipping Norton, OX7 5PH

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Tyson Shepherd against an enforcement notice issued by West Oxfordshire District Council.
- The notice was issued on 24 March 2021.
- The breach of planning control as alleged in the notice is: (1) Without planning permission a material change of use of the land from agriculture to a siting of caravans for residential use; and (2) Operational development consisting of the laying of hard-standing, construction of an access track, works for the installation of services and associated engineering works.
- The requirements of the notice are:
 - (1) Cease the residential use of the land; and
 - (2) Remove from the land the caravans and any items associated with non-agricultural use.
 - (3) Remove all hard core and other materials used to create the access;
 - (4) Remove all hard core and other materials used to create other areas of hard standing;
 - (5) Remove all pipes, wires and other apparatus installed for domestic use;
 - (6) Reinstate the land on which the access track, hard standing and caravans were located to natural ground and to a similar condition as the agricultural land immediately surrounding it by seeding it with grass or an agricultural crop; and
 - (7) Take away from the land all hard core and other materials that did not originally derive from there.
- The periods for compliance with the requirement are: 3 months for requirements Steps (1) and (2) and 5 months for Steps (3)(4)(5)(6) and (7).
- The appeal is proceeding on the ground set out in section 174(2)(g) of the Town and Country Planning Act 1990 as amended.

Appeal B Ref: APP/D3125/W/21/3275608

Land west of 66 Over Norton Road, Chipping Norton, Oxfordshire, OX7 5PH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr Tyson Shepherd against the decision of West Oxfordshire District Council.
- The application Ref 21/00801/FUL, dated 8 March 2021, was refused by a notice dated 28 April 2021.
- The development proposed is Change of use of land to use as a residential caravan site for 4 gypsy/traveller families, including the laying of hard standing, construction of access driveway and associated earthworks.

Decision on Appeal A

1. It is directed that the enforcement notice be varied by:
 - the deletion of the words “3 months” in section 5 and substitution with the words “10 months”; and
 - the deletion of the words “5 months” in section 5 and substitution with the words “12 months”.
2. Subject to this variation, the appeal is dismissed, and the enforcement notice is upheld.

Decision of Appeal B

3. The appeal is allowed and planning permission is granted for the material change of use of land to use as a residential caravan site for 4 gypsy/traveller families, including the laying of hard standing, construction of access driveway and associated earthworks (part retrospective) at Land west of 66 Over Norton Road, Chipping Norton, Oxfordshire, OX7 5PH in accordance with the terms of the application, Ref 21/00801/FUL, dated 8 March 2021, and the plans submitted with it, subject to the conditions set out in the schedule hereto.

Appeal A on ground (g)

4. This ground is that the period specified for compliance with the notice is unreasonably short. The notice specifies different periods for different steps. Cessation of the residential use is required within 3 months and the final step, namely removal of all materials and waste debris resulting from compliance with the other steps and restoration of the site is required within 5 months.
5. The appellant submits that as the Council has been unable to identify any land to satisfy the identified unmet need for gypsy and travellers’ sites a compliance period of 3 months is clearly inadequate time for the appellant and his extended family to find alternative accommodation. A period of at least 18 months is required to allow sufficient time for an alternative site to be found, planning permission obtained, and for the site to be developed.
6. The Council accept that they do not have a five-year housing land supply for gypsy and traveller sites, and we heard at the hearing that the appellant had been searching for some time and unable to identify an alternative site. Whilst I agree that three months is insufficient time for the family to find an alternative site and if necessary obtain planning permission for it, a period of 18 months would be tantamount to the grant of a temporary planning permission. The decision that I have come to is that a period of 10 months would be reasonable to cease the residential use and 12 months to comply with the other steps. The appeal on ground (g) succeeds to that extent.

Conclusion on Appeal A

7. For the reasons given above, I conclude that the appeal succeeds to the extent indicated under ground (g). I shall uphold the enforcement notice subject to a variation.

Appeal B

Main Issues

8. The main issues are the effect on:

- the character and scenic beauty of the landscape, having particular regard to the site's location within the Cotswold's Area of Outstanding Natural Beauty (AONB); and
- the setting of Over Norton Conservation Area.

Reasons

Cotswold Area of Outstanding Natural Beauty

9. The appeal site comprises a triangular paddock adjacent to the northern edge of the town of Chipping Norton. To a great extent the site is enclosed by mature trees and hedge planting. A public footpath runs along its easterly boundary and the site itself slopes down in a south easterly direction towards the stream and pond to the rear of the neighbouring property No 66 Over Norton Road. There is an existing vehicular access to the site from Over Norton Road.
10. The proposal is for a residential caravan site for four gypsy families. Each family would have a caravan in the form of a twin-unit mobile home and two car parking spaces. The development would include the construction of an access driveway and the laying of hard standing. The families have already moved onto the site and are currently living in their touring caravans. The first section of the access road leading into the site has been constructed and some areas of hard surfacing laid to accommodate the touring caravans. However, the proposed site layout would see the new mobile units more spaced out within the north westerly part of the site, and due to the site's sloping nature there would need to be some cutting and filling to provide them with a level base. Laurel hedging has been planted along the site's boundary with the public footpath and a new hedge has been planted along the length of the access road. Although the development has already begun, my determination is made on the basis of the scheme before me rather than what I saw on my visit.
11. The National Planning Policy Framework (the Framework), the Planning Policy for Traveller Sites (PPTS) and the Council's development plan do not establish an objection in principle to gypsy and traveller development in rural areas. Policy H7 of the West Oxfordshire Local Plan 2031, adopted September 2018 (WOLP) sets out how the Council will make provision for pitches and plots to meet the needs of travelling communities, including how it seeks to achieve a five-year housing land supply. When considering new sites, Policy H7 requires them to meet certain criteria, including the need to ensure the site is in an appropriate location such that it does not have an adverse impact on the character and appearance of the area and does not conflict with the objectives of Green Belt or AONB.
12. Consistent with paragraph 176 of the Framework, Policy EH1 of the WOLP requires that in determining development proposals great weight should be given to conserving and enhancing landscape and scenic beauty in AONB which have the highest status of protection in relation to these issues. Policy EH1 advises that the Cotswold Conservation Board's Management Plan and guidance documents are material considerations in decision making in the

AONB and that proposals that support the economy and social wellbeing of communities located in the AONB will be supported, provided they are consistent with the great weight that must be given to conserving and enhancing the landscape and natural scenic beauty of the area.

13. The West Oxfordshire Landscape Assessment (LA) classifies the site as having a *semi enclosed valleys and ridges* landscape character type (LCT) within the *Northern Valleys and Ridges* landscape character area. From observations on my site visit I would concur that the site and its immediate surrounds display some of the landscape characteristics of this LCT including smaller-scale fields with irregular field boundaries on steeper slopes, valley bottoms and around settlements; strong landscape structure of hedges, trees and woodland blocks and moderate to low intervisibility. Situated on the edge of Chipping Norton, the LA further analyses the character and sensitivity of the landscape surrounding this key settlement. Lying to the north of Chipping Norton the LA recognises that built form on valley sides is mostly screened by mature vegetation except for new housing and that there is low intervisibility, views down into the valley floor. It recognises that the valley sides and floor are an important component of the valley landscape and that special attention should be given to maintaining strong landscape edges.
14. The LA sets out guidelines for valley landscapes including development sensitivities and enhancement priorities. It advises that enclosed valley sides may offer limited opportunities to absorb small scale development within a strong structure of trees and woodlands or with other buildings. The site is identified as a part of the landscape that should be conserved, with enhancement priorities including introducing new planting along water courses and in lines and groups within the valley floor and introducing more hedgerow planting and hedgerow trees to strengthen the landscape.
15. The appeal site is a roughly triangular paddock, situated on the lower slopes of the valley and bounded by mature trees and/or hedging on all sides. There is a line of poplar trees along the northern boundary which have been pollarded during the last couple of years, and a belt of woodland to the south eastern and western boundaries. The access to the site comprises a field gate set back from the road and the newly laid crushed stone leading into the site is now well assimilated in the area. Currently, the touring caravans are situated along the northern part of the site close to the line of poplar trees.
16. At the time of my visit, during the winter, the presence of the caravans is only glimpsed from the road where there is a thinning in the woodland as you travel down into the valley past the last property in Chipping Norton and along Over Norton Road. However, in the summer months when the trees are in leaf the site would not be visible from the road. It is also possible to glimpse the top of the vans from the public bridleway across fields through the entrance to High Cleeve. However, due to the position of the site on the lower slopes of the valley, enclosed by trees, the site is not visible from any other part of this public bridleway where the scenic beauty of the AONB in this area is fully appreciated.
17. The site access adjoins the public footpath which then runs along the south-eastern boundary of the appeal site, through the woodland, adjacent to the pond and stream and into Chipping Norton. Whilst visible at the site entrance, the caravans are not conspicuous from the public right of way due to its

enclosure within the wooded valley and some additional hedge planting by the appellant along their site boundary. However, I noted on my site visit that during the winter months, although not close, there is a clear line of sight of the site from the neighbouring property No 66 Norton Road.

18. The Council alleges that the use and proposed operational development would cause landscape and visual harm to the Cotswolds AONB. They consider that the enabling works would adversely urbanise the rural character and appearance of an important open space between Chipping Norton and Over Norton resulting in harmful visual coalescence between the two settlements.
19. However, as the LA sets out this part of the landscape is semi-enclosed valleys and ridges. It has a mixed character in that it is open in part with large swathes of open fields on the ridges, but it is more enclosed within the valleys. The appeal site is situated on the lower slopes of the valley, and considering the neighbouring woodland belts, hedge planting and the line of poplars, it is my view that it has an enclosed appearance. The general principle for development set out in the LA advises that in visual terms landscapes enclosed by landform or vegetation are generally able to absorb new development, although accepting that they may be sensitive to change because of their intrinsic landscape quality.
20. There is no doubt that the appellant's use of the land has changed the appearance of the field. In addition, the formation of the level plots will involve some further engineering works which will also extend across a greater part of the site and result in a further loss of grassland. However, the harm that would be caused would be modest, and not significant nor urbanising. Furthermore, whilst I appreciate that non-indigenous hedge planting has taken place along the public footpath, the appellant is willing to consider a more suitable landscaping scheme, and conditions could be imposed to secure such a scheme, including opportunities to bolster the planting along the northern boundary and biodiversity enhancements. The appellant advised that he has secured off-site storage for his touring vans which would reduce clutter on the site. In addition, the exact details of the mobile unit, including finished colour could be conditioned and this would further assimilate the use into the area. Those proposals would in my view conserve and enhance the locally distinctive character.
21. Policy OS2 of the WOLP advises, amongst other things, that all development should be proportionate and appropriate to its context having regard to the potential cumulative impact of development in the locality. Furthermore, new development should avoid the coalescence and loss of identity of separate settlements. The PPTS sets out that caravan sites are acceptable in the rural area provided they do not dominate the nearest settled community. The site is well related to Chipping Norton, adjoins the settlement edge and the Council do not allege that it would dominate the settled community. The site is tucked away behind No 66 Over Norton Road. Whilst I appreciate that it lies beyond the woodland edge, it is on the lower slopes of the valley, and for the reasons set out above it is an enclosed and not a visually sensitive site. In this location it appears more to round off the settlement form as opposed to being an extension of the existing linear development along Over Norton Road. The open fields which provide a clear visual break of open countryside between the edge of Chipping Norton and Over Norton would not be eroded or harmed, and

I do not consider that the proposal would result in any visual coalescence between these two settlements.

22. Overall, I conclude that subject to the imposition of conditions as discussed, the development would conserve and provide some enhancement of the landscape and natural scenic beauty of the area. Furthermore, it would support the social wellbeing of communities, a matter to which I also give great weight. This aspect of the development is therefore in accordance with Policies H7, OS2 and EH1 of the WOLP, the aims of which are set out above. The development is also in accordance with Paragraphs 174 and 176 of the Framework which seek to protect and enhance valued landscapes.

Setting of Over Norton Conservation Area

23. The village of Over Norton is situated to the north of the appeal site and separated from it by open grassland. The historic core of the village is designated as a Conservation Area (CA) which comprises the eastern half of the village, centred along Main Street. In my view the significance of the CA as a heritage asset is largely derived from the locally distinctive vernacular buildings within a rural village, many of which retain their historic joinery, original slate roofs and are listed buildings. The setting of the CA includes surrounding parkland and fields, where views of the CA are afforded from both approach roads and the public footpaths which traverse the surrounding fields.
24. The appeal site is located some distance from the CA and separated from it by tree lined Over Norton Road and open grassland. Observations on my site visit confirmed that even during the winter months, when the trees are not in leaf, there is no intervisibility between the appeal site and the CA. The setting of a CA is derived from the surroundings in which that heritage asset is experienced. In this case I consider the setting to include the tree lined approach road to the village from Chipping Norton and the fields and parkland to the east and south which envelope the village and make a positive contribution to the rural qualities and historic development of the CA. However, considering the distance between the appeal site and the CA, the topography, and mature trees and planting along both Over Norton Road and the northern boundary of the appeal site, there are no views of the CA from within the appeal site. The appeal site is not within the setting of Over Norton Conservation Area and consequently the proposed development would preserve the setting and significance of the CA.
25. I conclude that the proposed development would preserve the setting of Over Norton Conservation Area. There would be no conflict with the development plan and in particular with Policies EH9, EH10 and H7 of WOLP, 2031 which, amongst other things, seek to protect the district's heritage assets. I also find no conflict with the heritage aims of the Framework.

Other Matters

26. An ecological appraisal report accompanied the planning application and concluded that the site was unsuitable for breeding amphibians and the site as a whole sub-optimal for amphibians, which it concluded were absent on the site. Similarly, the survey found the site had sub-optimal potential for reptiles and no specific surveys would be necessary. However, it recognised that there is a potential for small mammals to be present on the site and therefore care needs to be taken during any further vegetation removal and topsoil stripping.

I have had regard to concerns expressed about the ecological impact of the development. However, I have not been presented with any substantive evidence that the development has or would cause any significant loss of habitat or has threatened any protected species. At the hearing the Council did not suggest that it would be necessary for any conditions in this regard.

27. Concerns have been raised from third parties that the development may result in increased flooding in the area and express concern that the adjoining public footpath now gets extremely wet and muddy. I noted on my site visit that the owner of the neighbouring field to the north of the site has installed a pipe to discharge water presumably from field drains to a channel beneath the access track and into the stream. However, I have not been provided with any substantive evidence that any works undertaken by the appellant have given rise to any increase in flooding elsewhere. Nevertheless, although no specific details have been provided, the appellant is committed to providing a package treatment plant for the site and I am satisfied that both foul and surface water run-off could be controlled by a suitably worded condition to address drainage matters.
28. I have had regard to the representations made by neighbouring residents and Parish Councils both in response to the original planning application, the appeal and made in person at the hearing. I appreciate that the occupier of No 66 Over Norton Road, particularly in the summer months can see the caravans and the site usage is different from the undeveloped field which had previously been his outlook. However, considering the distance of the caravans from his property, I do not consider that use as a residential caravan site would have a harmful effect on his living conditions, including privacy. Furthermore, the twin mobile units to be installed will have a less stark appearance than the touring vans.

Planning Balance

29. I have found no conflict with the development plan read as a whole. For decision taking this means approving development proposals that accord with the development plan. Within their submissions and at the hearing the parties addressed other material considerations including the need for gypsy and traveller sites, personal circumstances, Human Rights and equality considerations. These are not matters that I need to address as I have concluded that the proposal accords with the development plan. I conclude that Appeal B succeeds.

Conditions

30. I have considered the need for conditions put forward by the parties in the light of the Planning Practice Guidance and the discussion at the hearing. A condition to specify the approved plans is necessary to provide certainty. Having regard to my finding on the development plan, I do not consider that it is necessary for temporary planning permission to be granted. It is necessary though to restrict the occupation of the site to gypsies and travellers with each of the four pitches having only one static caravan. This was proposed by the appellant who has secured off-site storage for his touring vans. Restricting the touring vans on the site will reduce the impact of the development and preserve the character and scenic beauty of the AONB.

31. In the interests of the appearance of the site, it is necessary to require the submission and approval of a scheme of soft landscaping and biodiversity enhancements, which should include the retention of all existing boundary hedging, trees and additional planting, including but not limited to the northern boundary of the site. It is also necessary to control any external lighting, fencing and other means of enclosure, and to prevent the stationing and storage of vehicles over 3.5 tonnes.
32. As the material change of use has already occurred and the details submitted with the original planning application did not include precise details of the proposed twin unit caravans or drainage proposals for the disposal of surface and foul water, it will therefore be necessary to impose a condition requiring the submission and approval of a Site Development Scheme (SDS). This is in the interests of the appearance of the site and to avoid pollution and prevent increased risk of flooding. The condition is drafted in such a way as to require the appellant to comply with a strict timetable.
33. The condition is drafted in this form because, unlike an application for planning permission for development yet to commence, in the case of a retrospective grant of permission it is not possible to use a negatively worded condition precedent to secure the subsequent approval and implementation of the outstanding detailed matter. The condition therefore provides for the loss of the effective benefit of the grant of planning permission where the detailed matters in question are not submitted for approval during the time set by the condition, approved (either by the local planning authority ("LPA") or by the Secretary of State on appeal), and then implemented in accordance with an approved timetable. Should the requirements of the condition not be met in line with the strict timetable, then the planning permission falls away.

Conclusion

34. For the reasons given above I conclude that Appeal B should succeed and planning permission is granted subject to conditions set out in the formal decision below.

Elizabeth Pleasant

INSPECTOR

Schedule of conditions (Appeal B)

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans: Site Location Plan, Scale 1:1250; Site Layout Plan, Scale 1:500; Site Survey, Drawing No. 20096/01.
- 2) 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 show people or circus people travelling together as such.
- 3) There shall be no more than four pitches on the site laid out in accordance with the approved Site Layout Plan (Scale 1:500).
- 4) On each of the four pitches hereby approved, no more than one caravan, as defined by the Caravan Sites and Control of Development Act 1960 and the Caravan Site Act 1968 as amended, shall be stationed at any one time on the site.
- 5) No external lighting shall be put in place or operated on the site at any time, other than has been previously submitted to and approved in writing by the Local Planning Authority as part of the scheme approved under Condition 8 of this permission.
- 6) No vehicles over 3.5 tonnes shall be stationed, parked or stored on this site.
- 7) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking and re-enacting or amending that Order) no additional gates, walls or fences or other means of enclosure, shall be erected or placed within/to the boundaries of the site.
- 8) The uses hereby permitted shall cease and all caravans, vehicles, structures, equipment and materials brought onto the land for the purposes of such uses shall be removed and the land restored to its condition before the development took place within 28 days of the date of failure to meet any one of the requirements set out in (i) to (iv) below:
 - i) Within three months of the date of this Decision a site development scheme (SDS) of foul and surface water drainage of the site; external lighting; details of twin unit caravans; hard surfacing; details of soft landscaping for the site, including retention of existing native hedgerows and trees on the site's boundaries, and details of species, plant sizes and proposed number and densities and biodiversity enhancements.

The SDS shall have been submitted for the written approval of the Local Planning Authority and shall include a timetable for its implementation.

- ii) Within 11 months of the date of this decision the SDS should have been approved by the Local Planning Authority or, if the Local Planning Authority refuse to approve the SDS or fail to give a decision within the prescribed period, an appeal should 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 should have been finally determined and the submitted SDS should have been approved by the Secretary of State.
- iv) The approved SDS shall have been carried out and completed in accordance with the approved timetable and shall thereafter be retained for the duration of the use of the site and development.

Additionally, within 5 months of the date of failure to meet any one of the requirements set out in i) to iv) above: all hardcore and other materials used to create the access and all other areas of hard standing within the site and all pipes, wires and other apparatus installed for domestic use shall be removed; and the land on which the access track, hard standing and caravans were located shall be reinstated to natural ground level and to a similar condition as the agricultural land immediately surrounding it by seeding it with grass; and all hard core and other materials that did not originally derive from the site shall be removed from the site.

In the event of a legal challenge to this decision, or 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.

- 9) At the same time as the scheme required by condition 8 above is submitted to the local planning authority there shall be submitted a schedule of maintenance for a period of 5 years of the proposed planting beginning at the completion of the final phase of implementation as required by that condition.

The schedule shall make provision for the replacement, in the same position, for any tree, hedge or shrub that is removed, uprooted or destroyed or dies within 5 years of planting or, in the opinion of the local planning authority, becomes seriously damaged or defective, with another of the same species and size as that originally planted.

The maintenance shall be carried out in accordance with the approved schedule.

END

APPEARANCES

FOR THE APPELLANT:

Mr Philip Brown BA (Hons) MRPTI

Philip Brown Associates Limited

Mr Peter Nolton B.Ed (Hons)

Mr Tyson Shepherd

The Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Mr Chris Wood

Senior Planning Appeals Officer

INTERESTED PARTIES:

Mr James Bennett

Local Resident

Ms Paulette Minhofer

Local Resident

Documents submitted at the Inquiry

- 1) Brochure Details of Panel Cabins.