



Appeal Decision

Inquiry held on 8 March 2022, 14 and 20 June 2022, 30 and 31 January 2023, 1 and 2 February 2023, 1 March 2023, and 24 April 2023

Site visits made on 28 February 2022 and 6 February 2023

by Peter Rose BA MRTPI DMS MCMi

an Inspector appointed by the Secretary of State

Decision date: 1st June 2023

Appeal Ref: APP/J1915/W/20/3262192

Land at Millfield Lane, Bury Green, Little Hadham SG11 2ED

- 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 J Connors against the decision of East Herts Council.
 - The application Ref: 3/20/1040/FUL, dated 4 June 2020, was refused by notice dated 27 August 2020.
 - The development proposed is creation of a four pitch Gypsy/Traveller site comprising the siting of one mobile home, one touring caravan, and the erection of one dayroom on each pitch, and the formation of an internal track and hardstandings.
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Decision

1. The appeal is dismissed.

Applications for costs

2. At the Inquiry an application for a partial award of costs was made by Mr J Connors against East Herts Council, and an application was submitted by the Council against Mr Connors. Those applications are the subject of separate Decisions.

Procedural matters

Temporary and/or personal permission

3. The application which is the subject of this appeal is for full, non-personal planning permission but the appellant confirmed at the Inquiry that, should such terms be found to be unacceptable, possibilities for a temporary and/or personal permission should also be considered.

Status of the proposed occupants

4. Gypsies and travellers are defined in Annex 1 to the Government's Planning Policy for Traveller Sites (the PPTS, August 2015) as persons of a nomadic habit of life whatever their race or origin. There is no dispute between the parties regarding the Annex 1 status of the proposed occupants and that, as nomadic gypsies, the appeal falls to be determined in that regard within the terms, amongst others, of Policy HOU9 of the District Plan.¹

¹ The East Herts District Plan October 2018

The appeal proposal

5. The parties' Addendum to the Agreed Statement of Common Ground² (the Addendum) includes a further drawing at its Appendix 1 setting out agreed details in relation to site access. This drawing was accepted by the Inquiry as part of the appeal proposal and is considered accordingly.

Main issues

6. The main issues are:
 - whether or not the site is in a sustainable location in terms of accessibility to existing local services;
 - the possible effect of the development upon the character and appearance of the appeal site and its surroundings, and;
 - the absence of information in relation to on-site services.
7. The Council's decision notice cites harm to highway safety, and that objection has since been addressed through the Addendum, but concerns remain from local interested parties.
8. Objections are also cited by local interested parties in relation to the impact of the development upon the settings of two nearby listed buildings.
9. Should I find conflict with the development plan in respect of any of these issues, and then further conclude overall conflict with the plan when read as a whole, it will be necessary to consider whether other material considerations would indicate that planning permission should be granted. The further other considerations may be summarised as:
 - the general need for gypsy and traveller sites and the available supply;
 - the personal circumstances of the proposed occupiers, and including associated rights and duties;
 - all further other relevant material considerations.

Reasons

Accessibility to local services

10. The appeal site comprises a relatively narrow rectangular strip of open countryside extending back from its frontage to Millfield Lane. The western part of the site has been previously developed as stables in connection with an equestrian use, but that building had been removed at the time of my second visit. Further land to the south is in the control of the appellant and used for horse grazing.
11. The site lies within a general pattern of relatively enclosed fields and of very occasional scattered buildings. It is bounded by hedgerows to the north, west and east, but is more open to the south where the topography descends towards Hill Cottage/The Snug some 150m away.³ Millfield Cottage lies some

² Signed by the local planning authority, the local highway authority and the appellant, and dated 31 January 2022 and 4 February 2022

³ All distances quoted in paragraphs 11 and 12 as agreed between the parties. Email from Emily Temple dated 21 February 2023 refers

60m to the north-west. The entrance to Silver Leys Polo Club is to the south-west, but its incidental built form lies further beyond. The appeal site is not physically adjacent to any other dwellings. Bury Green is the nearest designated settlement and comprises a residential hamlet some 300m to the south and with no formalised village boundary.

12. The nearest primary school is some 1.3km from the appeal site, and the nearest bus stop some 1.65km. There is a large Tesco supermarket on the edge of Bishops Stortford at a distance of some 2.9km. The nearest secondary school is some 8km away. A grocery store had previously operated some 1.57km away at Little Hadham, but has since closed as a conventional shop.⁴
13. The PPTS makes clear that local planning authorities should ensure that traveller sites are sustainable economically, socially and environmentally. Local planning authorities should, therefore, ensure that their policies: promote peaceful and integrated co-existence between the site and the local community; promote access to appropriate health services; ensure that children can attend school on a regular basis; provide a settled base that reduces both the need for long-distance travelling and possible environmental damage caused by unauthorised encampment; and provide for proper consideration of the effect of local environmental quality.⁵
14. The appellant identifies Little Hadham as an 18-minute walk from the appeal site, and that walking this route can provide access to public transport services into Bishop's Stortford, as well as to the amenities of Little Hadham itself.⁶ The Council suggests this journey to be slightly longer, and the duration of the walk will inevitably vary according to circumstance.⁷ The appellant further refers to guidance prepared by the Chartered Institute of Highways and Transportation suggesting that most people will walk to a destination that is less than one mile (1.6km) away, and that, generally, cycling is a potential mode of transport for journeys under 5 miles (8 km).⁸
15. Particular reference was also made throughout the Inquiry to an appeal decision at Chapel Lane.⁹ This was a relatively recent decision which granted permission for change of use of land to 10 pitches. The site also lies within East Herts District some 2.3 km to the west and was subject to the same District Plan. Both sites fall within the Plan's designated Rural Area Beyond the Green Belt.
16. The Chapel Lane site has some locational characteristics comparable to the appeal site, but also distinct contrasts. The appeal site is closer to the local primary school. It is also closer to the Tesco store but still at a significant distance likely to necessitate vehicle-based travel for shopping purposes. The Chapel Lane decision also identifies the walk to Little Hadham to be some 15 minutes.
17. Bury Green is defined by the District Plan as a Group 3 Village. This is the lowest category of settlement and the hamlet provides no recognisable public services to benefit the appeal site. The Chapel Lane decision identifies that site

⁴ As confirmed by local resident in Mr Singer's email of 1 February 2023

⁵ Paragraph 13

⁶ Paragraph 7.30 of Mr Woods' proof

⁷ Emily Temple in examination

⁸ Planning for Walking, 2015, Planning for Cycling, 2015

⁹ Appeal Ref: APP/J1915/W/19/3234671 Land off Chapel Lane, Letty Green, Little Hadham, Hertfordshire SG11 2AB dated 4 February 2020

to be 1km from Hadham Ford and which provides limited facilities comprising a part-time post office, part-time doctor's surgery and a public house. A bus link operates along Chapel Lane with limited services, and there is a bus stop by a public house at the end of Chapel Lane in Hadham Ford. Hadham Ford is also defined in the District Plan as a larger Group 2 Village where various appropriate development of small-scale facilities will be permitted. Hadham Ford is some 2.87km from this current appeal site by road.¹⁰

18. I have also had regard to a number of other appeal decisions as cited, and particularly decisions at Bury Green Farm and South Acres, and which also fall within the same District. The circumstances of each are also distinct from the current appeal. In the case of South Acre, whilst the decision notes that site is not located with easy access to services and facilities, the scheme relates to a replacement building and with a slightly different policy context. The decision at Bury Grange farm pre-dated the District Plan and refers to a site being reasonably close to a village where services include a pub, a school and a farm shop/café.
19. The current appeal site sits deep into the rural heartland of Millfield Lane and where there are no nearby services. The highway is a narrow and winding single lane country road generally enclosed by hedgerows either side, and descends in level from its junction with Hadham Road towards Bury Green. Millfield Lane is lightly trafficked, unlit, and devoid of footpaths or cycleways, although it is crossed by another footpath. Particularly at night, and late afternoons in autumn and winter, and during periods of inclement weather, walking and cycling would be hazardous and particularly unattractive. Millfield Lane is also not accommodating for use of buggies or wheelchairs or for other movement by people with disabilities.
20. The use of the appeal as a settled base would involve significant daily vehicular comings and goings both to services and for other purposes, although less so when occupiers are away travelling. The proposed occupants confirmed to the Inquiry that a second vehicle associated with each plot would be required for such purposes. Those shorter, local journeys consequent of a settled base would be akin to those expected of the settled community. There would also be trips to the site made by visitors.
21. In the context of the scale of the development proposed, I do not consider it to be a significant benefit that the equestrian use would be served by existing occupants without the need to travel.
22. As with the development plan, the PPTS does not preclude development of gypsy and traveller accommodation in the countryside as a matter of principle. Rather, Policy H of the PPTS states that new gypsy and traveller development should be very strictly limited in open countryside that is away from existing settlements or outside areas allocated in the development plan.
23. The appeal site is not allocated for gypsy and traveller development and there is no dispute the site comprises open countryside. The PPTS does not define how 'away from existing settlements' should be applied, and this remains a matter of fact and planning judgement for the decision-taker.

¹⁰ Paragraph 7.29 of Mr Woods' proof

24. Millfield Cottage lies beyond the appeal site and on the opposite side of Millfield Lane. It has no intervisibility or functional connection to the appeal site. Hill Cottage/The Snug are similarly unrelated to the appeal site and lie further away in the opposite direction but with a rear and relatively distant outlook towards the appeal site. The character of the surroundings is plainly one of open countryside containing a very limited number of isolated, self-contained and relatively random historic dwellings.
25. My overall assessment is therefore that the site is in open countryside that is away from existing settlements. This conclusion is also informed by my immediate impression and reflection when on site, and from the submitted aerial photography.¹¹ I drew little real sense on site of significant physical proximity to Bury Green.
26. All-in-all, the immediate physical context of the site, allied to a relative absence of nearby services, mean the scheme would occupy a highly vehicle-dependent location with only very limited reasonable prospects for walking or cycling as alternatives.
27. Policy DPS2 of the District Plan sets an overarching policy for delivery of sustainable development according to a hierarchy of locations, the lowest tier being limited development in villages. This policy needs to be read alongside Policy HOU9 and the qualifying terms of the PPTS. I agree that to apply this policy rigidly and out of context is likely to prohibit the ability for any sites intended to accommodate gypsies and travellers to come forward as windfalls. I also recognise the likelihood that, in any case, such opportunities to develop in the District will arise in the countryside outside of settlements.
28. Similarly, Policy TRA1's expectation for a range of sustainable transport options is of less relevance to gypsy and traveller sites in the countryside. In particular, the Framework makes clear that opportunities to maximise sustainable transport solutions will vary between urban and rural areas, and how this should be taken into account in both plan-making and decision-making.¹²
29. Aside from its relative physical isolation, I have no other particular reason to conclude that, socially, the site could not be integrated into the local area to allow for successful co-existence between the site and the wider settled community as expected by paragraph (e) of Policy HOU9.
30. A settled base would reduce the need for continuous travel and facilitate consistent access to schools and medical services. Nevertheless, and even allowing for the countryside context and the implications of the nomadic character of the proposed occupants, the development, by reason of its location, would still not be reasonably accessible to local services.
31. I therefore conclude the proposed scheme would provide a less than sustainable location in terms of accessibility to existing local services, and there would be conflict with Policy HOU9 of the development plan in that regard. This seeks, amongst other things, for non-allocated gypsy and traveller sites to be in a sustainable location in terms of accessibility to existing local services. This is a matter to which I attach significant weight.¹³

¹¹ See Appendix 1 to appellant's Statement of Case and paragraph 3.2 of Emily Temple's proof

¹² Paragraph 105

¹³ By way of clarification, the weight that I attribute to the considerations in this appeal are according to an ascending scale of: little or no; limited; modest; moderate; significant; considerable; and substantial.

Character and appearance

32. The appeal site comprises part of Area 86 Perry Green Uplands (Area 86), as defined in the Council's Landscape Character Assessment SPD (the LCA).¹⁴
33. The purpose of the LCA is to identify distinct landscapes within East Hertfordshire by describing their key characteristics and natural, historical and cultural features. The document then provides a structured evaluation of these landscapes, a landscape strategy and guidelines for conserving and enhancing the character of each area, and a framework for assessing planning applications.¹⁵
34. The landscape character of Area 86 is variously identified to include undulating upland with clustered hamlets linked by narrow winding lanes and treed farmland. The LCA identifies Area 86 to be in good condition with a moderate strength of character, and its recommended Strategy and Guidelines for Managing Change are summarised as to 'conserve and strengthen'.¹⁶
35. The appeal site and its immediate surroundings are characteristic of Area 86. Although of limited public exposure, the site makes a significant and consistent contribution to that wider pattern and character, positioned on rising land and exposed from other land to the south.
36. Whilst the overall character of the surroundings is predominantly open countryside, it is punctuated by Millfield Cottage to the north, Hill Cottage/The Snug to the south, and by facilities within the Polo Club but which are set further away from Millfield Lane. Hill Cottage/The Snug and Millfield Cottage appear as incidental features of an established historic landscape. Activities within the Polo Club are not readily apparent from Millfield Lane, and there is no evidence to suggest they detract from its rural character.
37. The main public view of the scheme would be from the entrance, but the plots would be largely obscured by the presence of the proposed replacement stables, although some exposure of the access and associated hard surfaces would remain. In the stables' absence, a similar screening effect from the entrance could be achieved through planting of a substantial scale.
38. The existing hedging to the Millfield Lane frontage of the adjoining land to the south would significantly screen the development in those views from the road. Nevertheless, there would still be some very glimpsed views, at various points, of domestic paraphernalia and comings and goings as to be expected of such active residential uses. This would particularly occur when the planting is not in full leaf, and also at a field gate fronting the lane to the south.
39. The proposal would necessitate some trimming of the existing hedge adjacent to the access in order to facilitate necessary sightlines. The substance of the hedge would remain intact, and would continue to screen public views of the site from Millfield Lane, but a consequence of the trimming would be slightly greater exposure of the access from the highway to the north and south.
40. Whilst there would be some relatively distant private views from Hill Cottage, significant screening would be provided along the site's southern boundary.

¹⁴ Landscape Character Assessment, September 2007 - Supplementary Planning Document (SPD)

¹⁵ Paragraph 2.1

¹⁶ Pages 183/184

41. Hence, in terms of visual impact, the development would be significantly screened from the public realm. This includes through the creation of meadow margins along the boundaries once established. Even if that were not to be the case, the PPTS makes clear that gypsy and traveller sites should not be enclosed with so much hard landscaping, high walls or fences, that the impression may be given that a site and its occupants are deliberately isolated from the rest of the community.¹⁷
42. In relation character, however, different considerations apply. A key characteristic of the appeal site, and of its surroundings, is its rural tranquillity. This is expressly recognised by the LCA which describes Area 86 as a unified and tranquil area away from the A120.¹⁸ That relatively serene character is also reinforced by, and is consistent with, a rich and varied ecological interest in the immediate area. The stillness and quiet character are very much part of the vicinity's distinct sensory qualities, both acoustically and visually.
43. The development would effectively introduce a small residential community of related families, with attendant daily comings and goings as to be expected of some 8 adults and currently 14 children¹⁹ when not travelling, and attendant mobile homes, day rooms, vehicles, hard surfaces and domestic paraphernalia. This would be of a scale and intensity of development far greater than arising from each of the existing nearest scattered dwellings.
44. The extent of lighting in periods of darkness necessary to serve, and arising from, the scale of development proposed would also be likely to be intrusive in an otherwise largely unlit setting. Lighting would be likely to be evident externally to the site, particularly from the south, and would also highlight associated comings and goings.
45. The existing rural tranquillity of the site and its surroundings add to their sensitivity and subsequent vulnerability to change. The scheme would be in very marked contrast to the planning character of a policy-compliant stables and equestrian use and would have an unduly urbanising effect upon the established character of the wider landscape.
46. The scheme would significantly interrupt and harm the formally acknowledged character of Area 86 and would conflict with its demonstrable physical attributes. The development would not conserve and strengthen Area 86 as expected of the LCA.
47. The Framework seeks for the planning system to contribute to and enhance the natural and local environment by protecting and enhancing valued landscapes, and, more generally, by recognising the intrinsic character and beauty of the countryside.²⁰ Whilst the appeal site itself enjoys no specific recognition as a formally valued landscape, for the reasons indicated, it still makes a significant and integral contribution to the character of the surrounding open countryside and to the distinctiveness of its immediate setting.
48. The Framework may recognise that some land has a value worthy of specific designation for the quality of its landscape, but this does not imply that the

¹⁷ Paragraph 26d)

¹⁸ Paragraph 183

¹⁹ The Inquiry was informed that one of this number has now passed the age of 18

²⁰ Paragraph 174

loss of undesignated countryside is not of itself capable of being harmful in the planning balance.²¹

49. The Chapel Lane development lies within a different LCA, and has a different relationship to its surroundings. The current appeal site is a smaller and narrower piece of land and is largely concealed from the public highway. Its size, shape and position, and its enclosed relationship to Millfield Lane, make for a more intimate, secluded and particularly tranquil character consistent with its LCA.
50. Unlike the Chapel Lane decision which found, in applying Policy HOU9, no undue harm to the visual amenity and character of the area, my assessment is that particular policy threshold would be far exceeded by the appeal scheme and would be in conflict.
51. I recognise the layout and design of the scheme seek to minimise the development's visual impact and to integrate the character of the use into its surroundings. Even so, the scale and intensity of such a use would make for a highly discordant presence at the expense of an otherwise tranquil, open countryside character.
52. I therefore conclude the proposed scheme would incur serious harm to the character of both the appeal site and its surroundings, and some much more limited harm to appearance. This would be contrary to Policy GBR2 of the District Plan which seeks to ensure that gypsy and traveller development in sustainable locations in the Rural Area Beyond the Green Belt is compatible with the character and appearance of the rural area. It also requires development to accord with Policy HOU9 and which seeks to ensure that the occupation and use of the site would not cause undue harm to the visual amenity and character of the area and should be capable of being assimilated into the surrounding landscape without significant adverse effect.
53. The scheme would also be contrary to Policy DES2 and which reinforces the expectations of the LCA. Policy DES2 requires proposals to demonstrate how they conserve, enhance or strengthen the character and distinctive features of the district's landscape and should have regard to the Council's adopted Landscape Character Assessment Supplementary Planning Document. The scheme would also not promote local distinctiveness as expected of Policy DES4. Reflecting both harm to character and some more limited impact upon appearance, this is a matter to which I attach considerable weight.

On-site services

54. The Council maintains that insufficient information has been submitted to assess whether the site can accommodate appropriate services, particularly drainage, and how adequate play provision and storage facilities would be provided.
55. There would be space for play and domestic storage within the site and I do not consider any harm would arise in that regard.
56. No details have been submitted of proposed arrangements for drainage, but also no evidence has been offered by the Council to demonstrate that drainage,

²¹ Cawrey Limited and Secretary of State for Communities and Local Government and Hinckley and Bosworth Borough Council, Neutral Citation Number: [2016] EWHC 1198 (Admin), 23 May 2016

refuse and nor any other issues of concern to the authority, are not matters of technical detail and which could not otherwise be resolved by suitable planning conditions. I have no basis to find any unresolvable harm would arise in those regards.

57. Whilst the Framework and the Planning Practice Guidance (the Guidance)²² seek to minimise the use of conditions, their deployment in such circumstances would be a legitimate application should the proposal be otherwise acceptable.
58. I therefore conclude the proposed scheme would not give rise to any conflict with Policy HOU9 in this regard. This seeks, amongst other things, to ensure that sites will be suitable in terms of various matters, and including access to essential services such as water supply, sewerage, drainage, and waste disposal.

Highway safety

59. The Addendum sets out agreement of how, with the benefit of works to create appropriate sightlines in both directions and an appropriate driveway, the Council's previous objection has been addressed.
60. Additional traffic generation arising from four plots would be relatively modest in terms of highway implications, and I have no reason to conclude, with the benefit of the mitigation set out in the Addendum, that there would be any undue impact upon the existing free and safe movement of vehicles and pedestrians in Millfield Lane. No convincing technical evidence was offered to the Inquiry to the contrary, and the terms of the Addendum are formally endorsed by the local highway authority.
61. I therefore conclude the proposed scheme would accord with Policies TRA2 and HOU9 of the District Plan in this particular regard. These seek, amongst other things, for development proposals to ensure that safe and suitable access can be achieved for all users, will not result in any severe residual cumulative impact, and that non-allocated gypsy and traveller sites should be suitable in terms of vehicular access to the highway, parking, turning, road safety and servicing arrangements.

Listed buildings

62. The significance of Millfield Cottage is as a Grade II seventeenth century or earlier timber framed house with gabled thatched roof and other related features. Millfield Cottage has no historical relationship to the appeal site, and no particular significance arises from its wider setting.
63. The significance of Hill Cottage is as a Grade II sixteenth century or earlier timber framed house with half-hipped thatched roof and other related features.
64. Whilst Hill Cottage to the rear overlooks open land extending up to the appeal site, I am unconvinced that this wider setting makes a noticeable contribution to its significance. Even if it did, the combined effect of relative distance, of the intervening ridge of the land and of the landscaping/screening proposed would mitigate and offset any visual harm arising. Whilst the submitted evidence

²² Paragraph: 003 Reference ID: 21a-003-20190723 of the Guidance and paragraph 56 of the Framework

further references the tranquillity of the setting, I do not consider that feature to be a specific contribution to the historic significance of the asset.

65. Although the rural surroundings to each asset would change, I agree with the Council that this would not incur any particular heritage harm to either asset.
66. I therefore conclude the proposed scheme would incur no conflict with Policy HA7 of the District Plan. This seeks to ensure, amongst other things, that proposals that affect the setting of a listed building will only be permitted where the setting of the building is preserved.

The general need for gypsy and traveller sites and available supply

67. Policy B of the PPTS requires local planning authorities, in preparing local plans, to set targets which address the likely permanent and transit site accommodation needs of gypsies and travellers in their area. Local planning authorities are encouraged to identify and update annually a supply of specific deliverable sites sufficient to provide five-years' worth of sites against their locally set targets whilst, amongst other things, protecting local amenity and the environment.²³
68. The Council's latest and relatively up-to-date assessment²⁴ (the GTANA) identifies a need for 48 pitches to be delivered by 2033, with 36 of those to be provided in the first five years. This relates to all gypsies and travellers and not just those meeting the Annex 1 PPTS definition. The parties agree this need, when adjusted for recent site-specific decisions, becomes 53 pitches up to 2033, with 41 to be provided in the first five years.
69. A total of 22 pitches have been allocated by Policy HOU9 for the plan period of 2011–2033, and which reduces to a net supply of 19 pitches.
70. The Council's position is that, if all gypsies and travellers are included, there is an outstanding need for 34 pitches across the plan period to 2033, with 22 of those pitches to be delivered within the first five years.
71. The appellant considers the supply figure by 2027 to be 15 pitches, whereas the Council maintains there is a reasonable prospect of a further 4 pitches being provided within that timeframe.
72. The appellant's position is that the outstanding need for all gypsies and travellers is at least 58 pitches across the plan period to 2033, with 50 of those to be delivered within the first five years.
73. The parties also disagree regarding treatment of in-migration. Whilst the GTANA evidence justifying in-migration of a further 24 families appears very limited and the accuracy of that figure must be open to question, other evidence in support of such unmet need has been identified by the appellant. The GTANA's assumption of zero in-migration is also curious given the known and unmet pre-existing need of the appellant and his proposed co-occupiers.
74. The Inquiry received no evidence of any other known alternative sites available for development, and no indication of any public sites currently available for occupation.

²³ Paragraph 10a) and e)

²⁴ The East Herts Council Gypsy and Traveller Accommodation Needs Assessment (GTANA) Final Report May 2022, Opinion Research Services

75. Whilst the absence of a five-year supply and of any currently available sites each reflect, to some degree, a current failure of planning policy, the Council was satisfied at the time of its decision there was no shortfall, and its position has only changed in light of the new GTANA. It is also clear that work to address that changed position is afoot. It is intended that a bespoke strategy will be developed to ensure that mechanisms are in place to meet the remaining needs identified in the GTANA across the period to 2037, and this will proceed in parallel with a review of the District Plan.²⁵ I am also satisfied there is a reasonable prospect of the Council's already identified sites becoming available for development within a five-year period.
76. I also have regard to the Public Sector Equality Duty (the PSED)²⁶ as it relates to available supply. The PSED, amongst other things, sets out the need to advance equality of opportunity. The proposed occupiers are Irish Travellers and thereby persons who share a protected characteristic for the purposes of the PSED.
77. The existence of significant currently unmet need in the District is not now disputed, and is a matter to which I attach moderate weight relative to the other matters of importance identified in the development plan.

The personal circumstances of the proposed occupiers, and including associated rights and duties

78. The proposal would involve occupation of the site by four related families. Each family would comprise two parents and their children.
79. Dismissal of this appeal would contribute towards loss of a potential home for the families, thus interfering with their private and family life, and the apparent lack of immediately available alternative accommodation makes such interference more serious. In the absence of other opportunities, there would be a possibility of a roadside existence.
80. These matters are relevant to the proposed occupants' rights under Article 8 of the European Convention on Human Rights, as incorporated by the Human Rights Act 1998, in relation to respect for private and family life, and also to Article 1 of the First Protocol in relation to peaceful enjoyment and protection of property. In this regard, I note that the proposed occupiers have sought to develop the site through a joint venture involving a necessary pooling of financial resources.
81. I am also mindful that Article 8 places a positive obligation on the state to facilitate a gypsy way of life. This is reflected by the PPTS in stating that the Government's overarching aim is to ensure fair and equal treatment for travellers, in a way that facilitates the traditional and nomadic way of life of travellers while respecting the interests of the settled community.²⁷ The Framework also makes plain that its policies should be read in conjunction with the PPTS.²⁸
82. The evidence has demonstrated the personal needs of the families, their difficulties in securing suitable accommodation, and the proposed occupiers'

²⁵ Council's note attached to email of 28 February 2023 refers

²⁶ Section 149 of the Equality Act 2010 refers

²⁷ Paragraph 3

²⁸ Paragraph 4

cultural aversion to living in bricks and mortar. There is a significant shortfall in local site provision, and a lead-in time for future planned availability. There would thus be a significant interference with the occupiers' relevant rights and this also raises a further possible issue of proportionality to which I return in my overall conclusions.

83. It is not necessary to demonstrate local connections but, as potential factors in support, none of the proposed occupiers identified any particular local social or economic associations.
84. The personal circumstances of the proposed occupiers are a matter to which I attach modest weight relative to the other considerations of the development plan identified, but this excludes implications arising from the need and supply of sites, and excludes the best interests of the children. These are matters to which I attach further separate weight.

Best interests of the children

85. Where Article 8 rights are those of children, they must also be seen in the context of Article 3 of the United Nations Convention on the Rights of the Child and which requires a child's best interests to be a primary consideration. The best interests of the children are necessarily a consideration at the forefront of this decision. No other matter is intrinsically more important, although other issues may prove weightier in final assessment of the particular circumstances and merits of a case. Children also have the protected characteristic of age under the PSED.
86. The Guidance similarly advises that the decision-maker needs to ensure the approach taken is proportionate to the case.²⁹ In doing so, the decision-maker needs to be mindful that the best interests of a particular child will not always outweigh other considerations, and including those that impact negatively on the environment or the wider community.
87. In this case, the children's best interests relate to educational and health needs, to the advantages of a settled existence, and to wider implications for their well-being and lifelong development.
88. The Inquiry heard evidence of how some of the children were currently in nursey/school elsewhere and of their existing family and other support elsewhere. One of the children was also receiving one-to-one support in response to particular needs, but no evidence was put forward of specific medical conditions directly relevant to the site. The children also have no welfare or family connections to local area, no existing or formally recognised association to local schools, and no current reliance or other connection to the site.
89. The best interests of the children are matters to which I attach moderate weight.

All other relevant material considerations

Previously developed land

²⁹ Paragraph: 028 Reference ID: 21b-028-20150901

90. The Council granted permission in 2019 for development of part of the appeal site involving equestrian use and erection of a stable block comprising stables, tack room and hay store.³⁰ Whilst development was subsequently undertaken pursuant to that permission, subsequent enforcement action necessitated removal of the building in order to address an outstanding matter of land contamination beneath the structure. That issue pre-dated the appellant's acquisition of the site. A further application was submitted by the appellant for the same development, and permission was again granted.³¹
91. The Framework defines previously developed land to include land which is or was occupied by a permanent structure, including the curtilage of the developed land.³² As such, I conclude the appeal site comprises previously developed land. The PPTS requires weight to be attached to effective use of such land.³³
92. Policy DPS2 sets out the Council's strategy to deliver sustainable development in accordance with a specified hierarchy, the first tier of which is development on sustainable brownfield sites. This is also consistent with similar general encouragement to be drawn from the Framework.³⁴
93. Whilst the site is undoubtedly previously developed land, that status arises from a twice-authorised policy-compliant equestrian use and stables without incurring undue harm. The appeal scheme would not serve to address any particular adverse consequence of that previous development. In terms of tangible benefits, I attach only very limited further weight to that status as an additional factor in favour. Its relevance is policy compliance in assessment against the development plan as a whole and little more.

Biodiversity

94. In response to the original application publicity, a report was submitted to the Council on behalf of local interested parties.³⁵ The report identifies the undoubted bio-diversity value of the local area, and particularly in regard to the adjacent Millennium Wood and its surroundings.
95. The report raises concerns regarding the possible wider ecological implications of the development from additional traffic, noise and lighting, but identifies little direct and specific evidence of impact upon the appeal site itself. No ecological objection is raised by the Council.³⁶
96. In response to the concerns raised by local interested parties, further evidence was submitted to the Inquiry by the appellant in the form of a preliminary ecological appraisal.³⁷ This followed a desk study and an up-to-date field survey to record baseline information on the site itself and the surrounding area. No protected plant species or habitats were identified within the site. The appellant is also committed to achieving a minimum 10% net biodiversity gain through the accompanying landscaping and wider site treatment.

³⁰ Planning permission Ref: 3/18/2664/FUL dated 28 February 2019

³¹ Planning permission Ref: 3/22/2699/FUL dated 20 April 2023

³² Glossary, and noting that it should not be assumed that the whole of the curtilage should be developed
³³ Paragraph 26a)

³⁴ Paragraph 120

³⁵ 'The Bio-Diversity of Millfield Lane around the junction of Hoecroft Lane and Silver Leys Polo Club, incorporating the adjacent Millennium Wood' compiled by Jonathan Forgham

³⁶ Email from Rachael Collard dated 3 March 2022 and as further confirmed by Emily Temple in response to Inspector's question

³⁷ Preliminary Ecological Appraisal by Arbtech dated 13 February 2023

97. I therefore conclude the proposed scheme would accord with Policy NE2 and Policy NE3 of the District Plan. These seek, amongst other things, to ensure all proposals avoid harm to, or the loss of, features that contribute to the local and wider ecological network, achieve a net gain in biodiversity where it is feasible and proportionate to do so, and enhance biodiversity and create opportunities for wildlife.
98. I do not assess the ecological proposals to be a significant benefit of the scheme. Rather, this aspect of the proposal would involve mitigation necessary to offset the otherwise largely undeveloped natural condition of the land to be developed and of its surroundings, and is required to achieve accompanying policy compliance. I attach only very limited weight as a factor in favour.

Flooding

99. The site lies within Flood Zone 1 and the Council acknowledges it is not at high risk of flooding.³⁸ Little technical assessment is before me to suggest otherwise, and I have no reason to conclude that necessary arrangements for suitable drainage could not be addressed by planning conditions.
100. I therefore conclude the proposed scheme would accord with Policy WAT1 of the District Plan. This seeks, amongst other things, to ensure all proposals should not increase the likelihood or intensity of any form of flooding.

Land ownership

101. The appellant has confirmed that the proposed entrance would involve access across a very small strip of established common land between the gate and the highway. An explanation was given to the Inquiry of the statutory procedures available to authorise such work, and there was no suggestion of any particular impediment arising in that regard.

Planning balances

The development plan as a whole

102. For the reasons set out, I conclude there would be serious conflict with the development plan and, in particular, arising from the expectations of Policies GBR2, HOU9 and DES2. Whilst there may be compliance with other policies of lesser significance, these are the policies which are most important to the proposal. Accordingly, the proposal would not accord with the development plan read as a whole.

The balance of other material considerations

103. For the reasons already explained, I attach significant weight to issues of a sustainable location and considerable weight to character and appearance. I apply moderate weight to issues of need and supply, modest weight to the personal circumstances of the proposed occupiers, moderate weight to the best interests of the children, and very limited weight to brownfield status and to proposed ecological measures.
104. The appellant has submitted that the absence of a five-year supply of deliverable gypsy and traveller sites engages the tilted balance of paragraph 11.d) of the Framework as a further material consideration.

³⁸ Officer report paragraph 8.75

105. Footnote 8 to the Framework indicates that policies are out-of-date where a five-year supply of deliverable housing sites cannot be demonstrated. Footnote 38 to paragraph 74 makes clear that a five-year supply of sites for travellers should be assessed separately, in line with the PPTS. Footnote 27 makes the same point and with reference to the Annex 1 definition successfully challenged in *Lisa Smith*.³⁹ That judgement relates to the definition of gypsies and travellers for the purposes of Annex 1 and not to the general approach set out in the Framework as to how available gypsy and traveller supply should be assessed. No update of the Framework has been provided to the contrary, and relevant policies are not otherwise substantively out-of-date.
106. Accordingly, I have no reason to accept that the absence of a five years' supply of gypsy and traveller sites engages the tilted balance. Even if the tilted balance were to be engaged, however, I consider the magnitude of the adverse impacts of an approval would still significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. This argument is not therefore a further material consideration in favour of the development.
107. In summary, given the scale and intensity of the proposed development relative to the circumstances of the site and its surroundings, I do not consider the relevant other material considerations outweigh the conflict with the development plan and its associated harm.

Possibilities for temporary and/or personal permissions

108. Possibilities for temporary and/or personal permissions each require a further balancing exercise taking into account, as appropriate to each, the personal circumstances of the proposed occupiers and the reduced durations of both the harms identified and of the benefits likely to arise.
109. A temporary permission would also be dependent upon a reasonable expectation of a change in planning circumstances, such as alternative sites becoming available through the development plan process within a specific period.⁴⁰
110. The appellant has advised that a temporary permission would be required for a minimum period of five years.
111. I consider a period of five years is likely to allow the Council reasonable time to complete its assessment of other possible sites through the District Plan review and for appropriate opportunities to then be pursued. It would also be a reasonable period given the extent and cost of the various site works required for a temporary period, including outstanding arrangements for drainage.
112. The PPTS also advises that if a local planning authority cannot demonstrate an up-to-date five-year supply of deliverable sites, this should be a significant material consideration in any subsequent planning decision when considering applications for the grant of temporary planning permission.⁴¹

³⁹ *Smith v SSLUHC & Ors* [2022] EWCA Civ 1391

⁴⁰ Paragraph: 014 Reference ID: 21a-014-20140306 of the Guidance states that a temporary permission may be appropriate where it is expected that the planning circumstances will change in a particular way at the end of that period

⁴¹ Paragraph 27

113. I have assessed three possible alternative scenarios: a personal and permanent permission; a temporary, non-personal permission; and a temporary, personal permission.

114. I find that when all the other relevant material considerations are added and adjusted as appropriate to each, including the continuing absence of a permanent home, they would not outweigh in each scenario the totality of harm arising relative to the development plan. Whilst a five-year permission would offer temporary benefits to the proposed occupiers, the harm identified would nonetheless remain and be experienced over a considerable period of time.

Possible conditions

115. None of the conditions discussed during the Inquiry, either individually or collectively, would overcome the harm identified to enable the grant of a planning permission.⁴²

Proportionality

116. Dismissing this appeal would interfere with the proposed occupants' relevant statutory rights as identified, and the concept of proportionality is crucial. Article 8 and Article 1 rights are not unqualified. Interference in this instance would be in accordance with the law and in pursuance of well-established and legitimate public aims of protecting the countryside and promoting sustainable development.

117. Further, I find the relevant planning policy aims could not be achieved by means less imposing or intrusive and, as the minimum action necessary to serve those important ends, would not have an excessive or disproportionate effect on the interests of the persons affected, and including the particular interests and accompanying rights of the children.

Conclusion

118. For the above reasons, the appeal is dismissed.

Peter Rose
INSPECTOR

⁴² As per paragraph 55 of the Framework and paragraph 28 of the PPTS

APPEARANCES

For the local planning authority:

Saira Kabir Sheikh of King's Counsel, and **Annabel Graham Paul**⁴³ of Counsel, instructed by Victoria Wilders, Legal Services Manager, East Herts Council

They called:

Emily Temple – Director, ET Planning Ltd
Kay Mead – Principal Planning Officer, East Herts Council

Rachael Collard, Interim Team Leader Development Management, East Herts Council, also contributed to roundtable discussions

For the appellant:

Alan Masters of Counsel, instructed by Brian Woods, WS Planning and Architecture

He called:

John Connors – applicant and proposed joint occupier
Edward Connors – proposed joint occupier
Miles Connors – proposed joint occupier
John Beary – proposed joint occupier
Brian Woods – Managing Director, WS Planning and Architecture
Mark Sanderson – Director, The Heritage Advisory
Adrian Draffin – Draffin Associates

Interested parties:

Joanna Ede – Director and Head of Landscape and Visual Assessment, Turley Planning Consultants (giving technical evidence on behalf of local residents)
Rob Lucas – Senior Partner, David Brain Partnership (also giving technical evidence on behalf of local residents)
Councillor Geoffrey Williamson – Local Member (on behalf of local residents)
Mark Jackson – Mark Jackson Planning (on behalf of local residents)
Sam Boaden – local resident

⁴³ Annabel Graham Paul appeared for the authority from 30 January 2023

INQUIRY DOCUMENTS

The following documents were submitted and accepted in evidence during the Inquiry:

Reference	Title
ID1	Proof of evidence of Mark Sanderson dated April 2022
ID2	Opening statement by Saira Kabir Sheikh KC on behalf of the Council dated 14 June 2022
ID3	Council position statement relating to the lawful status of the appeal site and attaching to Emily Temple's email of 17 June 2022, and enclosures
ID4	Supplementary proof of Brian Woods dated July 2022
ID5	Supplementary proof of John Connors dated July 2022
ID6	Supplementary proof of Edward Connors dated July 2022
ID7	Supplementary proof of Miles Connors dated July 2022
ID8	Supplementary proof of John Beary dated July 2022
ID9	Rebuttal statement from Emily Temple dated 2 August 2022 and enclosures
ID10	Council Landscape Proof Addendum with accompanying appendix – dated November 2022, as copied to the appellant by email dated 24 November 2022
ID11	Emails from Rachael Collard dated 15 December 2022 and 12 January 2023, and from Peter Brownjohn dated 20 December 2022 and 12 January 2023, relating to The Stables/Chapel Lane
ID12	Email from Rachael Collard dated 27 January 2023 enclosing update to 5-year supply and other documents
ID13	Undated statement from Councillor Williamson, including cross-reference to previously submitted report 'The Bio-Diversity of Millfield Lane around the junction of Hoecroft Lane and Silver Leys Polo Club, incorporating the adjacent Millennium Wood' prepared by Jonathan Forgham and dated 3 July 2020
ID14	5-year need/supply statement of common ground dated 30 January 2023 and amendment
ID15	Email from Peter Brownjohn dated 31 January 2023 relating to planning application details for replacement stables, and from Rachael Collard dated 1 February 2023
ID16	Email from Rachael Collard dated 1 February 2023 enclosing Council's response to Inspector's questions set out in email of 31 January 2023
ID17	Email from John Singer dated 1 February 2023
ID18	Email from Judith and Michael Wheeler dated 3 February 2023
ID19	Email from Peter Brownjohn dated 16 February 2023 and accompanying Preliminary Ecological Appraisal by Arbtech dated 13 February 2023
ID20	Email from Emily Temple dated 21 February 2023 setting out agreed distances

ID21	Emails from Mark Jackson dated 22 and 23 February 2023 enclosing comments regarding Preliminary Ecological Appraisal by Arbtech dated 13 February 2023
ID22	Email from Rachael Collard dated 28 February 2023 enclosing note relating to GTANA follow-up and District Plan review questions raised by Inspector in email dated 17 February 2023
ID23	Agreed amended schedule of recommended conditions submitted by email from Emily Temple dated 28 February 2023
ID24	Email from Rachael Collard dated 28 February 2023 clarifying archaeological designation
ID25	Email from Rachael Collard dated 7 March 2023 identifying the location of the Millfield Common Ponds Local Wildlife Site
ID26	Email from Rachael Collard dated 20 March 2023 in confirmation of Council decision relating to the Gilston Area
ID27	Final agreed summary headline statement of factual clarification relating to 5-year need/supply signed and dated 12 and 13 April 2023
ID28	Application for an award of costs by Mr J Connors dated 18 April 2023
ID29	Application for an award of costs by the Council dated 19 April 2023
ID30	Confirmation by email from Peter Brownjohn dated 20 April 2023 of Council decision to grant planning permission for equestrian use and stables (Application Ref: 3/22/2699/FUL), and qualification of costs application
ID31	Council correction to paragraph 4 of summary headline statement of factual clarification relating to 5-year need/supply signed and dated 12 and 13 April 2023, and attaching to email from Rachael Collard dated 20 April 2023
ID32	Council response to appellant's application for costs submitted on 24 April 2023
ID33	Closing statement by Annabel Graham Paul on behalf of the Council dated 21 April 2023
ID34	Closing statement by Alan Masters on behalf of the appellant dated 24 April 2023
ID35	Note by Annabel Graham Paul dated 28 April 2023 and relating to the applicability of the Framework's 'tilted balance'