



Appeal Decision

Hearing held on 10 October 2023

Site visit made on 10 October 2023

by Rachael Pipkin BA (Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 November 2023

Appeal Ref: APP/C1760/W/22/3310058

The Atchen Tan, Netherton Road, Hurstbourne Tarrant SP11 0DN

- 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 Mrs Rebecca Lee against the decision of Test Valley Borough Council.
 - The application Ref 21/01020/FULLN, dated 10 February 2021, was refused by notice dated 23 June 2022.
 - The development proposed is permanent siting of four caravans for residential use by one family.
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Decision

1. The appeal is allowed and temporary planning permission is granted for siting of four caravans for residential use by one family at The Atchen Tan, Netherton Road, Hurstbourne Tarrant SP11 0DN, in accordance with the terms of the application Ref 21/01020/FULLN, dated 10 April 2021, subject to the conditions set out in the attached schedule.

Preliminary Matters

2. The appellant advised in writing that her name had changed from Ms Rebecca Richards to Mrs Rebecca Lee. I have therefore used the appellant's current name in my decision.
3. The description of development in the Council's decision notice more accurately describes the proposed development. I have used that in the banner heading above, omitting the word 'permanent' in my formal decision as the permission is for a temporary period only.
4. The appeal site is common land registered under the Commons Registration Act 1965. During the course of the appeal, the appellant made an application for registration of the appeal site based upon adverse possession. This is made to HM Land Registry under entirely separate legislation to that governing this appeal. This is a matter of land ownership and not for me to determine as part of this appeal.
5. I have been told that parts of the appeal site and wider area for which adverse possession is being claimed has been enclosed to prevent access by anyone other than the appellant and her family. As this is common land, under the Commons Act 2006, it cannot be lawfully enclosed so as to exclude the public in the absence of consent from the Secretary of State. I have not been made aware that such a consent has been applied for or granted. However, this is also not a matter for this appeal.

6. At the Hearing, the Parish Council raised a concern about the loss of amenity value arising from restrictions on the use of the common land for the local community. This was discussed at the Hearing. I have addressed this matter as a main issue below.

Background and Main Issues

7. The appellant and her family have stated that they have been residing at the site for in excess of 13 years. In 2015, temporary planning permission for the siting of 4 caravans for residential use was granted on appeal¹ for a 2 year period which expired on 30 July 2017. A further temporary permission was granted² by the Council which expired on 20 April 2021. That permission has now lapsed and planning permission is now being sought for the permanent siting of the caravans and occupation of the site.
8. The Council's first reason for refusal referred to water for domestic purposes not being provided on the site as not providing an adequate standard of living for the occupants of the site. Notwithstanding this, the Council confirmed at the Hearing that since the appellant and her family had been living in this way for many years there was nothing to suggest their living standards were unsatisfactory. The Council confirmed its main concern under this reason for refusal was in respect of the trip generation arising from this. It was also concerned about wastewater disposal in respect of nutrient neutrality.
9. Consequently, the main issues are:
- whether the appeal site is a suitable location, having regard to the accessibility of the site to day-to-day services and facilities and essential services (water and wastewater disposal);
 - the effect of the proposed development on the character and appearance of the area, including the North Wessex Downs Area of Outstanding Natural Beauty (AONB);
 - whether the location is suitable for the proposed development, with particular regard to flood risk;
 - the effect of the proposed development on the amenity value of the common land;
 - the effect of the proposed development on the integrity of protected habitats sites within The Solent, with particular regard to nutrient neutrality; and
 - whether any harm identified, including conflict with the development plan, would be outweighed by other considerations.

Reasons

Suitable location

Day-to-day services and facilities

10. The appeal site is located in the countryside. The nearest settlement is the village of Hurstbourne Tarrant, some 1.5 kilometres (km) away. There are

¹ Council Ref: 13/01648/FULLN

² Council Ref: 17/01736/FULLN

basic services within the village including a village shop. For a more extensive range of services and facilities to meet day-to-day needs, occupants of the site need to travel to larger settlements, such as Andover around 11km away and Newbury, approximately 18km.

11. Hurstbourne Tarrant is served by public transport, with two services operating, four times a day on weekdays. There is also a school bus from the village. Netherton Road, on which the appeal site is located, runs through the countryside. It is also part of the National Cycle Route 246. However, the route is unlit and has no footpath. It is therefore neither a safe nor an attractive route along which to walk either to the village or to access public transport, particularly during the dark or periods of poor weather. It would also be an unattractive option for cycling in such conditions. The occupants are therefore reliant on the private car to access public transport, the school bus or to meet their other day-to-day needs. The appellant confirmed this to be the case at the Hearing.
12. The appellant has asserted that under Hampshire County Council Transport to School Policy the route to the village is deemed safe and reasonable for a child to walk to the Rural Business Hub, from where the school transport runs. I have not been provided with a copy of that policy. In any event, I find that the route is unsuitable for reasons I have set out.

Access to water and wastewater disposal

13. The appeal site is not connected to mains water or mains drainage. To meet these needs, drinking water is purchased from the supermarket and other water, for washing and other day-to-day needs is brought to the site either in churns or a water bowser. This is collected from Greenham Marina or from the appellant's daughter's place of work in Newbury. The appellant has stated they do this roughly on a fortnightly basis.
14. An Elsan chemical toilet is used as the absence of water on the site prevents the installation of a package treatment plant or similar. Sewage and wastewater is disposed of at Greenham Marina in Newbury or Great Bedwyn Canal Services Point which are some 25 minutes or so drive from the site.
15. Bringing in fresh water and disposing of wastewater from the site both require trips by private motor vehicles. The appellant has stated that these are combined trips which seems reasonable, particularly as Greenham Marina is located within Newbury where there are many other services and facilities. I nevertheless consider it is possible that there will be occasions when these are single purpose trips. On balance, it seems to me that there may be a few less trips from the site if there was a mains water connection.
16. There is evidence that the appellant has taken steps to address this. A quote for the works has been provided by Southern Water and a connection to the main supply could be provided. It would require a length of self-lay pipe to be laid to the connection point. The appellant proposes to do this herself but would not do so until planning permission is granted. Once mains water is in place, she would then be able to arrange for the installation of a package treatment plant. I am sympathetic to the appellant's position in this regard. Without permanent planning permission, it is understandable that she would not want to invest in putting in place these services if she were to be subsequently asked to leave the site.

17. The Council has disputed that this connectivity would be possible, stating it would need to cross third party land. No plan has been provided showing the line of the proposed pipe to the connection point. As the appellant does not own the land, it is also unclear as to what her rights would be in respect of laying a pipe. However, that falls outside the scope of matters for me to consider.
18. Currently, there is no connection. There is no conclusive evidence that a connection to mains water would be made although it seems to me that if permanent permission were to be granted, it is more likely that arrangements to achieve this would be pursued. I also note that there is no policy requirement for the site to be connected to mains services.
19. In view of the above, I am assessing the suitability of the location on the basis of the arrangements in place now. I have found that without a mains water connection, the number of trips is likely to be higher but not significantly so.

Overall findings on location

20. The occupants of the site are reliant on the private motor vehicles to meet their every day and essential needs, both travelling to the village and to larger settlements a greater distance away. Whilst the bus service from the village may offer alternative access to nearby settlements, this is not a feasible option when dealing with essential services.
21. Reliance on private transport is commonplace in rural areas. The National Planning Policy Framework (the Framework) recognises that opportunities to maximise sustainable transport solutions will vary between urban and rural areas, and this should be taken into account in decision-making. However, the distance from the appeal site to nearby settlements with access to essential and a wide range of services are around 20 minutes or more drive from the site. Whilst trips are likely to be combined, on balance, I find that the distance and number of trips results in unsustainable travel patterns.
22. The appeal site is therefore not in a suitable location, having regard to the accessibility of the site to day-to-day services and facilities and essential services. It therefore conflicts with Policies COM2 and COM13 of the Test Valley Borough Revised Local Plan 2016 (the Local Plan), the Framework and the Planning Policy for Traveller Sites (PPTS). Together these permit gypsy and traveller accommodation which is located where services and facilities are accessible and seek to very strictly limit new traveller development in open countryside that is away from existing settlements.

Character and appearance

23. The appeal site is located within the open countryside, in an isolated position, physically and visually apart from other development. It is at the side of Netherton Road which runs through the Netherton Valley with the land rising up either side of the road. Land to the rear of the appeal site is well vegetated with trees and native scrub which provides a backdrop to the site. The area lies within the North Wessex Downs AONB. It is described in the North Wessex Downs AONB Integrated Landscape Character Assessment as being downland with woodland. Whilst the North Wessex Downs AONB Management Plan 2021 (the Management Plan) identifies the sense of remoteness and tranquillity as

being fundamental to the character of the AONB which is central to its enjoyment.

24. The part of the AONB within which the appeal site lies displays these identified characteristics. There is very little development along Netherton Road, apart from a few agricultural buildings, a logging enterprise and a couple of detached residential properties set well back from the road. The absence of development is a characteristic of the area. I appreciate that the logging enterprise does generate activity and noise as do the nearby farming enterprises and the use of the area of shooting. However, these are the activities associated with a rural location and the appeal site, as a residential caravan site, is not comparable.
25. The use of the site has introduced a number of vehicles to the site including four caravans and a horsebox as well as gates and fencing, dog cages, an outdoor garden area, areas of hardstanding, parking and other domestic paraphernalia. I am told that prior to the occupation of the site, it would have existed as scrub and woodland which characterises the land either side of Netherton Road. I have no reason to doubt this.
26. In an area uncharacterised by development the level of activity associated with appeal site, including vehicle movements and lighting, is incongruous. Whilst some lighting could be controlled, such as that placed externally, through the imposition of a suitably worded condition, internal lights are less easy to control and there is likely to be light spill in an otherwise dark environment.
27. Whilst enclosed to a degree by planting which screens the site, the caravans are nevertheless seen beyond this. They would be more prominent during winter months when trees are not in leaf. There is a public footpath opposite the site, which was quite overgrown at the time of my site visit and impassable, from third party photographic evidence it seems that the site is visible at points along this path. It is also visible along a short stretch of Netherton Road and from within the common land. Whilst views of the site are localised, given this is an AONB and valued as a high quality and attractive landscape, harm within this location is more sensitive than elsewhere. Furthermore, planting cannot be relied on in perpetuity to provide screening of development.
28. The Framework requires great weight to be given to conserving and enhancing landscape and scenic beauty in AONBs which have the highest status of protection in relation to these issues. The scale and extent of development within this area should be limited.
29. The proposal neither conserves nor enhances the valued landscape of the AONB. This accords with the conclusions reached by the previous Inspector in 2015 who found there would be significant adverse impacts on the natural landscape and scenic beauty of this area of countryside when granting temporary permission on appeal³ for the use of the site. She also concluded that this effect would be made worse if the proposal were permanent.
30. The absence of a response from the North Wessex Downs AONB does not confirm acceptance of the proposal. I recognise that the appellant is willing to accept any necessary conditions to help to reduce the visual impact of the proposal. However, it is not clear what measures could be put in place in the

³ APP/C1760/W/15/3002341

form of screening that would be both effective in the long term and not harmful to the character and appearance of the area. This does, therefore, not alter my overall findings on this main issue.

31. I therefore conclude the proposal causes significant harm to the character and appearance of the area, including the AONB. It therefore conflicts with Policy E2 of the Local Plan and the Framework which together seek to protect and enhance the landscape of the Borough and to conserve the scenic beauty of the AONB. Although not part of the development plan, it also conflicts with the Management Plan which opposes development that fails to conserve and enhance the character and quality of the AONB and requires development to respect the distinctive character of the North Wessex Downs.

Flood risk

32. The appeal site lies within Flood Zone 1. It also lies along the line of the Bourne Rivulet, a winterbourne. The 'Cock' and the 'Hen' are groundwater riverbeds and sources of this rivulet. The Cock runs through the Netherton Valley. The site lies on this riverbed and is at risk of groundwater flooding due to the flow path of the ephemeral watercourse. The Local Lead Flood Authority has stated this has been observed to flood approximately every 10 years. The site also lies within an area at high to medium risk of surface water flooding. Caravans are a highly vulnerable use under the Framework Annex 3: Flood risk vulnerability classification.
33. Paragraph 167 of the Framework sets out that development should only be allowed in areas at risk of flooding where, in the light of a site-specific flood risk assessment (FRA) (and the sequential and exception tests, as applicable) it can be demonstrated that certain criteria can be met.
34. Footnote 55 of the Framework states that in Flood Zone 1, a FRA should accompany all proposals involving land that may be subject to other sources of flooding, where its development would introduce a more vulnerable use. Footnote 56 makes it clear that the sequential and exception tests should be applied as appropriate to changes of use to a caravan site.
35. A FRA has not been provided. The Council nevertheless went on to consider the sequential and exception tests. It concluded that the sequential test had been met as there are no reasonably available sites that the proposed development could be located that would be at a lower risk of flooding. The Council considers that the exception test has not been met.
36. Paragraph 164 sets out that to pass the exception test it should be demonstrated that a) the development would provide wider sustainability benefits to the community that outweigh the flood risk; and b) the development will be safe for its lifetime taking account of the vulnerability of its users, without increasing flood risk elsewhere, and, where possible, will reduce flood risk overall. Both aspects of the exception test should be satisfied for development to be permitted
37. In terms of the wider sustainability benefits to the community, I shall weigh this up in my overall conclusions below. However, it will be seen that I conclude that there are wider benefits to the community from the appellant having a settled base. In this regard, the first part of the test has been met.

38. I was told that the area had flooded in 2013 and again in 2018. This was caused by the aquifer rising along The Cock. Flooding at the site was less severe than elsewhere along the road. However, part of the appeal site flooded in 2013. Water remained below the door threshold to the caravans and the occupants were still able to enter and exit the caravans and the site.
39. In the absence of a FRA or any flood modelling work, I have no information about either actual or predicted flood levels. I appreciate that the caravans are raised off the ground and this ground clearance allows for water to flow underneath the caravans, therefore not unduly impeding its flow. However, with raised floodwaters, it is possible that items from the site may be washed away and carried downstream. In a severe event, this could potentially affect the caravans themselves with associated danger to their occupants.
40. The appellant asserts that the site is predominantly porous and there is a soakaway plus 3 drainage ditches. I observed the ditches whilst on site, however, it was disputed by the Parish Council that these provide a drainage function. The evidence about these is inconclusive. In any event, whilst these may enable water to disperse in the event of flooding from surface water, these features would have little effect on flooding from groundwater which can take some time to subside.
41. The appellant has stated that a flood risk management plan is in place although this was not attached to the appeal submissions. It is not clear if there is an evacuation plan, although this could be required through a planning condition. She also advised that she is registered on the flood alert systems. As groundwater flooding is a significant concern locally, it is locally monitored and people are also kept informed through social media channels.
42. Furthermore, the appellant has stated that signs of rising water levels can be picked up by water levels within the ditches, giving the occupants of the site adequate time to react, and if necessary, move from the site or secure items that may get washed away. This is disputed by the Parish Council who stated that during the 2018 flood event, groundwater rose by a foot and a half within 24 hours.
43. Whilst it was evident from the discussions at the Hearing that the appellant is very aware of flood risk, I nevertheless have insufficient evidence before me to demonstrate that the development would be safe for its lifetime.
44. I have been told that during past flood events, a lot of debris was carried along into the River Swift, downstream. However, I have no substantive evidence that this arose from the appeal site.
45. The Parish Council has been actively managing flood risk within the local area, having carried out riverbed maintenance of The Hen and would be looking to do the same to The Cock. This would help to alleviate flood risk by essentially de-silting the riverbed and therefore increasing its capacity. With the caravans on site, I am told it would not be possible to carry out these works to the riverbed. Given that the caravans on the site are touring caravans, it would be feasible to move them off the site to accommodate these works.
46. I have no evidence as to when this work would take place, nor anything to secure agreement from the appellant to remove her caravans to let this operational work take place. However, it seems to me that this would be a

matter to be agreed between the appellant, who has indicated that she would move the caravans to facilitate these works, and the Parish Council, in much the same way as they would need to reach agreement with others occupying land which includes the riverbed.

47. Drawing together my conclusions on the second part of the exception test, I find that the development would not be safe for its lifetime although there is nothing before me to indicate that this would increase flood risk elsewhere. No evidence has been put to me that it would reduce flood risk overall. However, this is only required by policy 'where possible'. As the requirements under the second part of the test have not been met, I must conclude that the proposed development would not satisfy the exception test.
48. I therefore find that the location is not suitable for the proposed development with regard to flood risk. As such, it conflicts with Policy E7 of the Local Plan, the Framework and Paragraph 13 of the PPTS which together seek to avoid locating highly vulnerable uses in areas at high risk of flooding.

Access to common land

49. The appeal site lies on common land which I am told extends over the verge either side of Netherton Road. As such it has rights of access by the public. The appellant makes use of some 2.2 hectares of this land, although only a small part of that, around 0.2 hectares, forms the appeal site and is used for domestic purposes. The remainder of the land is used for grazing of animals, recreational uses, wood harvesting and coppicing, bushcraft and some planted as an orchard.
50. The Parish Council has raised a concern about access to the site and a discrepancy in the submissions made by the appellant. In her appeal statement, it is stated that public access to the site remains available as well as to the Painters Farm and Faccombe Estate for the purposes of shooting; however, in her claim for adverse possession, it is stated that public access is restricted, this being a requirement for any adverse possession claim.
51. I heard that this area of common had been regularly used, not particularly by large numbers of people, but it nevertheless provided an area for the public for outdoor recreation within the AONB. The use of the common by the appellant and her family and specifically the appeal site itself, has led to this area not being used. The appellant's dogs, which she keeps for security, are also described as being intimidating for people which also discourages access to the common.
52. The appellant confirmed that she has restricted access to the area immediately around the residential caravans. It is enclosed by relatively thick vegetation and gated. This is for security purposes as they have suffered theft from the site in the past. The vegetation also provides screening of the site. Consequently, the appeal site appears to be a private area of land which members of the public walking within the common would be unlikely to enter.
53. I observed that the remainder of the common was largely accessible, although vegetation has been planted along parts of the boundary and ditches have been dug along the roadside to deter access. With the restricted access to the appeal site, there has been some loss of access to the common land. However, this is a relatively small area of land. It seems to me that anyone wishing to

walk the length of the common would be able to either briefly step into or cross the road in order to pass the appeal site. Overall, the loss of access is limited and I find little harm through loss of amenity value arises from this.

54. As this did not form one of the Council's reasons for refusal, no specific policy conflict has been identified. However, I find the proposal is not in conflict with national policy set out in the Framework which guards against the loss of recreational facilities and protects access to open space and recreation.
55. My findings in this regard do not alter the operation of the statutory and regulatory provisions concerning Common Land by which the appellant would still be bound.

Protected habitats sites

56. The appeal site is located within the Solent region which includes several European Sites of Nature Conservation Importance, namely the Solent and Southampton Water Special Protection Area (SPA) and Ramsar site, Portsmouth Harbour SPA and Ramsar site, Chichester and Langstone Harbours SPA and Ramsar site, the Solent Maritime Special Area of Conservation (SAC), Solent and Isle of Wight Lagoons SAC and the Solent and Dorset Coast SPA. I refer to these collectively as the Solent habitats sites. These are subject to statutory protection under the Conservation of Habitats and Species Regulations 2017 (the Regulations).
57. Regulation 63 of the Regulations prevents the competent authority from granting permission unless the proposal would not adversely affect the integrity of these protected sites. I am the competent authority for the purposes of this appeal.
58. There is evidence that high levels of nitrates entering the Solent is contributing towards eutrophication of these protected habitats sites. Causes of these nitrates include wastewater from residential development. In these circumstances, Natural England (NE) has advised that any development proposal resulting in a net increase in overnight accommodation is required to demonstrate nutrient neutrality. In the absence of appropriate mitigation to achieve nutrient neutrality, NE advise that the proposal would have a significant effect on the Solent habitats sites.
59. Essentially, provided there is no net increase in nutrient loading within the catchments of the affected habitats site as a result of proposals, then existing nutrient issues will not be worsened.
60. The site has been occupied by the appellant and her family for over a decade. Indeed, the occupation of the site by the appellant and her family pre-dated the Regulations and the concerns about nutrient impacts which are a relatively recent issue in respect of these sites.
61. As I have already discussed above, they have no facilities on site to deal with wastewater which is taken off site for disposal. I have no information as to where that wastewater, once deposited, is treated and therefore whether it enters the Solent catchment or a different one.
62. The use of the site is unauthorised as the temporary permission has now lapsed. However, to my mind, this does not alter the fact that there would be no net increase in wastewater arising from the continued occupation of the site

given the timescales during which the site has been occupied and if the existing arrangements for wastewater disposal remain in place. For this reason, I conclude that the appeal proposal would not give rise to any net increase in wastewater entering the Solent catchment to that which already may occur.

63. My findings are premised upon the appellant making no changes to the way in which wastewater is disposed of. Currently, there is no certainty that this would change although it seems likely it would in the event that a permanent permission were to be granted. However, my decision is to grant a further temporary permission. Nevertheless, I must consider the implications for the protected habitats sites in the event that the appellant was to install a package treatment plant. This may give rise to adverse effects, and it would therefore be both reasonable and necessary to secure appropriate controls to ensure this would not occur. This could be controlled by condition.
64. I therefore find no conflict with Policies E5 and E8 of the Local Plan which require development to satisfy the requirements of the Habitats Regulations, to conserve biodiversity and to not result in the deterioration of water quality.

Other considerations

The need for and supply of gypsy and traveller sites

65. The PPTS requires Councils to identify and annually update a five year supply of deliverable sites set against locally set targets. The *Gypsy and Traveller Accommodation Assessment 2021* (the GTAA) identified a need for 44 pitches over the period 2020 to 2036 with 34 pitches within the first 5 years, that is between 2020 and 2024.

The latest *Gypsy & Traveller pitch and Travelling Showpeople plot supply statement* (the Supply Statement) was published in September 2023. This confirmed that the Council did not meet any of the identified need for sites between 2020 and 2023. It sets out the Council's supply for the period 1 April 2023 to 31 March 2028 based on need and permissions granted. It concludes that the Council has a supply of 8 pitches out of a requirement for 36.4 pitches, equivalent to a 1.1 year supply of pitches. This is a significant shortfall in supply.

Failure of policy

66. The Council consulted on a Gypsy and Traveller Development Plan Document (DPD) in 2015 under Regulation 18 of the Town and Country Planning (Local Planning) (England) Regulations 2012. This plan did not progress any further. The reasons for this are unclear.
67. The Supply Statement sets out the Council's next steps in respect of the addressing the supply of sites which it will do through the emerging Local Plan. It discusses a range of approaches for the Council to explore, including an assessment of capacity of permanent sites which might enable intensification, extensions to existing sites, allocations and the use of a criteria based policy for assessing relevant planning applications.
68. The Council's cabinet is being asked to approve the document for consultation under Regulation 18, with an expectation that consultation would be underway during 2024 and the plan adopted early 2026.

69. I appreciate these are steps which may help the Council to address the shortfall in supply and the need for pitches. However, the emerging Local Plan is at an early stage. In terms of meeting the needs of the gypsy and traveller community within the Borough, there has been a persistent failure of policy, certainly since 2015, when the first temporary permission was granted on this site and when consultation was undertaken on the Gypsy and Traveller DPD which was subsequently not taken further.

In light of the unmet need and the shortfall in supply and in the absence of any meaningful progress in either allocating sites or putting in place policies to deal with gypsy and traveller accommodation, I conclude there has been a significant failure of policy in this regard.

Alternative sites

70. There are no available authorised sites within the Borough for the appellant to move to. The Council does not dispute this fact. Therefore, should the appeal fail there would be nowhere for the appellant and her family to move to.
71. The cost of identifying and purchasing land within an urban area is also a barrier to finding an alternative site for the family. The appellant has made reference to the Council considering releasing land for affordable traveller sites, as a rural exception site. Any such approach would need to be addressed through the local plan making process and would not resolve the current issue about the availability of alternative sites.

Personal circumstances

72. The site is currently occupied by the appellant, her husband and children. Her youngest child is of school age, the others are adults. Occupants of the site work locally. The status of the appellant and her family as gypsies is not in dispute by the Council.
73. The family are unable to reside within a traditional bricks and mortar house as this has a detrimental impacts on their mental health. This is not therefore a realistic option for the family. The appeal site has become their home over the years they have been residing there. The appellant has stated that being able to live in a caravan and to remain on the site is essential to their wellbeing and mental health as well as their day-to-day existence whilst maintaining their cultural identity. The fear of being forced from their home is exacerbating the mental health of the family.
74. Evidence has been submitted concerning the health and social care needs of the appellant and her husband. These support the appellant's case that they need to remain where they are.

The youngest child attends a local education setting. In addition to the educational needs of the child, I have been made aware of other personal and support needs for the child which are of sufficient severity to add to my concern should the family be moved off the site. To remove the child from their current education setting, social and support network would certainly not be in the child's best interests. I give this matter substantial weight in the balance.

Other Matter

75. Few objections from local residents were submitted in response to both the application and the appeal. The Parish Council has stated that 21 individuals approached them to raise concerns as they were uncomfortable being identified as having commented due to concerns about how the appellant may react. There was no dispute that there had been an incident in the past that may have given rise to these concerns. However, this does not alter my assessment of the case which I have done on its own individual planning merits.

Planning Balance

76. At the start of considering the issues in the planning balance I have borne in mind the duty placed on me within the Public Sector Equality Duty under section 149 of the Equality Act 2010 (the PSED). The appellant and her family are Romany Gypsies and have the protected characteristic of race. The PSED requires that a public authority must foster good relations between persons who share a relevant protected characteristic and those who do not. I have also considered the best interests of the child currently living on the site as a primary consideration.
77. The proposal is not in a suitable location due to the reliance of occupants on private motor vehicles to access both essential and day-to-day services. It causes significant harm to the character and appearance of the area, including the AONB. The exception test has not been passed and the site is therefore not a suitable location in flood risk terms. Together, I attribute significant weight to these harms.
78. I have found that the scheme does not harm the amenity value of the common land. It also does not adversely affect the protected habitats sites. These are neutral factors in my decision.
79. The personal circumstances of the occupants, including their mental wellbeing associated with uncertainty and other health concerns, in combination with the lack of alternative sites to meet their personal needs carry significant weight in favour of the scheme. It would clearly not be in the best interests of the child residing at the site should the family have to vacate the site without having an alternative site to move to. The best interests of the child residing on the site and the family's right to a home, carry substantial weight in favour of the scheme.
80. Since the appeal site is located within the AONB, the absence of a five year supply of deliverable sites is not a significant material consideration in accordance with paragraph 27 of the PPTS. Nevertheless, there is a significant level of unmet need and a shortfall in sites for gypsy and travellers. Furthermore, for a number of years, the Council has failed to make provision for sites through the plan making process. Each of these factors carry significant weight in favour of the scheme.
81. In view of the need and supply issues, allowing the appellant and her family to remain on site would avoid them resorting to a roadside existence which would not only be detrimental to the wellbeing of all the site occupants, it would likely give rise to harmful impacts where it occurs. It would also make a small contribution to reducing the overall need for sites within the County. These are factors in favour of the scheme, which I consider amount to wider sustainability

benefits to the community in the context of the application of the exception test, which I referred to earlier in my decision.

82. Overall, I conclude that the proposal conflicts with the development plan as a whole. In combination with its conflict with the Framework, this amounts to significant adverse effects. These outweigh the other considerations, including the personal circumstances put forward, and do not justify the grant of permanent planning permission.
83. I have had regard to the rights of the appellant under Article 8 of the European Convention on Human Rights as incorporated into the Human Rights Act 1998. Article 8 affords the right to respect for private and family life and home and the best interests of the children. It is a qualified right, and interference may be justified where that is lawful and in the public interest. The concept of proportionality is crucial.

Whether a temporary permission would be appropriate

84. The harm arising from the proposal would make a permanent permission inappropriate even when weighed against other considerations. In the absence of any alternative sites for the appellant and her family to move to that would provide them with the stability needed and meet the best interests of the child, I consider that a temporary permission would be appropriate. If granted for a sufficient time, this would enable the appellant's child to complete their education to the age of 16 at which stage a move to a new place of education would be less disruptive. It would also enable the Council to progress its emerging Local Plan and make provision through that process for suitable sites for gypsy and traveller accommodation. A period of 3 years would be appropriate for this.
85. The Planning Practice Guidance⁴ sets out that it will rarely be justifiable to grant a second temporary permission except where changing circumstances provide a clear rationale. This would be the third temporary permission granted on this site but this is clearly justified in this case for the reasons I have set out.
86. I appreciate this is not the outcome the appellant was seeking. However, the harm from the permanent siting of these caravans would be more harmful to the AONB than a temporary permission which would secure their removal and the restoration of the land at the end of that period. I recognise that this may also result in the appellant not following through on a mains connection to the water supply, with the associated benefits it would provide to the site occupants. However, this is a personal choice for the appellant to weigh up. No specific concerns about living conditions have been evidenced.
87. A temporary permission would be a proportionate response that balances the qualified Article 8 Human Rights of the appellants for respect of private and family life and home with the proper planning of the area and its economic well-being, including the protection of the environment.

⁴ Paragraph: 014 Reference ID: 21a-014-20140306

Conditions

88. In addition to those I have already referred to in my decision, the Council has suggested conditions in the event the appeal is allowed. These have been reviewed by the appellant. Where the conditions meet the tests set out in Paragraph 56 of the Framework, I have imposed them, amending where necessary for the sake of simplicity, clarity and precision.
89. In view of the personal circumstances of the occupants of the site and the need to find an alternative site, a personal and temporary permission is reasonable and necessary.
90. Conditions securing the restoration of the site post-occupation, limiting the number and type of caravans on site, preventing commercial activities from taking place, restricting the installation of external lighting and the use of generators, are necessary and reasonable in the interests of the character and appearance of the area. In the interests of enhancing biodiversity, a condition securing measures to achieve this is necessary and reasonable.
91. As temporary rather than permanent permission is being granted and given existing planting around the site, a condition requiring details of both hard and soft landscaping, protection during the establishment of planting and maintenance for 10 years is not reasonable. Similarly, due to the temporary nature of the permission, a condition requiring a mains water connection is not reasonable.

Conclusion

92. For the reasons set out above, I conclude that the appeal should be allowed for a limited period of three years.

Rachael Pipkin

INSPECTOR

Schedule of Conditions

- 1) The use hereby permitted shall be carried on only by Mrs Rebecca Lee, Mr Ethan Lee and their dependent children, and shall be for a limited period being the period of three (3) years from the date of this decision.
- 2) When the premises cease to be occupied by persons specified in condition no.1 above, or at the end of three (3) years, whichever shall first occur, the use hereby permitted shall cease and all caravans, access gates, and all structures, materials and equipment brought on to the land, or works undertaken to it in connection with the use, shall be removed and the land restored in accordance with details that shall have first been submitted to and approved in writing by the local planning authority within 2 months of the grant of planning permission.
- 3) No more than 4 caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968, shall be stationed at the site at any time, none of those caravans shall be a static caravan, and these caravans shall be sited only within the area delineated with green hatching on plan No. TVBC/17/01736/FULLN.
- 4) No commercial activities shall take place on the site, including the storage of materials.
- 5) No external lighting shall be installed at the site.
- 6) No generators shall be used on site except in accordance with details that shall have first been submitted to and approved in writing by the local planning authority.
- 7) No sewage or wastewater treatment plant shall be installed at the site unless details have first been submitted to and approved in writing by the local planning authority. The details shall include an implementation and management plan for the sewage disposal proposals which will be required to demonstrate nutrient neutrality in respect of the protected habitats sites within the Solent Region.
- 8) The development shall be occupied in accordance with the provisions of a management plan for the continued enhancement of this area for biodiversity that shall have first been submitted to and approved in writing by the local planning authority within 2 months of the grant of planning permission. Details should include an ecological appraisal of the area for protected and notable habitats and species.
- 9) A flood evacuation plan shall be submitted to and approved in writing by the local planning authority within 2 months of the grant of planning permission. The flood evacuation plan shall thereafter be maintained and adhered to.

End of schedule

