



Appeal Decision

Hearing held on 9 October 2024

Site visit made on 9 October 2024

by Timothy C King BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 January 2025

Appeal Ref: APP/X0360/C/22/3311592

Land at New Acres, Nine Mile Ride, Wokingham RG40 3LX

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Ms Mary Bowers against an enforcement notice issued by Wokingham Borough Council.
- The enforcement notice was issued on 6 October 2022.
- The breach of planning control as alleged in the notice is: Without planning permission the material change of use of the Land to use for the stationing of mobile homes/caravans for the purposes of human habitation together with associated hard surfacing, ancillary outbuildings and structures including but not limited to kennels, play areas, fencing and lighting.
- The requirements of the notice are to:
 - 1) Cease the use of the Land for the stationing of mobile homes/caravans for human habitation.
 - 2) Remove all mobile homes/caravans and associated vehicles from the Land;
 - 3) Remove all associated hard surfacing; ancillary outbuildings and structures including, but not limited to, kennels, play areas, fencing and lighting from the Land.
 - 4) Remove from the Land all resultant materials associated with steps 2) and 3);
 - 5) Cover the Land with topsoil to a depth of 20cm and sow with a grass seed mix at 50 grammes per square metre.
- The period for compliance is within nine (9) months from the date this notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2) (a), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fee has been paid within the specified period, the application for planning permission deemed to have been made under section 177(5) of the Act as amended falls to be considered.

Formal Decision

1. It is directed that the enforcement notice be corrected by:
 - i) deleting requirement (v) and its substitution with the requirement that the land should be restored to its condition prior to the said breach having occurred;
 - ii) deleting requirement (iii) and its substitution with the following:

‘Remove all hardstanding and any structures on the land associated with the unauthorised use of the land.’

- iii) It is also directed that the enforcement notice be varied with the period for compliance extended to twelve (12) months from the date the notice takes effect.
- iv) Subject to the above corrections and variation the appeal is dismissed, the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act, as amended.

Preliminary Matters

- 2. The appellant's case largely rests on the letter which accompanied the appeal when originally lodged. This outlines the appellant's case, and refers to the development being a minor extension of an existing caravan site.
- 3. The letter refers to the appeal on ground (c) and says that this relates only to allegation no 3 which cites the erection of outbuildings, structures and kennels. The appellant disputes that any such development was in situ at the time the notice was issued, although the existence of the mobile home and hardstanding was accepted. A ground (c) appeal accepts the presence of the development cited but claims that no planning permission was required for its lawful retention. Instead, an appeal under ground (b) contends that the breach - either in full or partially - had not occurred as a matter of fact. Accordingly, I will address this issue.
- 4. By an e-mail dated 30 September 2024 the appellant stated that the appellant will not be seeking a permanent planning permission, but would instead be seeking an approval subject to a time limitation condition; in other words a temporary permission. A three year term is requested.
- 5. Following the Hearing, when visiting the site, it did not prove possible to access the land upon which the mobile home was sited, nor its immediate surroundings due to this being flooded, seemingly due to recent heavy rain. Nonetheless, I was able to partially observe the mobile home and its contextual setting.
- 6. Regarding the reference in the enforcement notice to the operational development which the appellant disputes, as I was unable to access the site and view it in its entirety, and that the Council's evidence as to the actual development on the site at the time the notice was issued appeared to me less than convincing I am changing the wording of Requirement (iii), which I address later.
- 7. A new iteration of the National Planning Policy Framework (the Framework) was published in December 2024 and I have referred to relevant guidance therein. Also, earlier this month, an updated government policy paper, 'Planning policy for traveller sites' was published. Similarly, I have had regard to the contemporary advice contained within this document.

Matters concerning the enforcement notice

- 8. Requirement (v) would involve covering the Land with topsoil and then sown with grass seed mix. Such measures, although holding merit, represent a positive obligation upon the appellant and go beyond the remedial steps that

are allowed for under the s173(4) of the 1990 Act. Accordingly, I shall delete this requirement and substitute it with more appropriate wording.

9. Given my findings as to the legal ground of appeal lodged I am deleting the wording of requirement (iii), but with replacement wording to encompass the actual breach occurring.
10. With the above corrections I am satisfied that the enforcement notice has been put on a proper footing.

Background

11. The appeal site is a small area of land abutting the rear, or eastern end of New Acres caravan park. The park gained planning permission in 1986. The site is set back from the access driveway, behind a series of caravans and, relative to the various plots within the caravan park, it is of limited size.
12. I understand that the enforcement notice at appeal is one of seven notices issued at that time against the stationing of mobile homes on various pockets of land to the rear of New Acres. At the Hearing the Council indicated that most of these notices had originally been appealed, but these appeals had subsequently been withdrawn. As mentioned, due to the flooding, I was not able to view the site itself, nor the immediate surroundings to the rear of New Acres which would have included the said pockets of land.

The appeal on legal grounds (b or c)

13. With the appellant disputing the enforcement notice's reference to outbuildings and structures etc, which instead, would have necessitated an appeal under ground (b), this matter falls away given that I have corrected the wording of requirement (iii) to require only the removal of any operational development associated with the unauthorised use of the land. Accordingly, the 'hidden' ground (b) appeal succeeds to this extent.

The appeal on ground (a); the deemed planning application (DPA)

Main Issues

14. These are:

- 1) planning policy and the five-year supply position of gypsy and traveller pitches within the Wokingham District area;
- 2) location, and the effect of the development on the character and appearance of the surrounding area;
- 3) whether there is a threat to the development from flooding; and
- 4) the impact of the development on the Thames Basin Heaths Special Protection Area.

Reasons

Planning policy and five year land supply

15. As mentioned, National policy is contained in the government's Planning Policy for Traveller Sites (PPTS) which states that applications should be assessed and

determined in accordance with the presumption in favour of sustainable development.

16. Policy B of the PPTS says that local planning authorities, in producing their Local Plan, should identify and update annually, a supply of specific deliverable traveller sites, sufficient to provide five years' worth of sites against their locally set targets. In this context 'deliverable' means sites that are available now, offering a suitable location for the development.
17. In the above connection, Policy H and paragraph 25 of the PPTS says that Councils should, amongst other things, consider the level of need for additional gypsy and traveller accommodation, the availability of alternative accommodation and also personal circumstances.
18. In February 2023, when the Council prepared its written Statement for this appeal, the indication was that the Council could demonstrate a deliverable supply of gypsy and traveller pitches well in excess of five years against, what it termed, a robustly assessed need.
19. However, a new Gypsy and Traveller Accommodation Assessment (GTAA) had been commissioned and was completed later in 2023 which took into account all past delivery and supply of pitches in the borough and, in a Supplementary Statement produced in August 2024 for the current appeal, the Council indicated that the new baseline position meant that the Council was now unable to demonstrate a five year supply of pitches.
20. The new GTAA identifies a total 'cultural' pitch need between 2022/23 to 2039/40 of 86 pitches. It is also expected that there will be a higher short term need for pitches compared to the previous GTAA study carried out in 2017. Accordingly, the Council's evidence indicates that a minimum of 86 net additional additional pitches will be provided during the plan period.
21. The Council indicates that the emerging local plan (currently at Regulation 19 stage), which will replace both the Wokingham Borough Core Strategy (CS) and the Wokingham Borough Management Development Delivery Plan (MDD), as the new development plan, will allocate a range of sites for gypsy and traveller purposes. It makes reference to draft policy 19 thereto and indicates that provision will be made for a minimum of 86 additional pitches during the plan period. In other words it is hoped to meet the need identified in the GTAA, in full. The Council's local development scheme envisages adoption in May 2026.
22. In the meantime MDD policy TB10 'Traveller Sites', a criteria based policy, which is in accordance with the aims of CS policy CP2, remains in effect. The Council has provided details to show that, since the MDD's adoption, planning permission has been granted for 56 net additional pitches. Further, although acknowledging that a five year supply of pitches cannot now be shown, the Council indicates that this is only temporary, and it was indicated to me via the Council's Supplementary Statement which updates the local gypsy and traveller land supply position, that policy TB10 has played its part in previously ensuring that the Council has maintained a five year land supply.
23. Turning to policy TB10 itself I am satisfied that its provisos serve a variety of recognised planning purposes, and its requirements are not unduly restrictive. For instance, proviso (d) refers to poor flooding and poor drainage. Subject to

demonstrable compliance with the various requirements the policy's wording indicates that planning permission may be granted for new pitches or extensions to existing sites. Given this, and taken together with the permissions highlighted, I am not convinced that there has been a failure of policy, despite the appellant's claims to the contrary. Nonetheless, I attach considerable weight to the current shortfall in land supply, even if this is only a temporary position.

Location, and the effect on character and appearance

24. Paragraph 26 of the PPTS says that Councils should very strictly limit new traveller development in open countryside that is away from existing settlements or outside areas allocated in the development plan. Policy CC02 of the MDD defines the Wokingham Borough area settlement development limits. The appeal site lies outside of any defined settlement area and, in being outside the development limits, the site is considered to be within the countryside. This is despite the presence of the New Acres and nearby Pineridge Caravan Parks along with other residential development off Nine Mile Ride.
25. Without reference to any location plans such as ordnance survey extracts, looking towards the appeal site from the plot nearest the access driveway, the glimpses would appear that it forms part of the New Acres caravan park, but this is actually not the case. Instead, I am satisfied with the Council's explanation that the site, along with the other neighbouring pockets of land targeted within the enforcement notices served, fall just outside its limits. Any expansion of the New Acres caravan park is contrary to CS policy CP11 which, to protect the quality of the environment outside the development limits, imposes strict criteria for any planning permissions outside the development limits, so as to guard against any harmful encroachment.
26. Despite its immediate context, the site does lie within the Finchampstead Forested and Settled Sands Character Area, identified within the Wokingham District Landscape Character Assessment (2004), and it is on this basis that the Council says that the development at appeal has had a detrimental impact on landscape character. I feel though, that this assertion probably has more to do with what the Council sees to be an unauthorised expansion of the caravan park and, in this regard, I am mindful that the enforcement notice at issue was one of several issued at the time against alleged new pitches being created in the immediate area. Trees were apparently felled and land cleared to accommodate the pitch the subject of the current appeal and the other enforcement notices would tend to indicate that there may have been some wider clearance.
27. The LCA defines landscape quality on a three point scale - high, moderate and of poor quality. In this instance the LCA considers it of high quality; such categorisation referred to in the LCA as having a strong character with most individual elements in good condition. Whilst the Council acknowledges that there are local areas that have a suburban character I can also understand the authority's claim that the landscape also exhibits a distinctive remote character.
28. In accordance with MDD policy TB21 proposals must demonstrate how they have addressed the objectives and requirements of the said LCA which includes the retention and enhancement of the condition, character and features that

contribute to the landscape. Obviously, the expansion of the caravan park is incompatible with the findings and management of the local landscape and its character.

29. On the face of it the appellant's case is that the development represents a small 'add on' to the caravan park. However, in the circumstances I have described, I find that the development goes wider than the considerations arising from a single additional pitch. Containment of the caravan park's boundaries are important as, beyond this, the landscape has been identified as high quality, falling also within historic parkland; also termed a non-designated heritage asset. Given this I see no reason to deviate from the relevant findings of the previous Inspector in the 2017 appeals (*refs APP/X0360/C/15/3141000 and APP/X0360/C/15/3141001*) which were concerned with sites at both the New Acres and Pineridge caravan parks.
30. Here, the Inspector considered that this landscape is appropriately categorised as a 'valued landscape' for the purposes of the National Planning Policy Framework (the Framework). This remains the case, with paragraph 187 of the latest Framework saying that planning decisions should contribute to and enhance the natural and local environment by, amongst other things, protecting and enhancing valued landscapes such as this.
31. As mentioned, the Council put forward the case that the site has recently been subject to the felling of trees and has been cleared to allow for the development. The Natural Environment and Rural Communities Act 2006 (as amended) includes a duty under s40(1) that every public body must, in exercising its functions, have regard to the purpose of conserving biodiversity. Further, the government's planning practice guidance (PPG) refers to biodiversity net gain (BNG) being a way of development proposals creating and improving biodiversity. Clearly, in this instance, BNG has not been addressed.
32. Accordingly, I conclude that the development and its associated components and paraphernalia is harmful to the character and appearance of the landscape and conflicts, in particular, with the objectives and requirements of CS policies CP1, CP3, CP7 and CP11, along with those relevant within the MDD; namely policies CC02, TB10 and TB21 and TB23, and is also at odds with the requirements of policy RD1 of the Borough Design Guide.

Flood risk

33. As mentioned, MDD policy TB10 'Traveller Sites' says that planning permission may be granted for new gypsy and traveller pitches, or extensions to existing sites, where it can be demonstrated that, amongst other things, there are no significant barriers to development exists in terms of flooding and poor drainage.
34. The appeal site is located within Flood Zone 3b. The Framework says that a site specific Flood Risk Assessment (FRA) should be provided for all development in Flood Zones 2 and 3; the latter being the most vulnerable. Such development would normally require the implementation of both the Exception Test and Sequential Test so as to demonstrate that the development would reduce the flood risk to the site, during its lifetime, and also the surrounding area.

35. The Sequential Test is intended to establish whether the principle of development is acceptable in terms of flood risk. Accordingly, it is therefore unlikely that there will be circumstances where it would be appropriate to attach a condition requiring this test to be carried out.
36. Having applied the sequential test, if it is not possible for development to be located in areas with a lower risk of flooding (taking into account wider sustainable development objectives), the exception test may have to be applied. The need for the exception test will depend on the potential vulnerability of the site and of the development proposed, in line with the Flood Risk Vulnerability Classification. In this instance, given the zone 3b location, the vulnerability is high.
37. The application of the exception test should be informed by a strategic or site-specific flood risk assessment, depending on whether it is being applied during plan production or at the application stage. The exception test should also show that the benefits of the proposal outweigh the risks associated with development in an area at risk of flooding.
38. Referring once more to the 2017 appeals previously mentioned, the then appellant submitted site specific FRAs for both sites, and the Inspector accepted the findings. However, there is clear distinction here in that both the previous appeal sites fall within Flood Zone 2. Given the zone 3b location the risk is higher, and the fact that the site was flooded at the time – there had been high local rainfall in the preceding few days – would suggest that without evidence to show that the risk could be satisfactorily ameliorated the location is unsuitable for such development.
39. At the Hearing the appellant's agent indicated that he had placed some reliance on the previous Inspector's findings on the flood risk issue and he had not seen the necessity to arrange for a new FRA to be carried out. However, given the higher zoning, and that the onus is on the appellant to undertake the required investigation and, if possible, demonstrate any appropriate mitigation measures in the absence of any such, I must conclude that the development is at significant risk from flooding, and is in conflict with the aims and requirements of CS policy CP1 and MDD policies CC09 and TB10(d).

Impact on the SPA

40. The site is located within the 5km buffer zone of the Thames Basin Heath Special Protection Area (SPA). The Council, in consultation with Natural England, has formed the view that any net increase in residential development between 400m and 5km within is likely to have a significant effect on the integrity of the SPA.
41. Subsequent to the Hearing the appellant and the Council entered into discussions to draw up a s106 Agreement whereby, in the event that the appeal is allowed and planning permission granted, a series of measures (including payment of a financial contribution) have been highlighted to mitigate the impact of the development on the SPA.
42. Given this I am satisfied that any significant adverse impacts would be ameliorated by the various measures specified, which would be managed and

monitored by the Council. Accordingly, I find that the development would not contravene the aims and requirements of CS policy CP8 and also retained policy NRM6 of the South East Plan which has otherwise been revoked.

Other Considerations

Personal circumstances and alternative sites

43. It was indicated at the Hearing that the appellant has particular health needs and it is necessary that resides in the mobile home he currently occupies. Although certain details were made available for my purposes there was nothing compelling put to me which suggests that he could not occupy other pitches, if made available, within the vicinity. Little information was supplied by the Council as to the possibility of suitable and alternative sites being available, although the Council did refer to a nearby site, known as land at 23a Nine Mile Ride which has had planning permission granted for a maximum of three pitches.
44. I understand that the land was cleared in 2022, and remains so. Although the appellant is of the view that the said permission was to meet the needs of an extended family the Council says this claim is unsubstantiated, and has pointed out that there are no conditions as to the occupancy of the site. In fact, the Council says that the appellant's claim is untrue.
45. It seems unlikely from the Council's evidence that other alternative sites might become available in the near future.

Human Rights and the Public Sector Equality Duty.

46. Article 8 of the European Convention on Human Rights, enshrined in UK law through the Human Rights Act 1998, provides that everyone has the right to respect for his private and family life, his home and correspondence. In this regard there shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary, amongst other things, for the protection of the rights and freedoms of others.
47. In other words, if Article 8 is engaged, then interference with those rights can be justified by the Council if it is a legitimate aim, in accordance with the law and necessary in the public interest. The Public Sector Equality Duty (PSED), set out in s149 of the Equality Act 2010, is concerned with how a planning decision might impact upon a person with a protected characteristic of which gypsies and travellers are examples.
48. I find there was a legitimate aim here in the Council's decision to issue the enforcement notice, particularly to protect the character of the landscape and the propensity of flood risk which may spread wider rather than be confined to the appeal site itself. Accordingly, I am satisfied that the Council's decision to take formal enforcement action was necessary and proportionate and, in the policy context, it does not unduly compromise the right of respect for the appellants' private and family life, nor does it mean that the occupier's gypsy status should outweigh the issues which strongly indicate that planning permission should be refused.

Temporary planning permission

49. In the judgement of *McCarthy, Sheridan and Others v SOS & South Cambridgeshire DC* [2006] EWHG 3287 the court held that, in cases where the harm caused by a permanent development would justify refusal, the balance between the reasons for grant and reasons for refusal may be altered if the development is temporary.
50. Given the issues highlighted in the current appeal I am of the view that the adverse impacts arising from the development demonstrably outweigh the benefits afforded to the occupier from residing at the site. It then follows, because of the nature of the development, that the harmful effects of the development on its surroundings would not be diminished if it was only limited to the three years requested rather than being permanent.
51. Accordingly, in this instance, I conclude that a planning permission subject to a time limitation condition is not here justified.

Overall Conclusions

52. Although it is currently clear that the Council does not have a five year land supply for gypsy and traveller pitches, this is outweighed by the absence of any site specific flood risk assessment given the category 3b zoning, and also the effect of the development on the valued landscape. Both these give rise to harmful impacts and suggest on the face of it that the expansion of the New Acres caravan park, at least in this particular location, is unacceptable in planning terms. The government's Planning policy for traveller sites document does not provide guidance to the contrary.
53. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act, as amended.

The appeal on ground (f)

54. An appeal on ground (f) is that that the steps required by the notice to be taken exceed what is necessary to remedy any breach of planning control which may be constituted by those matters.
55. The starting point in a such an appeal is identifying the purpose of the enforcement notice which, in this particular instance, is to remedy the breach of planning control. The next step is to consider whether there is any obvious alternative or lesser step which would achieve the purposes of the enforcement notice with less cost and disruption. The requirements of the notice should therefore be proportionate in that sense.
56. The appellant considers that Requirement (iii), that is concerned with the removal of operational development which the appellant disputes goes beyond that necessary to remedy the breach identified. Given my changes to Requirement (iii) the appeal on ground (f) succeeds in part.

The appeal on ground (g)

57. An appeal on ground (g) is that the time period specified for compliance with the enforcement notice's requirements is unreasonably short. Here, the stipulated period is within nine months of the notice taking effect. From the evidence I heard, due to the likely disruption and inconvenience caused to the

appellant that would arise from him vacating his home, I am prepared to accept that this period be increased to twelve months.

58. A twelve month period is the extension requested by the appellant. This increased term may be helpful in the occupier finding alternative local accommodation in the event that this might prove difficult.

59. The appeal on ground (g) therefore, succeeds.

Timothy C King

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr Brian Woods of WS Planning & Architecture (agent)
James Bowers (occupier)

FOR THE LOCAL PLANNING AUTHORITY:

Sarah Castle (Planning Enforcement Team Leader)
James McCabe (Policy Planner)
Darren Fisher (Ecology Officer)
Chris Hannington (Team Manager, Trees and Landscape)