



## Appeal Decision

Hearing held on 16 November 2021

Site visit made on 16 November 2021

**by Thomas Shields DipURP MA MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 06 December 2021**

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**Appeal Ref: APP/C3105/C/21/3268454**

**The Stables, Main Street, Great Bourton, Cropredy, OX17 1QU**

- 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 Act").
- The appeal is made by Mr James Doran against an enforcement notice issued by the Cherwell District Council.
- The enforcement notice was issued on 8 January 2021.
- The breach of planning control as alleged in the notice is, without planning permission, the change of use of the land to use as a caravan site currently accommodating one mobile home type caravan designed and used for human habitation together with associated parking and storage of motor vehicles and a trailer, storage of touring caravans, and associated domestic paraphernalia the current locations of these elements being shown on the attached plan marked Plan 2
- The requirements of the notice are:
  1. Cease the use of the land as a residential caravan site;
  2. Remove from the land the mobile home style caravan currently in the approximate location shown in blue on Plan 2;
  3. Remove from the land the touring caravans in the approximate location shown in green on Plan 2;
  4. Remove from the land the motor vehicles and trailer currently parked or stored on the land;
  5. Remove from the land all other materials, equipment, and other paraphernalia brought onto the land in connection with the residential use of the land; and
  6. Return the land to its previous condition before the breach took place.
- The period for compliance with the requirements is 3 months
- The appeal proceeds on the grounds set out in section 174(2)(a), (f) and (g) of the Act. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

**Summary of Decision: The appeal is allowed, the enforcement notice is quashed, and planning permission is granted in the terms set out below in the Formal Decision.**

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### Application for Costs

1. An application for costs was made by the Council against the appellant. It was agreed with the parties at the close of the Hearing that the application was to be by way of an exchange of written representations following a set timetable. The application for costs is subject of a separate Decision.

### Procedural Matters

2. The appeal also included an appeal on ground (d), however this was withdrawn by the appellant shortly after the Hearing opened.

### **Appeal on ground (a)/deemed application for planning permission**

3. An appeal against an enforcement notice on ground (a) seeks planning permission for any breach of planning control which may be constituted by the matters stated in the notice, and permission may be granted for the *whole or any part* of those matters<sup>1</sup>.
4. As set out in the appellant's SOC<sup>2</sup> planning permission is sought for use as a residential caravan site for occupation by any persons who meet the PPTS<sup>3</sup> definition of gypsies and travellers. At the Hearing it was clarified that there would be no more than 2 caravans (a single pitch), with no more than one of them being a static type caravan. I have determined the appeal on that basis.
5. Policy BSC 6 of the Cherwell Local Plan (2015) (CLP) is the Council's most relevant Development Plan (DP) policy with regard to gypsy and traveller sites. Broadly reflecting the approach set out in PPTS it sets out the Council's sequential and criteria based approach for delivering proposed gypsy and traveller sites in the area.
6. Other than as may be provided through site allocations in the Local Plan Part 2, Policy BSC 6 states that planning permission will be considered for suitable sites including those (6.1) *within 3km road distance of the built-up limits of Banbury, Bicester or a Category 'A' village*. The appeal site is within 3km of Cropredy, a category 'A' village, and hence meets this requirement. The policy also requires the following criteria to be considered in assessing the suitability of a site:
  - a) access to GP and other health services
  - b) access to schools
  - c) avoiding areas at risk of flooding
  - d) access to the highway network
  - e) the potential for noise and other disturbance
  - f) the potential for harm to the historic and natural environment
  - g) the ability to provide a satisfactory living environment
  - h) the need to make efficient and effective use of land
  - i) deliverability, including whether utilities can be provided
  - j) the existing level of local provision
  - k) the availability of alternatives to the applicants

### **Main Issues**

7. Having regard to the reasons for issuing the notice, to local and national planning policies, and to all other evidence before me, the main issues in the appeal are:
  1. the effect on the character and appearance of the area/natural environment;
  2. whether there would be any unacceptable noise disturbance to occupiers of the site;
  3. whether there would be an unacceptable risk of flooding;
  4. whether the site is sustainably located; and
  5. the provision of and need for gypsy and traveller sites in the area.

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<sup>1</sup> s177(1)(a)

<sup>2</sup> Appellant Statement of Case, paragraph 5.3

<sup>3</sup> Planning Policy for Traveller Sites, August 2015, Annex A

## Reasons

### *Effect on character and appearance of the area*

8. The appeal site is identified by the red line on the enforcement notice plan. It comprises the northern top section of a rectangular field, accessed from Main Street, approximately 300 metres to the west of the built up area of the village of Cropredy. The village lies to the eastern side of the north-south rail line and its bridge over Main Street, thereby separating the built up area of the village from the more open countryside, including the appeal site, to the west of the rail line.
9. There is some hardstanding across the top part of the appeal site adjoining the mature hedgerow boundary and gated access onto Main Street. There are also 2 timber stable-type buildings, one of them open sided in which 2 old caravans are currently stored. These buildings and hardstanding benefit from planning permissions and a lawful development certificate respectively<sup>4</sup>. At the time of my visit to the appeal site a large touring caravan (currently occupied) was positioned on the hardstanding adjacent to the northern hedgerow boundary and close to the access. A public footpath runs along the outside of the rear southern boundary of the appeal site before cutting across its south-eastern corner and continuing on beyond the appeal site to the north.
10. The appeal site adjoins other fields to the east and west with some tree and/or hedgerow boundaries. While there is some built development on both sides in these adjoining fields they are located close to the northern boundaries and are generally equestrian/agricultural in terms of their form, materials and appearance. To the south, separated from the appeal site, is the much larger remainder of the original field also owned by the appellant which has been used for grazing horses. At the time of my visit there were also some geese in the field. Overall, I find that the character and appearance of the wider area including the appeal site, without any caravans, is predominantly that of a rural countryside landscape. While there is some built developments, as described, they do not appear out of context in this rural setting.
11. The nature of the appeal proposal as a gypsy and traveller site does not of itself confer an adverse effect on the character and appearance of the area. Indeed, PPTS acknowledges that traveller sites can be appropriately located in the countryside. Furthermore, while Policy BSC 6(f) requires potential harm to the natural environment to be considered in planning applications for traveller sites, the policy does not exclude<sup>5</sup> site locations in the countryside.
12. The proposed single pitch, comprising a maximum of 2 caravans, would be at the smallest scale of traveller site provision. The position of the caravans could by planning condition be confined to the existing hard-standing area behind the mature hedgerow boundary with the road. As such, there would be very limited visibility of them from the road. From the southern footpath the caravans would be seen against the existing site buildings, and would follow the pattern of other developments I have previously described, being close to northern field boundaries. Some planting of native species trees or hedgerow along the southern boundary would be of traditional rural character and would help to assimilate the development into its surroundings. External lighting on the site

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<sup>4</sup> Council references 05/00198/F, 06/00593/F, 13/00431/CLUE

<sup>5</sup> Outside of the Cotswolds Area of Outstanding Natural Beauty and the Green Belt

is likely to be minimal but illumination can also be controlled through the imposition of a planning condition.

13. To conclude, there has been a limited degree of harm to the character and appearance of the area from the already partially developed site. However, taking into account local and national planning policies which acknowledge that traveller sites can be located in the countryside, the scale of the proposed site, positioning of caravans on the existing hardstanding, and the potential for landscaping to soften the appearance of the development, I find overall that there would be no significant harm to the character and appearance of the area. As such, with regard to the character and appearance of the area and the natural environment there would be no material conflict with the requirements of Policy BSC 6(f), or with the requirements of Policies ESD 13 and 15, saved Policies C8 and C28 of the Cherwell Local Plan (1996), or with the provisions of PPTS and the Framework.

#### *Noise*

14. The Council's concern relating to noise is with regard to passing trains. Occupiers of caravans on the appeal site would be approximately 100 metres away from the rail line. During my visit at the appeal site I heard 2 trains go past at this distance while stood on the existing hardstanding. The noise from the trains was fleeting, lasting only a matter of seconds and was quite muted. To my mind the noise was no greater a passing disturbance than the sound of motor vehicles when passing by on the road outside the site. As such, I find that there would be no unacceptable noise disturbance to occupiers of the caravans either internally or externally. As such, a planning condition to control noise levels at the site would be excessive and unnecessary. Accordingly, there would be no conflict with the requirements of Policy BSC 6(e) and (g), Policy ESD15, or saved Policy ENV1.

#### *Flood Risk*

15. The appeal site lies within Flood Zone 1 of the Environment Agency's mapping system and hence is within an area at the lowest risk of flooding. At the Hearing the Council fairly agreed that its concern with regard to flood risk from surface water would be overcome if the caravans were restricted to being located on the existing hardstanding area. For the appellant it was confirmed that the hardstanding was intended to be the siting position of the caravans. As indicated earlier, a condition could be imposed requiring the location of the caravans to be so restricted. To conclude; the development would not result in any significant harm in terms of flood risk subject to an appropriately worded planning condition requiring approval of the site layout, including caravan positions. As such it would accord with the requirements of Policies BSC 6(c) and ESD 6.

#### *Whether the site is sustainably located*

16. Paragraph 25 of PPTS states that authorities should very strictly limit new traveller site development in open countryside that is "*away from existing settlements*". Contrary to the Council's view I consider that the location of the appeal site is not "*away from*" existing settlements. Rather, I find it to be very close in distance to Cropredy. A public footpath, separated from the vehicle carriageway, runs along the northern side of Main Street into the built up area of Cropredy, some 300 metres away. Thus, within a short walking or cycling

distance the site has good accessibility to Cropredy's health surgery, primary school, shop, café, pubs and other facilities. As such, there is no conflict with Policy BSC 6(a),(b) or (d). In reaching the wider range of facilities and services within Banbury, 4 miles away, I note that return bus services from Cropredy are quite limited. However, they would be easily accessible by a relatively short car journey. While there would likely be reliance on the car for access to services in Banbury that needs to be considered in the PPTS context of traveller sites being acceptable in the countryside, together with paragraph 105 of the Framework which advises that "*opportunities to maximise sustainable transport solutions will vary between urban and rural areas, and this should be taken into account in both plan-making and decision-making*".

17. Additionally, there is currently an under-supply of sites for gypsies and travellers in the district, as discussed later. In this context allowing the appeal would provide a settled base, facilitate the gypsy and traveller lifestyle, and reduce the need for long distance travelling and potential environmental damage caused by unauthorised encampment, all of which can contribute to sustainability in economic, social and environmental terms as set out in PPTS.

#### *The provision of and need for gypsy and traveller sites in the area*

18. It was common ground between the parties that there is currently a shortfall in the 5 year supply of suitable and deliverable gypsy and traveller sites in the district required by Policy BSC 6. The Council consider there is in total an under-supply of 7 pitches based on their latest assessment.

19. For the appellant it was argued that the under-supply is likely to be substantially greater because of 'hidden' unmet need not adequately accounted for in the Council's evidence base<sup>6</sup>. However, it is unnecessary for me to examine the conflicting views on the available evidence in any detail since a shortfall of 7 pitches, as a minimum, represents an urgent and pressing current need for further pitches to be delivered. Neither party could identify alternative available sites. Furthermore, in order to meet future need it is the Council's intention to allocate sites through further review of its DP documents, however progression of that is currently at a very early stage with the Council being unable to identify when additional sites might be expected to come forward. These factors add weight in support of allowing the appeal.

#### *Conclusions*

20. Paragraph 22 of PPTS and paragraph 2 of the Framework both reflect the requirement set out in law<sup>7</sup> that planning applications must be determined in accordance with the Development Plan unless material considerations indicate otherwise. That same requirement applies in determining this appeal.
21. For reasons set out earlier, subject to the imposition of appropriate site layout and other conditions, which I come to later, I have found that there would be no conflict with criteria (a), (b), (c), (d), (e), (f) and (g) of Policy BSC 6. In addition the Council acknowledged that all other criteria in the policy would also be met, and I agree. Also, for the same reasons I set out earlier, there would be no conflict with the other DP policies the Council refer to in their

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<sup>6</sup> Gypsy, Traveller and Travelling Showpeople Accommodation Assessment, ORS, June 2017, and Cherwell Council Annual Monitoring Report, December 2020

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

reasons for issuing the enforcement notice and in their submitted evidence. Additionally, the development would accord with the provisions of national planning policy set out in PPTS and the Framework.

22. Taking all of these matters together I conclude that the proposed traveller site for gypsies and travellers accords with the DP taken as a whole, and that there are no material considerations which by themselves or cumulatively would indicate that planning permission should be withheld.

#### *Conditions*

23. I consider the following conditions are necessary. (Numbers in brackets refer to the numbered conditions in the attached schedule).
24. In order to ensure that the justification for the development in the countryside is retained and to secure the site as part of the Council's supply of traveller sites against future identified need, a condition (1) would be required restricting occupation of the site to gypsies and travellers. Conditions (2) and (6) are required to restrict the quantum of development to that applied for and to safeguard amenity. Conditions (3), (4) and (5) are necessary in the interests of safeguarding the character and appearance of the area, for securing a satisfactory site layout, and for minimising the risk to occupiers of surface water flooding. I have not imposed a condition relating to the control of noise as one is not necessary for the reasons I set out earlier.

#### **Overall Conclusion**

25. For the reasons given above, I conclude that the appeal should succeed on ground (a). I shall grant conditional planning permission for use as a residential caravan site as described in the notice.
26. Consequently, the appeals on grounds (f) and (g) do not fall to be considered.

#### **Formal Decision**

27. The appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely use as a residential caravan site, at The Stables, Main Street, Great Bourton, Cropredy, OX17 1QU as shown on the plan attached to the notice and subject to the conditions in the attached Schedule.

*Thomas Shields*

INSPECTOR

**APPEARANCES**

FOR THE APPELLANT:

Phillip Brown BA (Hons) MRTPI                      Phillip Brown Associates

Patrick Doran    Appellant's son

FOR THE LOCAL PLANNING AUTHORITY:

Jane Law    Planning Enforcement Team Leader

Amy Sedman    Planning Enforcement Team Leader

Matthew Barrett                                        Council Solicitor

Wayne Campbell                                        Principal Planning Officer

## **Schedule of Conditions**

- 1) The site shall not be occupied by any persons other than gypsies and travellers as defined in Annex 1: Glossary of Planning Policy for Traveller Sites (or its equivalent in replacement national policy).
- 2) There shall be no more than 1 pitch and no more than 2 caravans stationed on the site, of which no more than 1 caravan shall be a static/mobile home type caravan.
- 3) No commercial activities shall take place on the land including the storage of materials, and no vehicle over 3.5 tonnes shall be stationed parked or stored on the site at any time.
- 4) No external lighting shall be installed on the site without the prior written approval of the local planning authority.
- 5) The use hereby permitted shall cease and all caravans, structures, equipment and materials brought onto the land for the purposes of such use shall be removed within 3 months of the date of failure to meet any one of the requirements set out in i) to iv) below:
  - i) Within 4 months of the date of this decision a scheme for: the internal layout of the site, including the siting of caravans, hardstanding, soft landscaping, including native species, boundary treatments around the boundary of the site and between pitches, parking and amenity areas, and for the provision of foul and surface water drainage works, (hereafter "the Site Development Scheme") shall have been submitted for the written approval of the local planning authority and the Site Development Scheme shall include a timetable for its implementation.
  - ii) If within 8 months of the date of this decision the local planning authority refuse to approve the Site Development Scheme or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
  - iii) If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted Site Development Scheme shall have been approved by the Secretary of State.
  - iv) The approved Site Development Scheme shall have been carried out and completed in accordance with the approved timetable.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.
- 6) Notwithstanding the provisions of Article 3 and Class A of Part 2, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015, no gate fence wall or other means of enclosure other than those that have been approved as part of the Site Development Scheme in condition 5 above shall be erected constructed or placed on the site without the prior written approval of the local planning authority.