



Appeal Decision

Hearing held on 17 and 18 November 2011

Site visit made on 16 November 2011

by Karen L Ridge LLB (Hons) MTPL

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 30 January 2012

Appeal Ref: APP/X0360/A/11/2154295

**Land adjacent to Cartref Farm, Islandstone Lane, Hurst, Reading,
Wokingham RG10 0RU**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr Henry Giles against the decision of Wokingham Borough Council.
- The application Ref. F/2010/2695, dated 6 December 2010, was refused by notice dated 31 January 2011.
- The development proposed is the use of land for the stationing of caravans for residential purposes for 1 no. gypsy pitch together with the formation of additional hard standing and utility/dayroom ancillary to that use.

Summary of Decision: The appeal is allowed and temporary planning permission is granted subject to the conditions set out.

Preliminary Matters

1. In its decision notice the Council describes the proposal as an '*application for the change of use of land for the stationing of caravans for residential purposes for 1 no. gypsy pitch, together with the formation of additional hard standing, stable block and utility/dayroom ancillary to that use. Formation of a new access to the site*'. Since I consider that this description more accurately reflects what is proposed I have adopted it in my decision paragraph.

Matters no longer in dispute between the main parties

2. The Council cited four reasons for refusal in its decision notice. One of the reasons related to the lack of information to enable a proper assessment of the impact of the development on legally protected species and habitat. An Ecology Survey dated May 2010 was submitted with the original planning application. Since that time further surveys have been conducted and a second Ecology report from Just Ecology, dated July 2011, has been submitted. On the basis of the findings in this latest report the Council has withdrawn its objection in relation to biodiversity and ecological matters, subject to the imposition of suitable conditions to protect such interests in the event that planning permission is granted.
3. I have carefully considered the ecology reports and I am satisfied that the information before me is sufficient to enable a proper assessment as to the possible effects of development on protected species and habitat. I am further

- satisfied, subject to sufficient controls regarding the timing of development and replacement hedgerows, that the proposal would not result in material harm to these interests. As such it would be in conformity with the objectives in Planning Policy Statement 9: *Biodiversity and Geological Conservation* and policy NRM5 of the South East Plan.
4. Another reason for refusal related to the lack of satisfactory provision by the appeal proposal in relation to services, amenities and infrastructure needs. The requirements occasioned by the proposal are set out in full in the Council's evidence. During the Hearing the appellant submitted an executed unilateral undertaking made pursuant to section 106 of the Town and Country Planning Act 1990 (as amended). This undertaking makes provision for financial contributions towards education, leisure and libraries, as well as a monitoring fee. In the event that a temporary planning permission is granted the undertaking provides that the contributions should be reduced to 1/80th of the contribution for each year of the temporary period. At the Hearing the Council confirmed that the completed undertaking overcomes its third reason for refusal.
 5. The education contributions would be used to fund additional primary school places within the catchment area containing the appeal site and a contribution towards Special Educational Needs provision. The leisure contribution would be used for various projects, including enhancement works to the Martineau Lane play area which is in Hurst close to the appeal site. Other contributions would be directed towards biodiversity, countryside access and library facilities as set out in the Council's evidence and based upon the Council's Planning Advice Note¹.
 6. The Council also sought payment of the sum of £375 in relation to its monitoring costs. However, I consider that the contributions listed above are for wider public use. Paragraph B19 of circular 05/05: *Planning Obligations* provides that the cost of subsequent maintenance and other recurrent expenditure associated with a developer's contributions should normally be borne by the authority. Accordingly, I consider that in the particular circumstances of this case the costs of monitoring the planning permission and the terms of the undertaking, essentially relate to the Council's statutory duty to ensure development is carried out in accordance with planning permissions. As such I conclude that the monitoring costs fall within recurrent expenditure and should not be recouped from the appellant.
 7. With the exception of the monitoring costs, I am satisfied that the provisions to be made by the undertaking accord with the tests set out in Circular 05/05 and also satisfy the requirements of regulation 122 of the Community Infrastructure Levy Regulations 2010. I shall take it into account in my determination of this appeal. As a result I conclude, on this matter, that the proposal is in accordance with policy CC7 of the South East Plan, Core Strategy Policy CP4 and saved policies W1C8 and WR7 of the Local Plan.
 8. On the second day of the Hearing a note² was submitted from both parties setting out the agreed position of both main parties to the effect that '300mm of flood water would constitute danger for some which includes children, the elderly and the infirm but would be safe for most which includes the general

¹ Infrastructure Impact Mitigation Contributions for New Development, Revised November 2010.

² In the form of an email, submitted document 20.

public'. I have taken this into account in my determination. Following the closure of the Hearing I asked for the views of the main parties on two possible conditions in the event that planning permission was granted. I have taken these views into account in my determination of this appeal.

Gypsy status

9. The proposed site would accommodate the appellant, Mr Henry Giles, his wife, Mrs Samantha Giles and their 4 children.³ Both Mr and Mrs Giles are Romany Gypsies and Mr Giles travels for work purposes. They currently live in a mobile home within the curtilage of his father's dwelling-house. On the basis of the written information before me, supplemented by the oral evidence of Mr Giles, I am satisfied that the appellant and his family fall within the definition of gypsies and travellers as set out in ODPM Circular 01/06: *Planning for Gypsy and Traveller Sites*.

Main Issues

10. The appeal site is in the open countryside where Planning Policy Statement 7: *Sustainable Development in Rural Areas* (PPS 7) seeks to strictly control new development. Having regard to this and the above matters, I consider that the main issues in this case are as follows:
- the effect of the proposal on the character and appearance of the surrounding countryside;
 - the risk to safety from flooding;
 - whether any other material considerations in support of the proposal outweigh any harm arising from the two main issues above, including:
 - the need for, and provision of, sites for gypsies within the area;
 - the accommodation needs and options of the appellant and his family;
 - the personal circumstances of the appellant and his family and human rights considerations;
 - any other material considerations in support, including other policy considerations.

Reasons

11. The Council's Core Strategy has now been adopted and largely replaces policies in the Wokingham District Local Plan adopted in 2004 (LP). However some LP policies have been saved and of particular relevance is saved LP policy WH17 which sets out the circumstances in which gypsy sites will be granted planning permission.
12. The development plan currently includes the South East Plan (RSS). Relevant policies relate to sustainable development (policy CC1), sustainable communities and the character of the environment (policy CC6), landscape and countryside management (policy C4) and sustainable flood risk management (policy NRM4). The Localism Act 2011 received Royal Assent on 15 November 2011 and prevents the creation of any further strategies. It is the

³ Mr and Mrs Giles currently have 3 small daughters and are awaiting the imminent arrival of a new baby.

Government's intention to lay Orders in Parliament which will have the effect of revoking the existing RSS subject to the outcome of environmental assessments.

13. In the context of this appeal the RSS policies referred to above are in conformity with other development plan policies and with current national policy. Therefore whilst I have had regard to the stated intent to revoke the South East Plan and the progress towards this, I consider that it is of limited consequence in this appeal, because the policy objectives in the relevant RSS policies before me are reflected elsewhere.
14. Circular 01/2006: *Planning for Gypsy and Traveller Caravan Sites* sets out national policy in relation to gypsy site provision. The Secretary of State made an announcement on the 29 August 2010 regarding his intention to revoke this Circular as he considers it to be flawed. The main parties and one of the professional representatives of the third parties agreed that the circular attracts substantial weight. The Government has also published a consultation document entitled *Planning for Traveller Sites* in April 2011 which is currently subject to consultation. As such little weight can be attributed to this document. Circular 11/95: *The Use of Conditions in Planning Permissions* sets out pertinent advice in relation to the use of conditions with regard to temporary planning permissions.

Character and appearance

15. The appeal site comprises a rectangular shaped piece of land within a larger grassed paddock adjacent to Islandstone Lane, a single track lane. The surrounding area is characterised by relatively flat agricultural fields demarcated by established hedgerows which generally close off middle and longer distance views creating a more intimate landscape setting. It is identified in the Council's District Landscape Character Assessment (adopted as supplementary planning guidance) as 'Hurst Farmed Clay Lowland' which is recognised as having peaceful rural qualities.
16. The site is located some 600 metres from the settlement boundary of Hurst, a small village, and there are scattered dwellings along the lanes and in clusters in the open countryside in the wider vicinity. The paddock area which contains the site is fenced and bounded by a deciduous hedgerow which includes trees.
17. The appeal proposal would result in the sub-division of the paddock and the introduction of a mobile home, touring caravan, dayroom and stable building, together with hardstanding. Whilst there are gaps in the existing hedgerow which would afford views of the development, these views would generally be limited to vantage points along the two lanes adjacent to the paddock. In addition, new hedgerow planting within the site would provide further screening, particularly in views from the entrance to the new access proposed.
18. The Council asserts that the proposal would not conform to the established pattern of hedgerows. However, the landscape character assessment refers to this area as a 'pastoral landscape defined by small-scale regular and irregular shaped fields' and this was evident on my site visit. I do not consider that the sub-division of the paddock would be out of keeping in this context. Neither do I accept that the proposed dayroom would be unduly large or obtrusive in this setting. The internal hedgerow proposed would go some way to screening it in views from the entrance way. Similarly the proposed stable building to be used

in conjunction with the remaining paddock area would be of a size commensurate with that area.

19. Whilst a significant proportion of the site would comprise hardstanding, the nature of this hardstanding could be controlled by condition. The design of the dayroom and stable are similar to many rural and other buildings in the wider vicinity and the use of materials could be conditioned. I accept that the hardstanding, together with the two new buildings, two caravans and vehicles would bring about a visual change to the immediate area of the appeal site. However, the changes would be low key, the development would be glimpsed in views along the lanes and it would be screened to a great extent by existing hedgerows which would be supplemented by additional planting. It would not be so discordant a feature as to be harmful in the immediate landscape setting and it would only be glimpsed in wider views.
20. Circular 01/06 provides that rural settings not subject to special planning constraints are acceptable in principle⁴. Bearing this in mind, and having regard to the above matters, I conclude that whilst the proposal would bring about some change, that change would not be so harmful as to be contrary to the objectives within policies CP1 and CP3 of the Council's Core Strategy, and policies CC1 and CC6 of the South East Plan. These policies seek, amongst other things, to protect the natural landscape and maintain the high quality of the environment. It would also be in conformity with criteria (a) and (b) of LP policy WH17.

Flood risk

21. Probability: The appeal site is within Flood Zone 2 identified as having a medium probability of flooding by Planning Policy Statement 25: *Development and Flood Risk* (PPS25). The broad objectives of PPS25 are to reduce and manage flood risk by avoiding inappropriate development in areas at risk of flooding and to direct development away from areas at highest risk⁵. In table D.2 of PPS25 caravans and mobile homes are classified as highly vulnerable forms of development. Table D.1 confirms that, subject to the sequential test being applied, highly vulnerable uses are only appropriate in flood zone 2 where the exception test is passed.
22. Both parties accept that the site falls within Flood Zone 2 having regard to the Environment Agency (EA) indicative flood map. These maps indicate the susceptibility of an area to flooding from rivers and coastal waters. I am informed that they take no account of other sources of flooding. I have also seen a 2009 map submitted by the EA showing detailed modelling of the River Lodden and flood probability. On that map the appeal site is depicted as falling within an area with a 0.1% probability of a flood in a given year. This coincides with the probability of flooding events in flood zone 2 put at between 0.1% and 1%⁶.
23. The Kayersbridge Brook, classified as a main river, flows along the eastern and western sides of the site with a further tributary of the River Lodden flowing 600m to the northeast of the site⁷. The EA representative confirmed that the modelling is, by its very nature, somewhat generalised and it does not take

⁴ Paragraph 54, Circular 01/06.

⁵ PPS25, paragraph 5.

⁶ i.e. between 1 in 100 years and 1 in 1000 years.

⁷ Environment Agency, appeal statement.

into account the Kayersbridge Brook. This causes me some concern given that the appeal site sits at the junction of two arms of the Kayersbridge Brook which wraps around two boundaries of the site. This is relevant in light of other evidence as to the numbers of flooding events provided at the Hearing and in the written submissions of local residents and the EA.

24. EA records indicate historic evidence of flooding on the site in 1947, 1974, 1981, 1991 and 2007. These records only go back to 1947. At the Hearing I heard further evidence from local residents as to the incidence of flooding in the vicinity of the appeal site and this included flooding events in 2000, 2001 and 2010. One resident contends that the road around Nelson Lane and Islandstone Lane floods around three times a year. Photographic evidence⁸ of flooding earlier this year on the lanes in the vicinity of the appeal site was submitted by Mr Larkin.
25. The appellant points out that the land comprising the appeal site sits at a higher level than the adjoining lane and that photographic evidence does not conclusively demonstrate that at times when the lanes were flooded so too was the site. Whilst the ground levels on the appeal site are generally a little higher than the surrounding lanes, I accept that when floodwaters are relatively low it must follow that there is a likelihood that the appeal site may not have standing water on it. I also accept the EA point that the photographs may not have been taken at the peak of the flood and cannot be said to be determinative. In any event the flooding on the surrounding lanes poses a question mark over the issue of safe access and egress from the site.
26. The site is in flood zone 2 which indicates a probability of a flooding event of between 1 in 100 and 1 in 1000 years. However, I am mindful of the evidence of recorded floods dating back to 1947. The EA records some 5 floods in a 64 year period and the EA further confirms that the list is not exhaustive. I do not consider these events to be statistically insignificant as advanced by the appellant. They appear to have occurred at relatively regular intervals over the 64 year period. Having regard to all of the evidence I conclude that the probability of flooding on land in the vicinity of the appeal site is likely to be at the upper limit of 1 in 100 years referred to in flood zone 2 or possibly even higher. In other words I conclude that the probability of a flood event occurring in any given year is, in my view, likely to be at, or more than, 1%.
27. Implications of flooding: Having concluded on the probability of flooding occurring on or near the appeal site it is necessary to go on to examine the risk to safety. The appellant's survey data sets the ground levels of the appeal site at between 36.62m and 37.1m AOD. This was not disputed by the EA representative. The appellant's expert contends that the flood level on the site would be around 37.0m AOD and that the finished floor levels (FFL) of the caravans should be 300mm above this flood level.
28. It is somewhat difficult to come to a definitive view on the likely flood level on site based on modelled data. However the photographic evidence and the oral evidence of neighbours regarding the flood levels on Islandstone Lane appear to me to support the appellant's figure of a flood level on the site of around 37.0m. On behalf of the appellant, Mr Cutting submitted that an appropriate FFL of the caravans should be based on the principle that FFLs should be 300mm above the 1 in 100 flood level event with climate change factored in, in

⁸ Photographs taken 18 January 2011.

- this case 37.40m AOD. The EA representative pointed out that the alternative approach was for FFLs to be 600mm above the 1 in 100 flood level (without taking account of climate change factors), namely 37.6mm AOD.
29. Annex E of PPS25 advises that flood risk assessments should take account of the impacts of climate change. This advice has been followed in the appellant's professional assessment which concludes that, as a result of the relatively flat nature of the catchment area, a 30% change in impact due to climate change would not materially increase the flood risk in terms of any increase in the depth of flood waters. This contention is supported by the contents of the Strategic Flood Risk Assessment⁹.
30. Taking all of the above evidence together I am satisfied that a FFL of 37.40AOD would be appropriate in this case. I further accept Mr Cutting's contention that the tethering of caravans could be an appropriate precaution to prevent the caravans floating away causing danger to any occupants and exacerbating flooding difficulties elsewhere.
31. Access to the site is via Islandstone Lane and I have already referred to the oral, written and photographic evidence of flooding on this lane. The matter is further complicated by virtue of there being two, relatively wide and deep drainage ditches on either side of this single track lane. In the event of flooding anyone seeking to travel down the lane would find it difficult to ascertain the presence of the ditches which would present an additional hazard. I note that local residents would be conscious of the ditches and that prudent traveller's and emergency services would, as a matter of practice, seek to travel along the centre of the lane. Nonetheless I consider that this would be an additional hazard to the unwary to which I attribute some weight.
32. Flood hazard is the risk posed to pedestrians during flooding in terms of the likelihood of a person being unbalanced by floodwaters. The possibility of this is directly related to the depth of flow and the speed with which the water is flowing. The edge of the flood zone is a short distance to the south-east on Nelsons Lane and to the north-east on Broadcommon Road. If flooding occurred on the lane and/or site the occupants would either be marooned there or tempted to negotiate the flood waters to enter or leave the site.
33. The appeal site is within a flat catchment area where flooding is likely to occur following a prolonged period of rainfall and water levels would rise fairly steadily. In the past, with some exceptions, it appears that floodwaters have generally receded within a matter of days. Having regard to technical advice notes the EA representative and the appellant's representative agreed that in terms of the depth of the water and its velocity, the flood water of 300mm would constitute a danger for some people including children, the elderly and infirm but that it would be safe for most which would include the general public.
34. In this case, given the flat catchment area it is likely that there would be some advance warning of rising waters to enable occupiers to make plans to evacuate the site. However, there may be instances where this does not happen and having regard to all of the above, I have some remaining concerns about the risk to personal safety of the abovementioned categories of persons

⁹ Paragraph 6.4. page 29.

from floodwaters in light of my findings about the probable number of times when flooding events are likely to occur.

35. The Sequential Test: PPS25 sets out the sequential approach designed to steer new development to areas at the lowest probability of flooding (zone 1). The accompanying practice guide to PPS25 confirms that the sequential test will need to be applied at the individual site level in circumstances where a site has not yet been sequentially tested in a Local Development Document (LDD) or where the use of the site proposed is not in accordance with LDD allocations and policies. This is the case here. It goes on to state that it is the responsibility of the developer to undertake pre-application discussions with the local planning authority, the EA and other stakeholders and to assemble the evidence for their application to allow the local planning authority to carry out the test¹⁰.
36. Paragraph D5 of PPS25 confirms that application of the sequential test will involve consideration of whether there are any other reasonably available sites in zone 1. The practice guide¹¹ assists further by adding the words suitable, developable and deliverable. In this borough there are currently no available pitches on either of the two Council sites and no allocated sites. One site, Highfields, has been granted planning permission for 12 pitches and is due to be developed. However I understand this to be a private site albeit unconstrained by a personal condition.
37. I am mindful that some 41% of the borough is within flood zones 2, 3a and 3b meaning that 59% is within zone 1. The opportunity for applying the sequential test at a local level would be when the Council is allocating land for sites in a Development Plan Document (DPD) allocations document. This has not occurred within this borough. In terms of this appeal site, the appellant gave evidence that he had considered a number of other sites before purchasing the appeal site and had ruled them out for various, ostensibly acceptable, reasons. However he further confirmed that he had not looked at which flood zones each of the sites were in. There is no documentary, or other substantive evidence, before me regarding the appellant's own search for sites or any consideration of sites in lower risk areas.
38. The appellant's position is that there are no reasonably available sites in areas with a lower probability of flooding than the appeal site. I accept that there are currently no available private or public gypsy sites. However, I have remaining concerns that there has not been a full analysis of any other potential sites which may be suitable for a gypsy site use within this borough, 59% of which is located in a lower risk area for flooding. This statement is not intended as a criticism of either party but as a simple analysis of the evidence before me on which I have to assess whether the sequential test has been reasonably applied and passed in this case. In this case I am not satisfied on the evidence before me that the sequential test is met.
39. The appellant advocated the approach of the Inspector in the Sykes v Malvern Hills¹² case to the sequential test. However there were different factors at play in that case. Firstly there was an acknowledged and substantial need for pitches in the district and secondly there is no indication in the appeal decision

¹⁰ Paragraphs 4.27 and 4.28, PPS25 Practice Guide.

¹¹ Paragraph 4.27, second bullet point.

¹² Appeal reference APP?J1860/A/09/2099293.

as to the proportion of land within the administrative district in a lower flood zone. In this case I am conscious that a large proportion of this borough is in flood zone 1 and this is a significant factor in applying the objectives of PPS25 which seek to direct development to areas of lower flood risk.

40. If the sequential test has been met, the vulnerability classification of the development is such that table D.3 of PPS25 requires the application of the exception test. Whilst I am not convinced that the sequential test is met I shall go on to examine the exception test.
41. The Exception Test: The proposal would provide a single gypsy pitch for one family which could potentially avoid the need for roadside or other unauthorised encampments harmful to the environment and all sectors of the community. Paragraph 64 of Circular 01/06 sets out the wider sustainability benefits of lawful pitches, including the promotion of peaceful and integrated co-existence between the site and local community, health and educational benefits for site occupants and a reduction in long-distance travelling. The final criterion relates to not locating sites in areas at high risk of flooding. I have already set out my views on the probability of flooding. In this case I am not satisfied that the wider sustainability benefits outweigh the flood risk in this case, having regard to the risk to safety of certain sections of the community as well as the likely frequency of flooding events.
42. The second limb of the exception test requires development to be on developable previously-developed land or, if not, there should be no reasonable alternative sites on developable previously-developed land. Given the limited information before me, I accept that there are no such reasonable alternative sites.
43. The third limb requires the FRA to demonstrate that the development will be safe, without increasing flood risk elsewhere and where possible, reducing flood risk overall. The EA has raised concerns about development within the 8 metre buffer zone of the Kayersbridge Brook since it could restrict essential maintenance and emergency access to the culvert. However, access could be gained via the other bank of the brook and the mobile home would not be a permanent structure. On balance I conclude that the use would not increase flood risk elsewhere.
44. Overall conclusions on flooding: the proposal would be safe for members of the general public but there are concerns about more vulnerable members of the community. I have also concluded that the likely incidence of flooding may be higher than the medium probability range generally applied to flood zone 2. I am not satisfied that there is enough evidence before me to conclude that the sequential test has been met, especially where some 59% of the borough is in a lower risk flood zone. Even if the sequential test is met, then I have concluded that the first limb of the exception test is not satisfied. In this regard the proposal is contrary to the aims of PPS25 and RSS policy NRM4.

Other material considerations in support of the proposal

45. General need for and provision of gypsy sites in the area: RSS policy H4 provides that council's should seek to identify a range and mix of housing opportunities for all sectors of the community, including gypsies and travellers. It goes on to provide that local authorities should seek to identify a mix of site allocations in each five year period. The RSS contains information on its

- interim statement with regard to gypsies and travellers. The recommendations, following a single issue review of the RSS in relation to gypsy pitch provision, were set out in emerging RSS policy H7, which proposed 21 additional pitches in Wokingham between 2006 and 2016.
46. The recommended figure of 21 additional pitches was at variance with the earlier Gypsy and Traveller Accommodation Assessment (GTAA) carried out in 2006¹³ which identified a need for only 2 additional pitches between 2006 and 2011. The Council's Core Strategy was adopted in January 2010 and the text to policy CP2 of that document records the RSS recommendations and states that once they had been confirmed by the Secretary of State the Council would proceed to allocate sites, if necessary, through a DPD.
47. Whilst confirmation of the RSS pitch figures is not proceeding, the Council has accepted that the figure of 21 pitches to 2011 is an appropriate starting point. The Council's position prior to the Hearing was that it has granted planning permissions for some 35 pitches and therefore the need has been addressed to 2016¹⁴. The appellant however has sought to revisit the GTAA and revise its calculations to provide, it is claimed, a more accurate assessment as to the general need for pitches. I shall now consider this.
48. *The GTAA*: the Council accepts the appellant's point that the GTAA assumes a net outward migration of families because it contains figures for turnover of pitches which refer to families leaving the district whilst there is no corresponding figure for inward migration. The most sensible way to address this deficiency, in the face of no other evidence, is to assume there is no net outward migration¹⁵. This decreases the available supply over 5 years by some 29 pitches.
49. In addition I am informed that only 4 of the predicted new pitches on Council sites came to fruition which reduces the supply by a further 3 pitches. The supply was also made up of 12 pitches on the New Acres site which the GTAA said were to be brought back into use. Whilst the appellant contends that these pitches were occupied at the time of the GTAA, no evidence has been put before me. I consider it reasonable to assume that the GTAA was, in part, based on survey and other evidence and I am not prepared to revise these figures without evidence to contradict the statement that 14 pitches (including the 12 from New Acres) were to be brought back into use.
50. If these alternative figures are fed back into the GTAA figures for Wokingham, it reduces the available supply from 59 down to 27¹⁶. This must be set against an estimated overall need for 61 additional permanent pitches 2006/2011 in the GTAA. When the estimated need of 61 is compared to the estimated supply of 27, the indicative need is then revised to 34 additional pitches to 2011.
51. The Council also accept that, looking forward, it is reasonable to apply a household growth figure of 17% over 5 years to calculate the additional need to 2016. There are already 73 authorised pitches which together with the outstanding need to 2011 of 34 pitches equates to 107 pitches/households as

¹³ By Tribal, entitled Gypsy and Traveller Accommodation Needs Assessment for the Thames Valley Region.

¹⁴ Proof of evidence paragraph 5.6.1

¹⁵ The figures assume that 6 existing pitches will become available in this way per year.

¹⁶ Ie Deducting 29 pitches (migration point) and 3 pitches (planned pitches) from current supply figure of 59 in GTAA.

- at 2011. It is also accepted that when a growth figure of 3% p.a over 5 years is applied to these households there will be an additional requirement for 17 pitches to 2016.
52. In terms of supply to date, the Council confirms that it has granted permission for some 34 pitches and the appellant accepted at least 30 pitches had been granted permission. The figures are quite close and I do not consider it necessary to examine them further.
53. However, the appellant points out that from 2011 onwards the general need will start to increase again due to household growth equating to an additional 17 pitches to 2016. This point was also accepted by the Council at the Hearing and it is an important one given the Council's previous stance that the need to 2016 had been met by the grant of planning permissions. It is clear that, without any further provision, as at 2016 there will be an outstanding need of at least 17 pitches.
54. There are two Council owned sites in the borough which are fully occupied and which have waiting lists with 14 names on it at the present time¹⁷. The caravan count data presents a somewhat mixed picture, with some nil returns and one higher figure of 24 unauthorised caravans. At the Hearing the Council confirmed that they currently have 5 different unauthorised pitches on 5 separate sites, three of which are likely to be tolerated.
55. The above evidence leads me to conclude that there is likely to be a modest level of unmet need for pitches at this present moment in time. This is based upon an examination of the revised GTAA figures and the grants of planning permissions, the waiting list for Council pitches and the current levels of unauthorised sites.
56. The appellant further contends that the Council have no concrete plans to address this need through the DPD process. The Council explained at the Hearing that it intended to address the delivery of gypsy sites through the Managing Development Delivery DPD (MDD). The anticipated adoption date of this document is May 2013 although the Council accepts there may be further slippage. The Council is currently in the process of preparing a tender document to enable outside consultants to bid for work in assessing need for additional gypsy pitches up to the end of 2026.
57. However, the MDD is currently undergoing consultation. The Council says it might contain some sites which are gypsy sites which have been put forward and are deliverable. The problem is that the evidence of need will not be available until after the consultation period of the MDD document which is effectively the policy document in which sites will be allocated. The timing of the collection of evidence on need and the policy document for delivery of sites is such that it raises questions as to whether the MDD will adequately address the correct level of any identified need for additional sites.
58. Having regard to all of the above evidence and my findings, I conclude that there is a level of current outstanding need for sites at the present time. In addition, household growth over the next five year period will result in further additional need for sites which will have to be catered for. These are matters which add support to the current proposal.

¹⁷ Submitted document 18.

59. Accommodation needs and options of the appellant and his family: it is accepted that the appellant and his young family do not have an authorised site. They currently live in a mobile home on land within the residential curtilage of his father's dwelling. A certificate of lawful use¹⁸ produced at the Hearing confirms that the siting of this mobile home is for purposes ancillary to the main house 'for occupation on an occasional basis by the applicant's daughter'. The appellant informs me that his older sister has a first claim on the mobile home. She and her family are away travelling and could return at any time. In any event it is clear that occupation of the mobile home is not permitted on anything other than an occasional basis.
60. Whilst there is no suggestion that enforcement proceedings are contemplated in relation to the residential use of the caravan this does not mean that the family's position is secure or acceptable. I consider that the permanent occupation of the caravan as a residential unit within the grounds of the house does not constitute an authorised gypsy site and does not represent a suitable alternative to such a site. Consequently the family currently have a personal need for an authorised site, although it is not an immediate need. This adds weight to the appeal proposal.
61. Personal circumstances: the appellant's two oldest children attend primary school in Yateley where their attendance records are excellent. The family are registered at a GPs surgery in Yateley and as such have access to healthcare. Other than his wife suffering from asthma, the appellant's family are all well and have no special healthcare needs.
62. A permanent base enables gypsy families to enjoy access to healthcare profession and education which becomes difficult to access from roadside encampments. Again these are matters which weigh in favour of the proposal, although such weight is tempered because there is no suggestion that the appellant and his family would be deprived of such access if the appeal failed.
63. In practical terms dismissal of this appeal would amount to an interference of the appellant's human rights in that he would be deprived of an opportunity of providing a settled base for himself and his family. Taking the above factors into consideration I attach some limited weight to the interference with the family's human rights in the event that the appeal was dismissed.
64. Other policy considerations: The Council confirm that it does not currently have a 5 year supply of housing land. Accordingly the requirement to consider favourably planning applications for housing in paragraph 71 of Planning Policy 3: *Housing* applies. The appellant also argues that there has been a failure of policy in relation to gypsy site provision. To the extent that there has been any such failure, I have had regard to it in terms of its consequences in resulting in an unmet general need.

Other Matters

65. Whilst some local residents raised concerns about highway safety, there was no objection from the Council. The new access would have satisfactory visibility splays and I am satisfied that it would not materially harm highway safety. The traffic generated by the use would be limited and the size of commercial vehicles could be controlled by condition as could a prohibition on commercial activities taking place.

¹⁸ Submitted document 19.

66. I have seen other objections relating to the sustainability of the site which is located a relatively short distance away from the centre of Hurst village which contains a general store, post office, butchers and bakery store. In addition it has a primary school and two churches. The bus service through Hurst is typical of many rural services with an hourly service and no evening services. I am satisfied, having regard to the advice in Circular 01/06, that the site would be in a relatively sustainable location for a gypsy site.
67. Some local residents have expressed concerns about the use of the remaining paddock should planning permission be granted. However the appeal site is limited to the area surrounded by a red line on the application plan. Any planning permission would relate to that area only and would not change the status of the paddock. Similarly the dayroom proposed is ancillary to the use as a gypsy pitch and could not be used as a separate dwelling. I am also satisfied that a suitable sewage disposal system could be required by condition if planning permission were granted.

Overall Conclusions

68. I have concluded that the proposal would not have a materially harmful impact upon the countryside, it is visually well-contained and neighbouring properties are sufficiently far enough removed such that there would be no adverse impact on residential amenity. The proposal would be in an accessible location and relatively close to services and amenities and the primary road network. I have also concluded that, subject to conditions, there would not be a significant adverse effect upon any interest of nature conservation importance. As such the proposal would be in conformity with LP policy WH17.
69. In relation to the consideration of a permanent planning permission; against the proposal is the harm to flood risk objectives which I have outlined. On the other side of the balance there is the general unmet need for sites to which I have attached some weight. The favourable presumption in PPS3 also applies.
70. When the above matters are weighed in the balance I conclude that the combination of factors in support of the grant of a general permanent planning permission do not outweigh the harm which I have identified to national and local policy objectives which seek to direct development to areas of lower flood risk and the harm to safety which I have identified. A permanent general planning permission should not be granted.
71. It now falls to me to consider whether or not the addition of the family's personal circumstances tip the balance in favour of the grant of a permanent planning permission personal to the appellant. Whilst the family have a need for a permanent base, I have concluded that this is not an immediate need. I therefore attribute only moderate weight to this aspect. When this factor, as well as the other general benefits in having a permanent site, are added to the matters which weigh in favour of a permanent permission, I am still not satisfied that they outweigh the harm identified. A permanent permission limited to this family is not therefore justified.
72. I shall now turn to consider the issue of a temporary planning permission. Paragraph 46 of Circular 01/06 advises that substantial weight should be attributed to the general unmet need when considering whether a temporary permission is justified. The proposal remains contrary to flood risk objectives which seek to direct development to areas at lower risk of flooding. I do

however acknowledge that whilst the annual probability of a flood and the consequences of a flooding event would remain the same as for a permanent consent, the likelihood of a flooding event occurring over a 4 year period is less than it would otherwise be for the lifetime of a permanent permission. I have taken this matter into consideration in my assessment.

73. It is clear that the Council are taking steps in making an assessment of the general need for sites. In this case I consider that there is a reasonable expectation that circumstances will change when the MDD is adopted and sites begin to come forward thereafter. The Council accepts that sites will take some 12 months to be developed following adoption of the MDD and I consider that a temporary period of 4 years would allow sufficient time for this to take place, allowing some scope for slippage in the adoption timetable. Any site allocations process would also have the potential benefit of applying the sequential test.
74. I conclude that planning permission for a temporary period of 4 years would be the appropriate response in this case since I am satisfied that the factors in support of such a measure clearly outweigh the factors against.

Conditions

75. The Council has suggested conditions which I have considered in light of the advice within Circular 11/95: *The Use of Conditions in Planning Permissions*. These conditions were discussed in full at the Hearing. The numbers in brackets relate to the Council's suggested conditions in relation to a temporary permission.
76. Development has not commenced so a condition setting out a time limit for commencement is required, as well as a condition limiting the period of use and requiring restoration of the site (1). The appeal has been determined on the basis that it is an application for a gypsy site and a condition limiting occupancy therefore needs to be imposed as well as a condition limiting the number of caravans on the site (4 and 6).
77. To control the development conditions requiring development to be carried out in accordance with the plans, details of the materials to be used in the stables and dayroom, preventing commercial activities and limiting the use of commercial vehicles are all necessary (2, 3 and 5). I have already referred to the proposed landscaping in my reasoning and it is necessary to condition this matter and to require retention of the existing hedgerows and a hedgerow mitigation scheme (7, 8 and 17). I have removed the reference to replacement planting within 5 years since it does not apply given the limited duration of the permission. I have also included a clause to prevent works being carried out between 1 March and 31 August in order to ensure that no damage is caused to the habitats of legally protected species. (16)
78. I also agree that it is necessary to restrict the erection of walls, fences, gates and other means of enclosure and to control external lighting given the countryside location of the site (9, 10 and 12). Similarly a condition is required to control the provision of the new access and the hard surfacing within the site (13 and 15). The Council accepted that condition 11 was no longer needed and withdrew it.
79. In relation to the management of flood risk I consider it necessary to require the submission of a flood risk management plan which shall include details of

the tethering of the caravans, finished floor levels of the caravans and an evacuation plan (14). Finally, as requested of the parties I also consider it necessary to impose a condition requiring details of foul sewage and storm water sewage. It is unnecessary to impose a condition prohibiting the dayroom and stables from permanent residential occupation.

Formal Decision

80. The appeal is allowed and planning permission is granted for the change of use of land for the stationing of caravans for residential purposes for 1 no. gypsy pitch, together with the formation of additional hard standing, stable block and utility/dayroom ancillary to that use. Formation of a new access to the site at Land adjacent to Cartref Farm, Islandstone Lane, Hurst, Reading RG10 0RU in accordance with the terms of the application, Ref. F/2010/2695, dated 6 December 2010, subject to the following conditions:

- (1) The development hereby permitted shall begin not later than three years from the date of this decision and the use hereby permitted shall be for a limited period of 4 years from the date of this decision.
- (2) No development shall commence until a scheme of restoration has been submitted to, and approved in writing by, the local planning authority. When the site ceases to be occupied or at the end of the 4 years from the date of this decision (whichever is the sooner), the use hereby permitted shall cease and all materials and equipment brought onto the land in connection with the use, including the dayroom hereby approved, shall be removed and the land restored to its former condition in accordance with the approved scheme of works within a period of 3 months from the date of cessation of the use.
- (3) The site shall not be occupied by any persons other than gypsies and travellers as defined in paragraph 15 of ODPM Circular 01/2006.
- (4) The development hereby permitted shall be carried out in accordance with the following approved plans: nos. 09_290_003A, 09_290_004, 09_290_005, 09_290_006, 09_290_007.
- (5) No more than 2 caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 (of which no more than 1 shall be a static caravan) shall be stationed on the site at any time in the positions marked on plan number 09_290_003.
- (6) No development shall take place until samples of the materials to be used in the construction of the external surfaces of the stable and dayroom building hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- (7) No vehicle over 3.5 tonnes shall be stationed, parked or stored on this site.
- (8) No commercial activities shall take place on the land, including the storage of materials.
- (9) No development shall take place until details of the method for the disposal of foul and storm water sewage have been submitted to and approved in writing by the local planning authority. The site shall not be occupied before the approved works have been implemented in full.

- (10) No development shall take place until there has been submitted to and approved in writing by the local planning authority a scheme of landscaping and hedgerow mitigation, which shall include details of species, planting sizes, spacing and numbers of trees/shrubs to be planted as well as a hedgerow mitigation scheme. The landscape and hedgerow mitigation scheme shall include a timetable for implementation and development shall be carried out in accordance with the approved scheme.
- (11) No trees, shrubs or hedges within the site which are shown as being retained on the approved plans shall be felled, uprooted, wilfully damaged or destroyed or cut back in any way or removed without previous written consent of the local planning authority. Any works on the site's existing hedgerows and trees shall be carried out outside the period of 1st March to the 31st August inclusive in any year, unless otherwise agreed in writing by the local planning authority.
- (12) No walls, fences, gates or other means of enclosure shall be erected on the site (including at the access mouth) other than those shown on the approved plans.
- (13) Details of any external lighting shall be submitted to and approved in writing by the local planning authority and shall be installed in accordance with the approved details.
- (14) The site shall not be occupied until the proposed vehicular access has been provided and surfaces with a permeable and bonded material across the entire width of the access for a distance of 10 metres back measured from the carriageway edge.
- (15) Prior to the commencement of the use a flood risk management plan shall be submitted to and approved in writing by the local planning authority. The management plan shall include full details of the method of finished floor levels and tethering of the caravans, a flood risk warning and evacuation plan including evacuation procedures and measures and safe routes to refuge points. The approved management plan shall be adhered to throughout the duration of the use.
- (16) No occupation of the site shall commence until the hard surfacing shown on the approved plan has been constructed from porous materials or provision has been made to direct run-off water from the hard surface to a permeable or porous area in accordance with details which have been submitted to, and approved in writing by, the local planning authority.

Karen L Ridge

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr Matthew Green	Green Planning Solutions LLP
Mr Cutting	Prior Associates Consulting Engineers
Mr Henry Giles	Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Ms Hannah Wilson	Planning Officer, Wokingham Borough Council
Ms Jenny Seaman	Principal Planning Officer, Wokingham Borough Council
Ms Claire Lawrence	Team Leader, Wokingham Borough Council
Mr Andy Glencross	Ecologist, Wokingham Borough Council
Ms Catherine Brimble	Landscape Architect, Wokingham Borough Council
Ms Ruth Letourneur	Environment Agency

INTERESTED PERSONS:

Ms Rebecca Lord	Bell Cornwell, Chartered Town Planners
Mr Mark Thackery	Walsingham Planning
Mr Larkin	St Nicholas Hurst Parish Council
Mr Michael Ewart	Local resident
Mr Nobles	Local resident
Mr Colin Gutteridge	Local resident
Mrs Jeanes	Local resident
Ms Sally McAllister	Local resident

DOCUMENTS SUBMITTED DURING THE HEARING

- 1 List of persons notified of the Hearing date, submitted by the Council.
- 2 Wokingham Borough Council Strategic Flood Risk Assessment, July 2007.
- 3 Decision Letter of Secretary of State, appeal reference: APP/T3725/A/10/2133713 and C/10/2133714, Land at Kites Nest Lane and Brownley Green Lane, Beausale, Warwickshire submitted by the appellant.
- 4 Suggested conditions in the event of a permanent planning permission, submitted by the Council.
- 5 Suggested conditions in the event of a temporary planning permission, submitted by the Council.
- 6 Appeal decision reference APP/T0355/A/10/2129018, Brayfield Stables, Windsor Road, Water Oakley, Windsor, submitted by the Council.
- 7 Decision Letter of Secretary of State, appeal reference: APP/T0355/C/10/2121576, Land to the South of Hilarion, Shurlock Road, Waltham St Lawrence, submitted by the Council.
- 8 Policy CP9 of Wokingham Borough Core Strategy, submitted by the Council.
- 9 Policy NRM4 of The South East Plan, submitted by the Council.
- 10 Community Infrastructure Levy Regulations 2010, submitted by the Council.
- 11 Copy letter St. Nicholas Hurst Parish Council to Wokingham Borough Council dated 5 January 2011.
- 12 Extract from The South East Plan, paragraphs 7.27 to 7.30, submitted by the appellant.
- 13 Appendix H (Local Data-Wokingham) to the Tribal Gypsy and Traveller Needs Assessment, submitted by the appellant.
- 14 Supplementary Note on Flood Hazard Ratings and Thresholds for Development Planning and Control Purposes, submitted by the Environment Agency.
- 15 Unilateral Undertaking of Mr Henry Giles and Mrs Samantha Anne Giles, dated 17 November 2011, submitted by the appellant.
- 16 Witness Statement of Henry Giles, dated 18 November 2011, submitted by the appellant.
- 17 Approved Wokingham Borough Local Development Scheme May 2011, submitted by the Council.
- 18 Email correspondence from Carol Lovell Interim Community Infrastructure Manager dated 18 November 2011, submitted by the Council.
- 19 Copy Certificate of Lawful Use for siting of a mobile home at 23 Sandhurst Road, Yateley, Hampshire, submitted by Bell Cornwell.
- 20 Email Matthew Green to Hannah Wilson dated 18 November 2011 setting out agreed position regarding risk of 300mm of floodwater, submitted by both parties.
- 21 Supplementary Note on Flood Hazard Ratings and Thresholds for Development Planning and Control Purposes, submitted by the Environment Agency.

PLANS SUBMITTED DURING THE COURSE OF THE HEARING

- A Appendix A to the Report of Prior Associates dated November 2009
- B Drawing 8887/02: Level Survey (Sheet 1 of 2) dated 16 November 2011, submitted by the appellant.
- C Drawing 8887/03: Level Survey (Sheet 2 of 2) dated 16 November 2011, submitted by the appellant.

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