



Appeal Decision

Inquiry opened on 17 September 2008

Site visit made on 19 September 2008

by **Clive Hughes BA (Hons) MA DMS MRTPI**

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

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Decision date:
9 October 2008

Appeal Ref: APP/J3910/A/08/2078618

Land at Chelworth Lodge, Cricklade, Swindon, Wiltshire SN6 6HP

- 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 Alan Olding against the decision of North Wiltshire District Council.
- The application Ref 08/00621/COU, dated 7 March 2008, was refused by notice dated 8 May 2008.
- The development proposed is change of use of land to accommodate 16 no gypsy pitches and associated works.
- The inquiry sat for 3 days on 17, 18 and 19 September 2008.

Applications for costs

1. At the Inquiry applications for costs were made by Mr Alan Olding against the Environment Agency and against North Wiltshire District Council. These applications are the subject of separate Decisions.

Decision

2. I dismiss the appeal.

Main issues

3. The main issues are (i) whether the proposed development would be in keeping with the scale and character of the surrounding area; (ii) whether the proposals would accord with the development plan and national advice concerning sustainable forms of development; (iii) whether the development would be at a significant risk from flooding or whether it would increase flood risk elsewhere; and (iv) whether the other considerations advanced by the appellants are sufficient to outweigh any identified harm.

Reasons

Scale and character of the area

4. The site is in a countryside location some 3km from Cricklade. The immediate area is mostly agricultural with a scattering of houses, farms, a 16-pitch gypsy site and a substantial haulage depot. The Council's view is that the proposed development should be considered in the context of the existing gypsy site to the west. If this appeal were allowed it would result in a combined site of 32 pitches which it considers would be out of scale and character with the area. This was a view shared by local residents. The Council cited the advice in *Designing Gypsy and Traveller Sites: Good Practice Guide* (CLG 2008) which refers to a maximum of 15 pitches on an ideal site. However, paragraph 4.7 of

the *Guide* indicates that this advice relates to site management and to the living conditions for site residents rather than to any impact outside the site.

5. I have some sympathy with the views of the Council and the local residents as there are only a few houses in the immediate vicinity; the population of these properties would be significantly outnumbered by the scale of the two gypsy sites. The site is too far from Cricklade to be viewed in the context of that town. It seems to me, however, that the management of the two sites would clearly be separate; they would have separate entrances from the C70. With additional landscaping neither site would be visually prominent in the landscape. There is no evidence before me to suggest that they would not both be occupied by Romany Gypsies.
6. Nonetheless, the sites do abut one another and while some land is indicated as being retained as a meadow the indicative site layout shows that at their closest the caravans on the different sites would only be separated by a distance of about 60m. In these circumstances I consider that it is inevitable that the two sites could be considered as a single entity. The size of the combined sites would be out of keeping with the scale and character of residential accommodation in the area. This would be contrary to Policy H9(ii) of the *North Wiltshire Local Plan 2006*. I consider that the harm arising from this conflict with policy would be likely to be both localised and limited.

Sustainable development

7. Policy H9(i) of the local plan requires gypsy sites to have reasonable access to local community facilities and services. The Council's case was based upon the likelihood that the development would encourage reliance on the private motor car and that the increase in pedestrian traffic on roads lacking adequate footways would be harmful to highway safety. The policy, however, pre-dates advice in ODPM Circular 01/2006: *Planning for Gypsy and Traveller Caravan Sites* which says that issues of sustainability should not only be considered in terms of transport mode and distances from services. I have therefore considered this issue in the light of that Circular.
8. The site is located about 3km from Cricklade where there are shops, services, medical facilities and a primary school. Although there are no footways for much of that distance, and the verges are in places rather overgrown, I do not consider that the distance would preclude walking or cycling. There is a bus stop close to the junction of the C70 with the B4040 from where there are buses to Cricklade and Swindon. While the bus times are not especially convenient there is a choice of transport mode. In any case, ODPM Circular 01/2006 makes it clear that rural settings are, in principle, acceptable for locating gypsy and traveller sites. It seems to me that such sites are unlikely to be well served by footways or street lighting. In this context I do not consider that the site is located in an especially unsustainable position.
9. I have also had regard to the sustainability benefits that would arise from having a settled base. I acknowledge that this is, in effect, a speculative application as there is no certainty as to who the site occupiers would be. Nonetheless, the evidence of Mr Birmingham, a prospective occupier of the site, is relevant as many of the benefits he identified would be likely to apply to most gypsies and travellers. In particular, a settled base would enable regular

access to schools and the ability for site residents to register with local GPs. These benefits carry considerable weight. Living on a settled base would also be likely to reduce the need for long distance travelling by the site occupiers and remove the problems that can arise through unauthorised camping.

10. I conclude on this issue that the site would have reasonable access to local community facilities with a choice regarding the means of travel. While it would not be likely to reduce dependence on the private motor car, this is, in part, due to the travelling lifestyle of potential site residents. I conclude that any harm arising from this dependence is outweighed by the other identified sustainability benefits identified in ODPM Circular 01/2006.

Flood risk

11. The parties relied mainly on advice in Planning Policy Statement 25: *Development and Flood Risk* (PPS25). Amongst other things this says that local planning authorities should ensure that planning applications for new development located in Flood Zones (FZ) 2 or 3 are accompanied by site-specific Flood Risk Assessments (FRAs) and that a risk-based approach should be adopted at all levels of planning.
12. The map produced by the Environment Agency (EA) shows that a large majority of the appeal site lies within FZ3 as defined in PPS25. A small part of the site lies within FZ2 with the remainder in FZ1. Part of the land within FZ3 site lies within a "Functional Floodplain" (FZ3b) and the remainder lies within an area of "High Probability" (FZ3a). Anecdotal evidence from nearby residents and occupiers, together with a large selection of photographs, show that flooding has occurred on and around the appeal site in the recent past. It was common ground that caravans and mobile homes fall within the "Highly Vulnerable" category in the Flood Risk Vulnerability Classification set out in Table D.2 of Annex D to PPS25. The EA's objection to the development is based upon guidance in Table D.3 of the Annex which says that highly vulnerable development should not be permitted in FZ3a or 3b.
13. There had been two previous planning applications for the development of the appeal site prior to that the subject of this appeal. The second had been accompanied by an FRA which concluded that the maximum flood depth would be well below the floor levels of caravans and mobile homes; velocities of flowing water would be small; and access to safe ground would be available. It also concluded that there would be neither a significant loss of flood storage capacity on the site nor loss of conveyance capacity and that the residents would have a safe, dry exit. There would be no significant effect on flooding to land or properties either upstream or downstream. The EA nonetheless objected to that application and it was refused.
14. This third proposal differs significantly in that the caravans and mobile homes would be now sited towards the higher land in the north east corner of the site. In order to enable that part of the site to be developed safely, the appellant proposes to excavate part of the site and use the excavated material (about 2000 cubic metres) to raise the level of the land in the north east corner in order to bring the level of the land where the caravans and mobile homes would be sited above the flood level. This, it was argued, would mean that the caravans and mobile homes could be sited in a safe location above the

maximum flood level while the excavation would ensure that the flood water storage capacity of the site would not be reduced.

15. Despite the substantial changes to the nature of the development, involving resiting the caravans and mobile homes and significant changes to ground levels, this fresh planning application was not accompanied by a revised FRA. The original FRA was re-submitted with a brief covering letter saying that the writer, who also wrote the FRA, believed that the revised proposal would have no impact upon the flood levels indicated in the FRA and that he saw no reason why the proposed layout should affect the flood levels derived through the hydraulic modelling in the FRA.
16. The principle of raising land levels in FZs 2 and 3 is acceptable. The *Practice Guide* to PPS25 says that risk to development may be reduced by raising land above the level of flood risk. It goes on to say, however, that any such proposal will have to demonstrate in the FRA that there is no increase in flood risk to the development itself or to any existing buildings which are known to, or are likely to flood. It adds that the calculation of the impacts on floodplain storage volumes should be included in the FRA, which should show how the overall design mitigates any impacts.
17. I accept that it is possible to raise the level of that part of the site where the caravans and mobile homes would be sited such that they would be above the flood level. However, I am not convinced that it has been adequately demonstrated that such works would not give rise to an increase in flood risk elsewhere. The letter accompanying the re-submitted FRA sets out the writer's conclusions but there is no reasoning or explanation as to how his conclusions have been reached. PPS25 makes it clear that the onus is on the developer to demonstrate that the development is consistent with that guidance. The supplement to PPS1: *Planning and Climate Change* requires a precautionary approach to be taken in decisions concerning flood risk. The responses, in cross examination, for the appellant that there could be a risk to the adjoining Bourne Lake Park Caravan Site (which is also partly within FZ3) and that there should be no problems arising from the timing of peak flood events "unless you are extremely unlucky" do not give me the necessary confidence to accept his advice without it being clearly demonstrated, in a FRA that has been agreed by the EA, that the development would be safe.
18. I conclude that the proposals involve a highly vulnerable form of development that would be partly within FZ3. It has not been shown that it would not give rise to an increase in flood risk elsewhere and so the proposals fail to comply with guidance in PPS25 and its *Practice Guide*.

Other material considerations:

Policy position

19. Concerning policy, the Statement of Common Ground (SoCG) says that the only development plan policy directly related to the provision of gypsy and traveller sites is Policy H9 in the local plan. This policy is a criteria-based policy written in the context of Circular 1/94 *Gypsy Sites and Planning* (which was replaced by ODPM Circular 01/2006). It is not based upon a quantitative assessment of need or a search for sites. I therefore give greater weight to the recent ODPM Circular 01/2006.

20. The Council will, along with other adjoining Councils, be merging in April 2009 to form a new unitary authority. Nonetheless, the Council has started work to identify suitable sites which could be subsequently allocated in a Site Allocations DPD. This is not anticipated until 2010 but there could be some slippage due to the impending unitary status.

Need for sites and future provision

21. The Council accepts that there is a substantial and unmet general need for additional gypsy and traveller sites in the District. The Council's GTAA identified a need for 24 pitches and this formed one of the inputs into the Regional Assembly's partial review of accommodation for gypsies and travellers for the period 2006-2011. Following the Examination in Public the Panel recommended that in this District the number of pitches to be provided should be 48. Since then the Secretary of State has published her intention to fix that need at 48 additional pitches during the period. So far 4 further permanent pitches have received planning permission, although at the time of writing there is also an undetermined appeal concerning 16 pitches at Minety.
22. The SoCG confirms that there are no available alternative sites within the District and that the unmet need in the District is substantial and immediate. Alternative sites need to be affordable, acceptable, suitable and available. The Council has recently carried out a *Gypsy and Traveller Site Search* which identified 6 Council owned sites that were suitable for further analysis. On 3 July 2008, however, the Council's Executive resolved that none of these sites was suitable. This process seems to have underlined the difficulties in finding suitable, acceptable sites. I therefore agree with the Inspector who, in July 2008, considered that the provision of additional gypsy and traveller pitches to meet the identified local need through the DPD process is likely to be at least three years away (APP/J3910/A/08/2066141). That Inspector concluded that the substantial unmet local need and uncertainty about future provision weighed in favour of allowing the appeal and I share that conclusion.

Personal circumstances

23. Mr Birmingham, a Romany Gypsy, intends to purchase and occupy the site with his extended family if planning permission is granted. The family comprises a large group who have never owned a lawful plot and therefore spend most of their time travelling. They stop at many different types of place including friends' plots, on land without planning permission, in car parks and by the roadside. The extended family includes a substantial number of children; there are about 30 children aged under 16. One of their main objectives is to secure a settled base from where the children can access schools. Although no documentary evidence was produced, it was stated that there are health problems amongst these prospective residents including asthma and diabetes while one child has a hole in the heart and narrow arteries. A settled base would enable them to receive regular healthcare.
24. The site owner stated that he is negotiating the sale of the land with Mr Birmingham and his extended family; he is not negotiating with anyone else. Under cross examination, however, he conceded that the sale has not been finalised and that he is not legally bound to sell it to that family. I can therefore only give very limited weight to the family's personal circumstances.

However, I consider it reasonable to assume that many of these circumstances, such as their need for a site and the education and general health requirements, are likely to be similar to those of many gypsy and traveller families. This likelihood is acknowledged by the Council. The general welfare benefits that would arise from the occupation of this settled base therefore carry some weight.

Balancing exercise

25. I have found that there would be some localised harm arising from the substantial scale of this proposal when combined with the existing gypsy site on the adjoining land. I am, however, particularly concerned that it has not been demonstrated in a FRA that there would be not be any additional flood risk arising from the works in FZ3 associated with this development. To be weighed against this harm are the sustainability benefits arising from the provision of a settled site and the substantial unmet need for more sites for gypsies and travellers in the area. This need is not likely to be met in the foreseeable future. The personal needs of possible future site residents, Mr Birmingham and his family, carry only limited weight due to the uncertainty as to whether he will purchase the site.
26. On balance I conclude that the benefits that would arise from allowing this appeal are outweighed by the identified harm arising principally from potential flood risk and that permanent planning permission is not justified in this case. I have therefore considered whether temporary planning permission should be granted in the light of the transitional arrangements set out in paragraphs 45-46 of ODPM Circular 01/2006 as sites may become available in 3 years or so. However, I am concerned that the costs involved in making the site safe and habitable would be likely to be significant. Although no evidence concerning costs was put forward, the expert witness for the appellant stated that as the development involves a fair degree of expense a temporary planning permission would not be appropriate. I agree with that assessment.
27. Concerning the submissions made under Article 8 of the *European Convention on Human Rights*, it is alleged that dismissing this appeal could result in the loss of a potential home and thus the continued homelessness of future occupiers. In this case, however, there is no certainty as to who the future occupiers would be. It is also necessary to balance any interference with the legitimate aims as stated in Article 8 which include the protection of the environment and public safety. I consider that the objections to this development, and in particular my concerns regarding potential flood risk, are very serious ones that cannot be overcome by imposing conditions or granting a temporary planning permission. I conclude that the public interest can only be safeguarded by dismissing this appeal. This does not place a disproportionate burden on any potential future occupiers of the site and I conclude that dismissal of the appeal would not result in violation of their rights under Article 8 of the Convention.
28. I conclude that the appeal should be dismissed.

Clive Hughes

Inspector

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Hugh Richards	Of Counsel; instructed by Mr P Jeremiah, Solicitor to the North Wiltshire District Council
He called	
Simon Chambers	Director, LPC (Trull) Ltd, Trull, Tetbury, Gloucestershire GL8 8SQ
BSc(Hons) MA MRTPI	
Roger Witt BSc MICE	Senior Development Control Officer, Wiltshire County Council
Nick Read BSc(Hons)	Development Control Engineer, Environment Agency Thames West Area

FOR THE APPELLANT:

Michael Rudd	Of Counsel; instructed by Green Planning Solutions
He called	
Matthew Green BA	Partner, Green Planning Solutions, 3A High Street, Much Wenlock, Shropshire TF13 6AA
Frank Farquharson	Director, Water Resource Associates, 14 Monks Mead, Brightwell-cum-Sotwell, Wallingford OX10 ORL
Alan Olding	Appellant
Martin Birmingham	Prospective purchaser and future occupier of site

INTERESTED PERSONS:

Peter Colmer	Vice Chair, Cricklade Town Council, Ockwells, 113 High Street, Cricklade, Wiltshire SN6 6AE
Nicholas Weighell	Pooley's Solicitors, 10-15 Regent's Circus, Swindon SN1 1PP on behalf of Gelvum Transport Ltd, Chelworth Lodge, Cricklade
Marion Ritchings	43 Bournelake Cottages, Cricklade, Wiltshire SN6 6QZ
John Norris	J & H Norris, The Paddock, Chelworth Road, Cricklade, Swindon SN6 6HD – owners of Blakehill Business Park
Linda Smith	5 Bourne Lake Park, Cricklade, Wiltshire
Mr H Sharrock	44 Bournelake Cottages, Cricklade, Swindon, Wiltshire SN6 6QZ

DOCUMENTS SUBMITTED AT THE INQUIRY

- 1 Council's notification letter and list of persons notified
- 2 Letter dated 5 September 2008 from Simon Chambers to PINS enclosing a bundle of appeal decisions
- 3 Signed Statement of Common Ground
- 4 Letter dated 17 December 2007 to Mr Frank Farquharson from Environment Agency
- 5 Formal responses to PINS' letter requesting information
- 6 Witness statement of Alan Olding

- 7 Witness statement of Martin Birmingham
- 8 Letter objecting to the proposed development dated 16 September 2008 from V G Collins, Blakehill Fields, Malmesbury Road, Leigh
- 9 Letter objecting to the proposed development from Chelworth Fields Livery Yard, Common Hill, Cricklade and signed by 5 persons
- 10 Coloured map showing boundaries of Flood Zones 2 and 3
- 11 Suggested conditions
- 12 Letters from Environment Agency dated 4 July 2007 to John Hastie and North Wiltshire District Council; and letter dated 29 January 2008 to Frank Farquharson
- 13 Letter dated 18 September 2008 from Wiltshire CC Bus Network Manager to Chief Planning Officer, North Wilts District Council
- 14 Wiltshire County Transport Bus Map and Guide

PLANS

- A Drawings No 07/042/OLD1_001C, 002A, 003A, 004A, 005, 006 and 007 – site location, site layout, elevations of buildings, cross sections and changes to levels
- B Drawings No 0732/01 and 02 – road survey and proposed visibility splay

PHOTOGRAPHS

- 1 Aerial photograph of adjoining transport depot submitted by Nicholas Weighell on behalf of Gelvum Transport Ltd
- 2 Bundle of photographs submitted by Marion Ritchings showing flood water in the vicinity of the appeal site