



Appeal Decision

Hearing held on 17 June 2022

Site visit made on 17 June 2022

by Graham Chamberlain BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22nd July 2022

Appeal Ref: APP/C1570/W/20/3250328

Land South of Brick End, Broxted, Essex CM6 2BJ

- 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 Ms Esther Breaker against the decision of Uttlesford District Council.
 - The application Ref UTT/19/1777/FUL, dated 19 July 2019, was refused by notice dated 3 October 2019.
 - The development proposed is described as 'The change of use of land for the stationing of caravans for residential purposes together with hardstanding and dayroom ancillary to that use and the erection of stables'.
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Decision

1. The appeal is allowed, and planning permission is granted for the change of use of land for the stationing of caravans for residential occupation together with the construction of hardstanding and dayroom ancillary to that use and the erection of stables at Land South of Brick End, Broxted, Essex CM6 2BJ, in accordance with the terms of the application, Ref UTT/19/1777/FUL, dated 19 July 2019, and subject to the conditions in the attached schedule.

Application for cost

2. An application for an award of costs was made by Ms Esther Breaker against Uttlesford District Council. This application will be the subject of a separate Decision.

Preliminary Matters

3. A revised version of the National Planning Policy Framework (the Framework) has been published since the Council issued its decision. The parties had an opportunity to address this in their submissions. It was clarified at the hearing that the proposal is an application for the stationing of caravans for residential occupation by those meeting the definition of Gypsies and Travellers for planning purposes as set out in the Planning Policy for Traveller Sites (PPTS).
4. A Noise Impact Assessment (NIA) was submitted with the appeal as was a revised Tier 1 Land Contamination Assessment (Tier 1 LCA). Appendix E of the NIA includes a drawing indicating the provision of an acoustic fence alongside the road to provide noise mitigation. The appellant nevertheless confirmed at the hearing that this drawing was not advanced as an amendment to the appeal scheme, as to do so would involve a structure that would probably need planning permission. On this basis, the documents are additional evidence

submitted in accordance with the appeal timetable. As a result, I have accepted them as no party would be prejudiced by this course of action.

Background and Main Issues

5. The appeal site would be located adjacent to a road and beneath the flight path of aircraft at Stansted Airport. The living conditions of future occupants of the proposal could therefore be affected by road and aircraft noise. That said, the submitted NIA demonstrates that with mitigation both internal and external noise guidance levels can be met. The mitigation would include double glazed windows with acoustic ventilation and an acoustic fence. There is nothing before me to suggest the fence would be ineffective if positioned on the inside of the roadside hedge. The Council's Environmental Health Officer (EHO) has reviewed the NIA and is satisfied that living conditions would be adequate subject to the imposition of a condition securing the recommended mitigation. As a result, the Council does not wish to pursue its third reason for refusal.
6. The revised Tier 1 LCA details the risks from land contamination, which appears quite high given the historic use of the site as an unauthorised car breakers yard and such like. This reinforces the comments of interested parties at the hearing that the site probably contains both surface and buried contamination. The Council's EHO has reviewed the Tier 1 LCA and is satisfied that the living conditions of future occupants would be adequate if occupation is prevented until a scheme of decontamination is approved and undertaken. The Council is content for this to be achieved through a suitably worded planning condition and therefore it does not seek to pursue its second reason for refusal either.
7. Substantive technical evidence has not been provided to counter the assessments outlined above. Thus, given all that I have read, heard and seen, I share the view of the appellant and Council that the living conditions of future occupants would be acceptable subject to the imposition of conditions and therefore a conflict with Policies ENV14 and ENV10 of the Uttlesford Local Plan 2005 (LP) would not occur. As a result, the main issues in this appeal flow from the Council's first reason for refusal and are:
 - Whether the proposal would be in a suitable location, with reference to policies concerned with development in the countryside; and
 - The accessibility of services and facilities.

Reasons

The suitability of the location, with reference to countryside policies

8. The appeal site encompasses a linear meadow on the edge of the hamlet of Brick End. It is not located within any defined settlement boundary and is therefore within the countryside for the purposes of applying the policies of the development plan, which in this instance are Policies S7 and S8 of the LP.
9. Policy S7 states that in the countryside planning permission will only be given for development that needs to take place there or is appropriate in a rural area. It also includes a second strand that development will only be permitted if its appearance protects or enhances the particular character of the part of the countryside within which it is set, or there are special reasons why the development in the form proposed needs to be there.

10. During the hearing I heard evidence from both the Council and appellant as to what types of development could be appropriate in rural areas for the purposes of Policy S7. The LP identifies (in Paragraph 2.2.8) examples of the type of development that may be permitted in principle in the countryside. These being the appropriate re-use of rural buildings, suitable farm diversification, outdoor sport and recreation uses, affordable housing and other facilities to meet local community needs. Thus, the proposed stable would be appropriate in the countryside and the Council understandably takes no issue with it.
11. In considering the proposed pitches, I share the appellants view that the question of whether they would be 'appropriate' can be considered with reference to national policy, Paragraph 2.2.8 of the LP seems to suggest this. To this end the appellant directed me to the PPTS, which sets out a generally positive approach to Gypsy and Traveller pitches in rural areas. The main qualification in the PPTS is that such development should not dominate the nearest settled community and should be strictly controlled in open countryside or outside areas allocated in the development plan. In this instance, the modest provision of two pitches would not dominate the nearest settlement. Moreover, the proposed pitches would not be in open countryside away from a settlement as they would be next to Brick End. There are no areas allocated in the development plan for Gypsy and Traveller pitches and therefore the pitches would not be away from them.
12. Accordingly, the proposed pitches can be considered appropriate in principle when applying the PPTS. Thus, by extension the proposed pitches can also be considered 'appropriate' for the purposes of Policy S7. As the pitches would be appropriate in the context of Policy S7, there is no need to consider whether the proposed development needs to take place in the countryside.
13. The assessment of the appeal scheme against the second strand of Policy S7 needs to be approached in the context that the proposal would be appropriate development in the countryside. Therefore, much like an agricultural barn or such like, the presence of the pitches in and of themselves would not necessarily fail to protect or enhance the character of the part of the countryside within which they would be set.
14. That said, the appeal site is currently a pleasant, undeveloped meadow that contributes positively to the rural character of the countryside and Brick End. The siting of mobile homes, hardstanding and other paraphernalia within the site would detract from the intrinsic quality of the site, especially as these additions would be visible through the site access. The erection of fencing would also be harmfully apparent, although the impact would be softened by the retention of the roadside hedge and painting it a dark colour. Moreover, whilst I consider there are special reasons for the proposal, there are not special reasons why the proposed development needs to be in this particular part of the countryside. Thus, the proposal fails the second strand of Policy S7. As a result, I find a conflict with the policy overall.
15. Policy S8 is concerned with development in the Countryside Protection Zone (CPZ). The CPZ is an area of countryside around Stansted Airport. There is no substantive evidence before me to suggest the CPZ is in place to protect a valued landscape. Instead, the Council confirmed at the hearing that the CPZ is a strategic policy aimed at preventing sprawl around the airport. It aims to do this by only permitting development that needs to take place in the CPZ or

- is appropriate in a rural area. It also has a second strand that includes strict control on new development, especially that which would promote coalescence or would adversely affect the open characteristics of the zone.
16. In respect of the first strand of the policy, it is important to note that it refers to development being '*appropriate to a rural area*' not '*the rural area*' or '*the CPZ*'. Therefore, as I have already concluded that the proposal would be appropriate in a rural area, it would adhere to the first strand of Policy S8.
 17. The Council confirmed at the hearing that it was content, despite what was suggested in its written submissions, that the proposal would not promote coalescence. I share this view given the sites situation surrounded on three sides by a broad 'horseshoe' of development, including an adjoining car park.
 18. As Policy S8 is a strategic policy aimed at strictly controlling development in the CPZ, it is reasonable to approach the effect on the open characteristics of the zone by considering the effect on 'openness'. Openness in this context can reasonably be described as the sense of land being free from development. The Council's Uttlesford Countryside Protection Zone Study 2016 places the appeal site in 'Parcel 7 Molehill Green'. This is described as a parcel that contains very limited development with a strong sense of openness. Moreover, the study explains that the parcel includes a mix of arable fields and pasture on settlement edges.
 19. As already explained, the appeal site encompasses a meadow and has a rural undeveloped character save for a small garage to the back of the site. In this respect, it is pasture on a settlement edge. The proposal would intensify development at Brick End and result in a perception that the settlement had expanded into open rural land. This would adversely affect the open characteristics of the zone, especially as the Council's Landscape Character Assessment places the appeal site in the Broxted Farmland Plateau, which identifies the pressure from settlement expansion as a key planning issue.
 20. That said, the impact would be moderated to one of limited magnitude by the presence of the 'horseshoe' of nearby development and the retention of the existing hedge lined field boundaries, which would not need to be breached given the presence of an existing highway access. However, even development that would have a limited adverse impact on the open character of the zone is to be strictly controlled in the terms of Policy S8.
 21. In conclusion, the proposal as a whole would fail to protect the part of the countryside within which it would be set and there are no special reasons why it must be located where it would be. As a result, it would be contrary to Policy S7. Moreover, the proposal would have an adverse impact on the open characteristics of the CPZ and therefore it would also be at odds with Policy S8.

The accessibility of services and facilities

22. The Parish Council has directed me to Policy GEN1 of the LP, and this states that development will only be permitted if it encourages movement by means other than driving a car. The reference to 'means' in the plural suggests there should be more than one mode of non-car transport available. This makes sense as it provides resilience, especially at a time of rising transport costs, and enables the health benefits from regular walking and cycling to be realised and encouraged.

23. There are very few services and facilities within Brick End or Broxton more generally, these mainly being a church, public house and village hall. As a result, future occupants of the appeal scheme would need to travel further afield to settlements such as Henham, Elsenham, Great Dunmow, Thaxted and Saffron Walden to access education, healthcare and retail.
24. These towns and villages are not within a comfortable walk of the appeal site and future residents may not have the proficiency, fitness or confidence to cycle the distances regularly. That said, the appeal site is only a short walk away from a bus stop that provides access to a reasonably frequent bus service, although it would be quite a long and convoluted trip to arrive at Great Dunmow or Saffron Walden. As a result, bus transport is unlikely to provide a desirable alternative to travel by car in this instance.
25. Thus, the residents of the proposed pitches would be predisposed to use private motorised transport when accessing everyday facilities and services. The number of trips would soon add up over the life of the development. This would result in negative impacts on carbon emissions and from disincentivising healthier travel options such as walking.
26. However, it must be borne in mind that future occupants of the proposed pitches would be following a traditional nomadic lifestyle and would therefore be away from the pitches when travelling for extended periods¹. This would reduce the number of trips from the appeal site over time. Moreover, accessibility needs to be considered in the context that members of the travelling community are generally reliant on vehicles wherever they live given their lifestyle. In this regard, pitches at the appeal site would facilitate reasonable access to the A120 and M11 for future occupants, thus aiding their travelling lifestyle. The provision of two pitches would also enable occupation by an extended family, which could reduce trips and allow others to be linked. These latter points moderate the extent of harm, as does the small size of the scheme. Nevertheless, I conclude by finding that the proposal would be contrary to Policy GEN1.

Other Considerations

The general need and supply of pitches

27. The PPTS states that local planning authorities should set pitch targets to address the likely accommodation needs of Gypsies and Travellers in their area that meet the PPTS definition. It also states that local planning authorities should identify and update annually a supply of specific deliverable sites sufficient to provide five years' worth of sites against their locally set target. The LP does not set a target for Gypsy and Traveller pitches and therefore the Council are unable to demonstrate an adequate supply of sites against a locally set target. This is at odds with the requirements of the PPTS.
28. Despite this, it is still material to my assessment to ascertain whether the most up to date evidence suggests the need for pitches is being addressed by the available supply. The Council's most up to date evidence in this regard is set out in a GTAA² dating from 2017. This study, which is now dated and has not

¹ A nomadic habitat of life encompasses travel for work but can include temporary periods where travel has ceased due to needs arising from education, health or old age. However, in these circumstances there should be a clear intention to begin travelling again in the future for economic purposes – See Annex 1 of the PPTS

² Uttlesford Borough (sic) Gypsy and Traveller accommodation Assessment Need Summary Report 2017

- been independently examined, concludes that at the base date of 2016, there was no unmet need for pitches from those meeting the PPTS definition. This is because none of the households interviewed met the PPTS definition.
29. The GTAA also considered future need up to 2031. The study concluded that because none of the households interviewed meet the PPTS definition, there would be no 'known' future need. It goes on to suggest that there could be a need for up to 8 pitches from those whose status against the PPTS definition was 'unknown'. However, the study suggests that only 10% of 'unknowns' are likely to meet the PPTS definition, so the 8-pitch figure is revised down to 1. As a result, there could be a need for 1 pitch up to 2031. I understand that the Council has approved three pitches since 2016 and therefore it would seem the possible need has been addressed on this measure.
30. The appellant has challenged this assessment, being of the view that the GTAA underestimated the number of Gypsy and Traveller households in the district at the base date and this has subsequently suppressed both the baseline and future needs. The appellant submits that at the base date, there were 56 households on authorised pitches and 2 on unauthorised pitches³, 11 concealed/doubled up households and 8 hidden households. Thus, at the base date the appellant suggests there was a need for 77 pitches but a supply of 60. This would result in an unmet need for around 17 pitches at the base date.
31. This analysis needs to be considered with some considerable caution because the appellant has amalgamated those households that meet the PPTS definition with those that do not. This is a significantly flawed approach as the PPTS is quite clear (in Paragraphs 9-10) that the pitch target and five-year supply requirement relate to nomadic Gypsies and Travellers as defined in Annex 1 of the PPTS. The needs of those not meeting the PPTS definition but requiring accommodation for culture needs or due to an aversion to housing, should be addressed pursuant to Paragraph 62 of the Framework.
32. Nevertheless, it is difficult to scrutinise the finding in the GTAA that none of the 15 households surveyed meet the PPTS definition because the interview questions are not available. Moreover, the interviews were apparently conducted without a community liaison group or representative being present. As a result, the interviewees may not have understood the questions or the implications of their answers. This casts notable doubt on the finding that none of the households interviewed meet the PPTS definition. It would also explain why there is a high number of households that were not interviewed and their PPTS status recorded as being 'unknown'.
33. Due to the low response rate, I share the view of the appellant that the extent of concealed and doubled-up households should be extrapolated from the available data rather than relying on the results of the interviews. The 15 interviews yielded 3 doubled up/concealed households. Extrapolating this out over the total number of traveller households identified in the GTAA would result in there being around 11 doubled up/concealed households to factor in.
34. Similarly, I also share the view of the appellant that rather than relying on households in bricks and mortar accommodation approaching the authors of the GTAA⁴, it would be reasonable to apply a ratio-based multiplier to ascertain

³ The Council did not contest this figure

⁴ Which could be suppressed by a distrust of authority

- how many Gypsies and Travellers are living in bricks and mortar housing, and then assume 5% of these households are in hidden need because they wish to live in a caravan. This would increase overall need by a further 8 pitches.
35. However, the evidence before me indicates that it is highly unlikely that all of these doubled up, concealed, and hidden households would meet the PPTS definition. Thus, most of the additional need coming from these sources is likely to be 'cultural' i.e. those that do not meet the PPTS definition. That said, the GTAA suggests that 10% of Gypsies and Travellers interviewed meet the PPTS definition. That figure has subsequently been updated to 25%⁵. On this assumption, which may be low, it would be reasonable to conclude that 25% of the doubled up, concealed, and hidden households could meet the PPTS definition.
36. Thus, given the apparent limitations in the interview methodology and the appellant's generally unchallenged analysis on doubled up, concealed and hidden households, I find that the conclusion in the GTAA, that there was no residual need at the base date for pitches to serve those meeting the PPTS, lacks reliability.
37. It is hard to establish a likely needs figure given the flaws in both the GTAA and appellant's analysis as outlined above. Nevertheless, it seems plausible that there was an overall combined 'cultural' and 'PPTS' need for 77 pitches at the base date and a supply of 60 pitches. This would give an overall unmet baseline need of 17 pitches. On the assumption that 25% of this need is from those meeting the PPTS definition, then there was a plausible baseline need in 2016 for around 4 pitches⁶.
38. It is difficult to accurately gauge what the future need is likely to be when the number of households meeting the PPTS definition is unclear and perhaps underestimated. Moreover, the appellant has also submitted unchallenged evidence that the GTAA has erroneously conflated population and household growth rates, with the latter rising more quickly when considering the national trend of fewer adults per household.
39. The GTAA suggests there could be a need for 11 additional pitches to cater for new household formation from those households whose PPTS status is 'unknown'. This was revised down to 8 on account of household movements to bricks and mortar homes and out migration. However, the appellant has pointed out that the GTAA does not account for inward migration, so this approach could be flawed. I have therefore relied on the 11-pitch figure.
40. It may be that all of the 39 households in the 'unknown' category meet the PPTS definition and therefore 11 additional pitches would be needed to meet household formation from this source, although this is unlikely. The GTAA suggest that 10% would, although, as mentioned above, the authors have revised this figure up to 25%. This would result in a future need for around 3-11 pitches⁷ from 'unknowns'. The PPTS explains that Council's should plan for identified need. Unknown need is unlikely to constitute an identified need. Nevertheless, given the high number of unknowns relative to the low number interviewed, it is reasonable to take the lower end of this range into account.

⁵ See Appendix C17 of the appellant's Statement of Case

⁶ $17/100 \times 30 = 4.25$ pitches (rounded down)

⁷ The need would be 2.75 pitches ($11/100 \times 25$), but I have round this up to avoid having 0.75 of a pitch

41. Therefore, it would seem there is a reasonable likelihood that there is a need for around seven pitches between 2016 and 2031, perhaps more. Against this need, the appellant has suggested that the supply since 2016 amounts to three pitches, but there have also been three lost. The Council has not demonstrated through its evidence that the number of approvals since 2016 have met or exceeded the likely need.
42. The apparent lack of supply needs to be considered in the context that there are no site allocations in the local plan or a criteria-based policy that can be used to provide a basis for assessing schemes that would otherwise come forward. It is unclear when the situation would be addressed. This is at odds with Paragraph 11 of the PPTS. There are also apparently long waiting lists for public sites which add a further barrier to those meeting the PPTS definition being able to find a pitch. Accordingly, there is a 'policy failure'. Thus, based on the evidence before me, I attach significant positive weight to the delivery of two pitches in this instance.

Other policy in the PPTS

43. In its first reason for refusal the Council has referred to sustainability criteria in the Framework, which at the time of the Council's decision would have been the criteria set out in Paragraph 14 of now supersede version. However, the current iteration of the Framework sets out economic, social, and environmental sustainability objectives in Paragraph 8. Paragraph 9 of the Framework states that they are not criteria against which every decision can or should be judged. Therefore, the reference to sustainability criteria is out of date. Nevertheless, the Framework advocates an approach to development that seeks to balance economic, social and environmental objectives in a way that seeks net gains in all three areas. Thus, 'sustainability' should not be considered through the narrow prism of access to services and facilities, although this is an important social and environmental consideration.
44. Thus, Paragraph 13 of the PPTS states that traveller sites should be sustainable economically, socially and environmentally by ensuring several criteria are addressed in planning policies. This enables a broader, more rounded view of sustainability to be taken.
45. The provision of a settled base would enable future occupants the ability to balance a traditional travelling lifestyle with the practical realities of modern living. It would also facilitate peaceful co-existence with the local community because the residents of the pitches could become positively involved in village life. In this way integration could gradually take place over time through incidental communication. However, this may be more difficult in this instance because the village has few facilities and therefore contact at schools and shops would be more limited. Nevertheless, the site is close to a public house and the indications are that there is a strong and active local community.
46. In addition, the pitches would provide a stable base from which future occupants could access health and education. However, for the reasons already set out they would have to travel quite far by private motorised transport to facilitate this. Nevertheless, this situation would be preferable to a roadside lifestyle or unauthorised pitches or encampments. I cannot discount the risk of this given the policy failure outlined above.

47. In addition, for reasons already set out, the appeal site would provide reasonable living conditions for future occupants with reference to noise and land contamination and the site is not at risk of flooding. As a result, the local environmental quality would be suitable and this would benefit the occupant's health and wellbeing, especially when compared to not having a settled base.
48. The appellant has also suggested that the ability to keep four horses on the site would support a traditional way of life and reduce travel. However, I have afforded this point very limited weight because the paddocks are contaminated and likely to be fenced off unless decontaminated. Therefore, it's unlikely a horse would be kept or grazed for some time. Moreover, permission is only being sought for one stable and there is no extant permission to keep horses on the remainder of the appellant's land.
49. Nevertheless, the wider sustainability benefits of providing two pitches at this location weigh moderately in favour of the proposal, especially as they would not be away from, or dominate, the settlement.

Other Matters

50. The access into the appeal site would cross a wide verge that is highway land. This results in a generous space between the site entrance and the carriageway. As a result, there would be adequate visibility in both directions, including any vehicles using the priority junction to the west. Moreover, I have not been presented with substantive evidence to suggest vehicles can not enter or exit the site in a safe manner due to the width of the carriageway. The Local Highway Authority have not raised any objections and I place significant weight in this instance on their independent and expert view.
51. There are a handful of listed buildings in Brick End, the nearest being Walnut Tree Cottage (or the Flying Rat), which is Grade II listed. This building is a fine example of the local rural vernacular with a thatched roof and plastered elevations. It therefore garners much of its significance from its architectural value as a repository of past building techniques.
52. The building has no apparent historic association with the appeal site but is experienced in the context of its current open and verdant appearance, which helps to provide a semi-rural setting. Moreover, due to the apparent removal of some landscaping around the appeal site access, it would be possible to see the proposed pitches in the backdrop of views of the listed building from along Brick End Lane. This effect would be grater in the winter. The appeal site is therefore in the setting of the listed building.
53. The pitches would be occupied by vehicles and mobile homes of a low profile. There would be scope to retain and supplement hedging around the site access and boundaries, which would soften the impact. In this context, the proposal would not meaningfully interfere with the ability to experience the architectural value of the listed building in its semi-rural edge of village context. Thus, views of the front principal elevation would be broadly unaffected. On balance, I am satisfied the proposal would not adversely affect the setting of the listed building. This is a conclusion equally applicable to other listed buildings, which are further away from the appeal site.
54. The appeal site incorporates meadow grassland and a pond. The appeal scheme would result in the pond being lost and the meadow truncated. As a

result, an ecological assessment should have been undertaken when applying the Council's Protected Sites and Habitats questionnaire. The failure to do this could have been a serious omission given the importance placed on biodiversity in both national and local policy. The Framework refers to Circular 06/2005, which states that it is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before planning permission is granted.

55. However, I was advised at the hearing that the meadow grassland is likely to have been newly established given the historic use of the site and the significant disturbance of the land this entailed, a point I was able to corroborate from what I observed during my site visit. Furthermore, its likely the meadow would need to be stripped at some point given the extent of contamination in the soil. In respect of the pond, I was also advised it was likely to have been a hole in the ground dug for other purposes that has incidentally filled with water and therefore has low biodiversity value. The Council and appellant therefore submit that it is unlikely protected species are present and a survey necessary.
56. I am not entirely convinced by this analysis, not least because neither the Council nor the appellant has taken the advice of an Ecologist or consulted standing advice. Furthermore, I cannot discount the possibility that protected species could colonise the site in short order, and the pond appeared to have some aquatic plants and is therefore more than just a hole in the ground. Thus, a precautionary approach is justified.
57. To this end, the parties suggested the use of a planning condition which would require a survey of the site. This would then inform a mitigate/enhancement scheme with the aim of providing a net gain to biodiversity. Circular 06/2005 states that ecological surveys should only be left to planning conditions in exceptional circumstances. In this instance, the contaminated and disturbed condition of the site and the ability of the appellant to mitigate impacts on the other land in her control (in blue on the site plan) is such that a negatively worded planning condition prohibiting development from occurring until surveys and mitigation/enhancement has occurred would, on balance, be exceptionally appropriate.
58. It has been suggested that the proposed stable is not large enough to accommodate the appellant's four horses. Furthermore, grazing the horses on the land would be detrimental to their health due to the extent of contamination. Nevertheless, for reasons already set out I have based my assessment on the assumption that the keeping of horses would be something for future. Animal welfare is also covered by other legislation. Thus, this is not a determinative matter in my assessment.
59. The Parish Council have queried whether the appellant and her family meet the PPTS definition of a Gypsy or Traveller for planning purposes. I heard during the hearing that the appellant used to travel with her husband before they separated. She is now currently unemployed and has not travelled for work for several years. The appellant sometimes assists her father at traditional horse fairs, but it is unclear how often, for how long, to what extent and if it is an economic arrangement. The appellant's daughters travelled as children but do not seem to travel now. It may be that the appellant and her family have

ceased travelling temporarily on health grounds, although no written evidence from a doctor was provided to substantiate this.

60. Ultimately, it will be for the appellant and her daughters in the first instance to reflect on whether they meet the PPTS definition before occupying the site. If they do not, then they would be in breach of condition and at risk of enforcement action. Nevertheless, as I have allowed the proposal based on local general circumstances, the appeal does not turn on the appellant's personal situation.
61. Substantive evidence is not before me to demonstrate that property prices would fall, or do so to such an extent that it is a matter of public interest. As a result, this is a matter of very limited weight. Similarly, evidence is not before me to suggest local infrastructure would be unable to cope with the increase in population caused by the proposal. The Officer's delegated report refers to an emerging Policy H9 as part of the 'Regulation 19' draft Local Plan. The Council is no longer taking this document forward through the examination process and therefore emerging Policy H9 is no longer a material consideration of any meaningful weight.

Conditions

62. In addition to the standard commencement condition, it is still necessary to impose a plans condition in the interests of certainty. As the approval is justified due to the needs of those meeting the PPTS definition, it is necessary to secure occupation by such persons. It is necessary, in the interests of safeguarding the character and appearance of the area and the living conditions of neighbours, to limit the number of pitches to two as well as the size of vehicles and extent of external lighting. For the same reasons it is necessary to secure details of landscaping, boundary treatment, the disposal of manure, external materials and to exceptionally remove permitted development rights to prevent visually cluttering development.
63. To protect the living conditions of future occupants it is necessary to secure details of noise attenuation, the remediation of land contamination, waste disposal and foul drainage. To protect and enhance biodiversity it is necessary to secure an informed scheme of mitigation and measurable a net biodiversity enhancement. To protect highway safety, it is necessary to secure adequate parking. To achieve this, it is necessary to fix the position of mobile homes.
64. The appeal scheme is acceptable on its own merits without reference to the personal circumstances of the appellant and her family. As a result, a personal permission would be unnecessary. Similarly, a three-year temporary permission is unnecessary as I have seen nothing of substance to suggest matters would change at the end of this period. For example, I have seen no timetable relating to the delivery of a site allocation(s) or criteria-based policy.

Planning Balance

65. For the reasons given above, the appeal scheme would be contrary to Policies S7, S8 and GEN1 of the LP and therefore the development plan taken as a whole. An application should be determined in accordance with the development plan unless material considerations indicate otherwise.
66. As a material consideration, the appellant argues the 'tilted balance' in Paragraph 11d(ii) of the Framework is relevant on account of the Council being

unable to demonstrate a five-year supply of Gypsy and Traveller sites. However, footnote 27 of the Framework states that it is the PPTS which sets out how the housing needs of those covered by the PPTS definition should be assessed. As explained, the PPTS requires a Council to demonstrate a five-year supply of sites. If it cannot then the PPTS provides the 'sanction' in Paragraph 27. It is this sanction that should be applied rather than the tilted balance in Paragraph 11 of the Framework.

67. The implication of this is that applications involving pitches for nomadic Gypsies and Travellers will rarely benefit from the 'tilted balance'. However, that is not illogical or unfair, because the PPTS already sets out an overtly permissive approach to this type of accommodation. For example, in requiring the specific accommodation needs of nomadic Gypsies and Travellers to be met over rolling five-year periods, in allowing pitches in the countryside and providing a clear statement that the particular needs of nomadic Gypsies should be recognised.
68. The conflict with Policy S7 needs to be considered in the context that it was written with the aim of protecting the countryside for its own sake. This is not consistent with the Framework, which instead seeks to recognise the intrinsic character and beauty of the countryside. Because of this, a report prepared for the Council⁸ suggests the policy should be afforded limited weight. However, this is an opinion taken some time ago and based on an earlier version of the Framework. Instead, the conflict with Policy S7 carries moderate weight because its second strand is aimed at protecting the character of particular parts of the countryside rather than doing so in a blanket fashion.
69. In seeking to manage sprawl in the CPZ, Policy S8 is seeking to address, in a locally specific and evidenced based manner, a particular local circumstance. Openness is important in this location and therefore the policy is recognising the intrinsic character and beauty of the countryside. This is not inconsistent with the Framework and therefore a conflict with Policy S8 is capable of carrying significant weight. However, in this instance I have only identified limited harm to the CPZ and therefore the weight I attach to the conflict is of middling weight. Policy GEN1 is consistent with the Framework but the conflict with this policy is borne out of a moderate level of harm. The conflict with this policy is also of middling weight.
70. As a matter in favour of the proposal I have concluded that the Council are unable to demonstrate a five-year supply of sites because it has no locally set target. Moreover, the evidence before me, albeit problematic for the reasons set out, suggests the current supply of pitches is not catering for the likely need. The PPTS explains that if a local planning authority cannot demonstrate an adequate supply of sites, then this should be a significant material consideration when considering an application for a temporary planning permission. However, I have concluded that there is currently a policy failure and therefore, in this instance, the permanent delivery of two pitches carries significant weight as a material consideration in favour of the appeal scheme.
71. Added to this is the proposal's broad conformity to the PPTS in that the pitches would be close to a settlement, would not dominate the settled community and the scheme would have other wider sustainability benefits. These are matters that add further moderate weight in favour of the proposal.

⁸ By Anne Skippers Planning

72. Thus, the specific circumstances of the case demonstrate that the benefits of the proposal would outweigh its adverse impacts. This is a material consideration that indicates the proposal should be determined otherwise than in accordance with the development plan.

Conclusion

73. The proposal would not adhere to the development plan but in this instance, there are other considerations which outweigh this finding. Accordingly, for the reasons given, the appeal has succeeded.

Graham Chamberlain
INSPECTOR

APPEARANCES

FOR THE APPELLANT

Mr Matthew Green
Ms Esther Breaker

Green Planning Studio
Appellant

FOR THE LOCAL PLANNING AUTHORITY

Ms Patricia Coyle

Uttlesford District Council

INTERESTED PARTIIES

Mr Nick Grant
Sarah Cousins
Stuart Earthy
Roger Clark
Tony Adams
Maggie Sutton

for Broxted Parish Council
Local Resident
Local Resident
Local Resident
Local Resident
Local Resident

DOCUMENTS SUBMITTED AT OR AFTER THE HEARING

1. Comments from the appellant on a list of suggested conditions and confirmation that the pre commencement conditions would be acceptable

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The site shall not be occupied by any persons other than gypsies and travellers and their resident dependent as defined in Annex 1: Glossary of Planning Policy for Traveller Sites.
- 3) No occupation shall take place until details of the hard and soft landscaping of the site shall have been submitted to and approved in writing by the local planning authority. These details shall include an implementation programme. The development shall be carried out in accordance with the approved details.
- 4) Any trees or plants put in place or required to be retained in accordance with the above condition which within a period of 5 years from planting or the approval of details die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the Local Planning Authority gives written consent to any variation.
- 5) There shall be no more than two pitches within the site. On each of the pitches hereby approved no more than two caravans shall be stationed at any one time, of which no more than one shall be a mobile home or a static caravan as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968. Only one caravan in each pitch shall be occupied as a primary residential use with the other caravan used as ancillary accommodation to the primary residential use.
- 6) Subject to the other conditions imposed on this permission, the development hereby approved shall be carried out in accordance with the following approved plans: 17_869_001 Location Plan, 17_869_003 Rev A Proposed Site, 17_869_004 Rev A Dayroom, and 17_869_005 Rev A Stable
- 7) The mobile homes shall be sited in accordance with Drawing No. 17_869_003 Rev A Proposed Site.
- 8) No occupation shall take place until the parking area shown on Drawing No 17_869_003 Rev A Proposed Site has been drained and surfaced in accordance with details that shall first have been submitted to and approved in writing by the local planning authority, and that area shall thereafter be kept available at all times for the parking of vehicles in connection with the use hereby approved.
- 9) No development shall take place in respect of the day room and stable until details of the of the materials to be used in the construction of the external surfaces of the day room and stables shall have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details. Other than like for like replacement, the approved materials shall not be changed without the prior written approval of the local planning authority.
- 10) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any other order revoking and re-enacting that order with or without modifications), no sheds or amenity/utility buildings, or other buildings or structures, walls, fences or other means of enclosure other than those shown on the approved plans, or approved under the other conditions hereby imposed, shall be erected on the

site unless previously approved in writing by the local planning authority following an application in that regard.

- 11) No occupation shall take place until details of the of the means of foul drainage and its maintenance have been submitted to and approved in writing by the local planning authority. The development shall be carried out and operated in accordance with the approved details.
- 12) Before the first use of the stables hereby approved, details of a scheme for the storage and removal of horse manure shall be submitted to and approved in writing by the local planning authority. The development shall be carried out and operated in accordance with the approved details.
- 13) No vehicles larger than 3.5 ton shall be parked or stored at the application site.
- 14) No development shall take place until the following have been submitted to and approved in writing by the local planning authority;
 - A Preliminary Ecological Appraisal (PEA) to include a Phase 1 survey, protected species assessment and biological records search undertaken by a suitably qualified ecologist in accordance with recognised good practice prepared by the Chartered Institute of Ecology and Environmental Management;
 - The results of any subsequent surveys/assessments recommended by the PEA; and
 - A scheme of mitigation and measurable net biodiversity enhancement, to include a timetable for implementation, informed by the above survey(s).

The development shall be implemented in accordance with the approved scheme of mitigation and biodiversity enhancement, which shall be retained thereafter.

- 15) a) No development shall take place until a Site Investigation (Phase II environmental risk assessment) report has been submitted to and approved by the Local Planning Authority which includes.
 - A full identification of the location and concentration of all pollutants on this site and the presence of relevant receptors, and
 - The results from the application of an appropriate risk assessment methodology
- b) No development approved by this permission shall be commenced until a Remediation Method Statement report; if required as a result of (a), above; has been submitted to and approved by the Local Planning Authority.
- c) This site shall not be occupied, or brought into use, until:
 - All works which form part of the Remediation Method Statement report above have been fully completed and if required a formal agreement is submitted that commits to ongoing monitoring and/or maintenance of the remediation scheme.
 - A Remediation Verification Report confirming that the site is suitable for use has been submitted to, and agreed by, the Local Planning Authority. The verification report shall include disposal records, waste transfer receipts etc, to ensure that all waste disposal is traceable.

- d) In the event that contamination is found at any time when carrying out the approved development, it shall be reported in writing immediately to the Local Planning Authority. An investigation and risk assessment shall then be undertaken by a competent person, in accordance with Land contamination risk management published by the Environment Agency. A written report of the findings should be forwarded for approval to the Local Planning Authority. Following completion of remedial measures, a verification report shall be prepared that demonstrates the effectiveness of the remediation carried out. No part of the development should be occupied until all remedial and validation works are approved in writing.
- 16) No external lighting shall be installed until details have first been submitted to and approved in writing by the local planning authority. External lighting shall thereafter only be installed and maintained in accordance with the approved details. Under no circumstances should any other external lighting be installed without the prior written approval of the local planning authority.
- 17) No occupation shall take place until a scheme of noise mitigation detailing the following has been submitted to and approved in writing by the local planning authority:
- Measures to limit road and air traffic noise levels within any mobile home to 35dB LAeq,16hour (daytime) and 30dB LAeq,8hour; and
 - Measures to limit road traffic noise within the pitches to 55dB LAeq,16hour
- The development shall be carried out and operated in accordance with the approved details, which shall be maintained thereafter.
- 18) No occupation shall take place until details of waste management shall have been submitted to and approved in writing by the local planning authority. The development shall be carried out and operated in accordance with the approved details.

End of Schedule