

APPEALS UPDATE

A. LODGED

4/01857/16 Mr S Whiston
New Dwelling with vehicle access,
1 Barberry Rd, HP1 1SD

4/02875/16/FUL Mr Weir-Rhodes Watts
Two Storey Front and Side Extension
Conversion of property to form four self contained flats
2 Bracknell Place, Hemel Hempstead

B. WITHDRAWN

None

C. FORTHCOMING INQUIRIES

4/00488/16/ENA MR A MATHERS
APPEAL AGAINST ENFORCEMENT NOTICE, CONVERSION OF ONE
DWELLINGHOUSE TO SEVEN FLATS
1 AIREDALE, HEMEL HEMPSTEAD, HP2 5TP
[View online application](#)

D. FORTHCOMING HEARINGS

None

E. DISMISSED

4/02187/15/FUL CASH
CHANGE OF USE OF LAND TO A RESIDENTIAL CARAVAN SITE FOR 8 GYPSY FAMILIES - EACH WITH TWO CARAVANS WITH CONSTRUCTION OF A UTILITY BUILDING AND ASSOCIATED HARD STANDING.
LAND WEST OF THE BOBSLEIGH HOTEL, HEMPSTEAD ROAD, BOVINGDON, HEMEL HEMPSTEAD, HP3
[View online application](#)

Appeal Decision

Inquiry held on 24, 25, 26 and 27 January 2017

Site visit made on 27 January 2017

by Peter Rose BA MRTPI DMS MCM

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

Decision date: 10 April 2017

Appeal Ref: APP/A1910/W/16/3149793

Land west of Bobsleigh Hotel, Hempstead Road, Bovington, Hertfordshire, HP3 0DS

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 Michael Cash against the decision of Dacorum Borough Council.

The application Ref: 4/02187/15/FUL, dated 29 May 2015, was refused by notice dated 15 December 2015.

The development proposed is change of use of land to use as a residential caravan site for 8 gypsy families, each with two caravans and a utility building, including the laying of hardstanding.

Decision

1. The appeal is dismissed.

Procedural Matters

Adjournment

2. The appeal was adjourned on 27 January 2017 pending final written submissions and was formally closed in writing on 9 February 2017.

Recent development at the appeal site

3. At the opening of the Inquiry, the appellant advised that caravans had in recent days been placed on the site and were in occupation for domestic use. The Council explained that a temporary stop notice had since been served in relation to associated operational development. The authority also subsequently advised the Inquiry that a High Court injunction had been issued and served relating to preclusions upon further development.

The status of the application

4. Given recent development at the site, I sought the views of the four main parties as to whether the appeal should now be considered as an application pursuant to section 73A of the Town and Country Planning Act 1990 (the 1990 Act). The commonly shared view was that, whilst the principle of the use was the same and involved some of the same occupants, the proposed development was materially different in its layout and form. I concur with that assessment and consider the appeal as proposed development in accordance

with the original application, but mindful of any relevance to recent events.

Drawings

5. In response to a concern by a local interested party revised drawing Ref: 'Site Layout Plan, Hempstead Road Bovingdon' (scale 1:500) dated 27 January 2017 was submitted to the Inquiry. This involves a minor correction to the boundary of the application site. The main parties considered this contains no material changes to the proposal, and I agree. The interested party also refers to a minor issue relating to adjoining land edged blue. This land is also within the control of the appellant but does not form part of the application site and I consider the issue has no material implications for the proposal.

Temporary and/or personal permission

6. The application which is the subject of the appeal is for full, non-personal planning permission but the appellant confirmed at the Inquiry that, should such a permission be found to be unacceptable, possibilities for a temporary and/or personal permission should also be considered.

Rule 6 Parties

7. The Inquiry was attended by two Rule 6 parties. One party was a joint representation of Bovingdon Parish Council and local residents, the second on behalf of MacDonald Hotels Ltd.

8. I consider the appeal on the above basis.

Main Issues

9. The main issues are:

(a) whether the proposal would constitute inappropriate development in the Green Belt with regard to the development plan and to the National Planning Policy Framework (the Framework);

(b) the possible effect of the proposed development upon other aspects of the Green Belt as set out in the Framework, and with particular regard to openness as an essential characteristic of the Green Belt, and upon the purposes of the Green Belt in relation to safeguarding the countryside from encroachment, and preventing towns from merging into one another;

(c) the possible effect of the proposed development upon the character and appearance of the appeal site and its surroundings;

(d) other material considerations which may need to be weighed as part of a planning balance, including the need for, and provision of, accommodation for gypsies and travellers within the area and, if required as a contribution to the balance, the accommodation needs and other personal circumstances of the occupiers and their families, and;

(e) if inappropriate development, whether any harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify the scheme in the Green Belt.

10. Whilst not identified within the Council's reasons for refusal, the following issues have been raised by other parties and were subject to examination at the Inquiry:

(f) implications for access, and;

(g) the possible effect of the development upon the living conditions of neighbouring residents with particular regard to outlook and noise.

11. A number of further issues were also identified by local interested parties, and I address those under other matters.

Reasons

Whether inappropriate development

12. The appeal site comprises some 0.9 hectares of open land located on the south-eastern side of Hempstead Road (the B4505), close to the village of Bovingdon. The site comprises a grass field adjacent to a pair of large semi-detached houses to the south-west, and adjacent to the Bobsleigh Hotel to the north-east. A residential caravan park is located behind the hotel. Access is provided from Hempstead Road via a private driveway adjacent to

the north-east boundary of the site, and which also serves the adjacent hotel and caravan park.

13. The site is enclosed by a large and relatively dense hedge and associated planting along its main frontage to Hempstead Road, and by some hedgerows and trees to the north-east and south-west. The main frontage to Hempstead Road faces towards large residential properties on its opposite side, whilst to the south of the site lies extensive open land.

14. The site forms part of the Green Belt as defined by the Dacorum Local Plan 2004 (the Local Plan), and this designation is further addressed by the Council's Adopted Core Strategy 25 September 2013 (the Core Strategy).

15. Policy CS5 of the Core Strategy advises that the Council will apply national Green Belt policy to protect the openness and character of the Green Belt, local distinctiveness and the physical separation of settlements. It states that, within the Green Belt, small-scale development will be permitted, as defined in its criteria (a) to (e), which include buildings for the uses identified as appropriate in national policy, provided development has no significant impact on the character and appearance of the countryside and supports its maintenance.

16. The proposal would involve the introduction of eight residential pitches, each comprising two caravans and a utility building. The layout would provide for a dispersed arrangement of plots overlooking a central play area and served by access leading from the private driveway connecting to Hempstead Road. The scheme would include hardstanding comprising permeable stone with some tarmac, retention of hedgerows, and provision of grass areas, and further hedgerows and trees, and post and rail fencing.

17. The Framework seeks to safeguard the Green Belt from inappropriate development. It does not identify a material change of use as proposed to be an exception to inappropriate development.

18. Further, Policy E of the government's Planning Policy for Traveller Sites document (the PPTS), August 2015, states that traveller sites in the Green Belt, whether temporary or permanent, are inappropriate development. Paragraph 4 of the Framework advises that it should itself be read in conjunction with the PPTS.

19. The appellant acknowledges the scheme to be inappropriate development in accordance with the Council's assessment and, for the reasons indicated, I agree.

20. I therefore find that the proposed change of use of the site would be inappropriate development in the Green Belt contrary to Policy CS5 of the Core Strategy, contrary to the Framework, and contrary to the PPTS.

Openness of the Green Belt

21. The Framework defines one of the essential characteristics of the Green Belt to be its openness. There is no formal definition of openness in the Framework but, in the context of the Green Belt, it is generally held to refer to freedom from development, or the absence of development.

22. The eight utility buildings would be permanent structures, and would be part of a development also comprising two caravans within each of eight plots, an access road and other hard surfaces, parked vehicles and the accompanying paraphernalia and activity arising from domestic occupation. Taken together, this would amount to a substantial loss of openness, and the appellant concedes the scheme would reduce the openness of the Green Belt markedly.

23. I therefore find that the proposal would result in very significant harm by reducing the openness of the Green Belt. Accordingly, the development would be contrary to Policy CS5 of the Core Strategy and contrary to the Framework.

Encroachment

24. The Framework defines one of the purposes of the Green Belt as assisting in safeguarding the countryside from encroachment.

25. The scheme would involve replacement of a large area of open countryside by

residential development. The site forms an integral part of the surrounding countryside and the scale of such loss would represent a very harmful intrusion into the Green Belt contrary to the Framework.

Merging of towns

26. Policy CS5 of the Core Strategy advises that national Green Belt policy will be applied to protect the physical separation of settlements. Paragraph 80 of the Framework defines one of the five purposes of the Green Belt to be to prevent neighbouring towns merging into one another.

27. The Green Belt Review Purposes Assessment Final Report November 2013 prepared for the Council by Sinclair Knight Merz (the 2013 Review) identifies the site within an area making limited or no contribution to prevention of merging. Even so, the development would lead to enclosure and occupation of open land between Hemel Hempstead and Bovingdon and thereby increase coalescence between the two settlements. Although views of the site from the road are relatively limited, it still forms part of the surrounding swathe of open countryside, and the unoccupied gap it currently contributes would be lost to the development.

28. The Hertfordshire Landscape Strategy Landscape Character Assessment for Dacorum Supplementary Planning Guidance May 2004 (the SPG) identifies the appeal site as forming part of the Bovingdon and Chipperfield Plateau (the Plateau). The scheme would be contrary to the SPG which seeks to generally resist proposals to extend sub-urban influences within the Plateau from the existing villages or through infill of more dispersed areas.

29. Whilst there was no dispute at the Inquiry regarding Hemel Hempstead's status as a town, there is little basis to conclude that Bovingdon enjoys a similar status. I accept that Hemel Hempstead has physical characteristics of a town, not least in terms of its relative scale and function, but Bovingdon is defined in the Local Plan as a Large Village.

30. I have little reason to interpret the Framework other than on the face of the ordinary language used. Accordingly, the proposal would not lead to coalescence between towns as expressly stated in the Framework. Whilst, in physical terms, it would undoubtedly contribute to coalescence between a town and a village, I find such coalescence would not thereby be contrary to the specific wording of the Framework.

31. Nevertheless, it would be contrary to the terms of Policy CS5 insofar as the development plan seeks, more widely, to protect the physical separation of settlements, but that aim is also expressly set within the context of national Green Belt policy. Such coalescence would, however, be contrary to the general terms of the SPG.

32. Paragraph 215 of the Framework requires due weight to be given to relevant policies in existing plans according to their degree of consistency with the Framework. Whilst there is a tension between the specific language of Framework and the terms of Policy CS5, the development plan policy refers more widely to 'settlements' and which I consider, interpreted objectively in accordance with the language used, would include villages. Further, whilst specific details of its examination are not before me, I note that the Core Strategy's adoption as part of the statutory development plan post-dated introduction of the Framework.

33. I find therefore that the scheme would lead to greater coalescence between Hemel Hempstead and Bovingdon contrary to Policy CS5 of the development plan, and generally contrary to the SPG, but not contrary to the express wording of the Framework. In relation to the conflict with the terms of the development plan and SPG, I find the scheme would incur moderate harm, but as limited by the contrasting wording of the Framework.

Summary of Green Belt harm

34. The scheme would incur definitional harm through inappropriate development and would impose very significant harm through loss of openness and

encroachment. It would incur more limited, moderate harm through merging of settlements as assessed in relation to the terms of the development plan and of the SPG. Paragraph 88 of the Framework advises that substantial weight is to be given to any harm to the Green Belt. Accordingly, I attach substantial weight to the totality of harm to the Green Belt.

Character and appearance

35. Whilst undistinguished in itself, the appeal site forms an integral part of a predominantly open landscape south of limited sporadic, ribbon development along Hempstead Road. The site is essentially green and open in its lawful character and this is clearly demonstrated by the aerial view on page 15 of Bovingdon Parish Council's proof of evidence showing the setting and composition of the site prior to its recent unauthorised development.

36. Notwithstanding the very open, rural nature of the site itself, aspects of the immediate setting are more urban in character. In particular, the Bobsleigh Hotel and residential caravan site lie immediately to the east and, whilst Hempstead Road contains trees, hedges and verges, it is a wide, busy road with some development on both sides. The appellant suggests the context is particularly defined by a pocket of existing urbanising development centred upon the hotel site, and including the residential caravan site which he considers to have been successfully assimilated into the local landscape.

37. Policy H of the PPTS states that new gypsy and traveller development should be very strictly limited in open countryside that is away from existing settlements or outside areas allocated in the development plan. Nevertheless, the PPTS does not preclude development of gypsy and traveller accommodation in the countryside as a matter of principle, and the appeal site is adjacent to existing development. I note reference made to Appeal decisions Ref: APP/J0405/C/13/2193582 and /2193601 relating to Land at Willows Park, Horton Road, Slapton, Buckinghamshire and dated 6 September 2013. These relate to siting of caravans at a distance of some 800 metres from an existing hamlet, and I am satisfied, given the broader setting of the appeal site as described, that the scheme should not be regarded as located away from a settlement.

38. Policy C of the PPTS advises that, when assessing the suitability of sites in rural or semi-rural settings, local planning authorities should ensure that the scale of such sites does not dominate the nearest settled community. Given the circumstances described, I have little reason to find that the scale of development proposed would contravene this aspect of the PPTS.

39. Policy H further advises that weight should be attached to well-planned or soft-landscaped sites that positively enhance the environment and increase openness, but that they should not be enclosed by hard landscaping to such a degree that a site could be seen as deliberately isolated from the rest of the community. Aside from the loss of openness already discussed, the design and layout of the scheme do seek to mitigate its impact in these regards. Public views of the site would be relatively limited to glimpses from the road through the northern boundary and more directly along the driveway leading from Hempstead Road. Notwithstanding the design, however, the site would still be significantly visible from Hempstead Road.

40. The adjacent hotel is of a substantial built form. In contrast, the caravan site is effectively concealed from the road, and is a feature with relatively restricted exposure in some limited views from the rear. Many of the caravans are in a derelict condition and only a small number remain occupied. Nonetheless, the use is acknowledged by the Council to be lawful and given that caravans are not fixed structures, there remains a fallback position whereby the existing caravans might be replaced by a more visually intrusive arrangement introduced without the possible need for planning permission. That said, the theoretical possibility of their replacement appears to be very limited. In particular, the owners made very clear to the Inquiry that, other than the

re-location of two occupiers, the caravans at the rear have no future at the site, as evidenced by the recent planning application Ref: 4/01088/13/MFA.

41. In the context of the existing adjacent caravan site, the proposed change of use would represent a westwards expansion of similar development, but I do not find its impact would be offset by the adjacent use. Rather, the inherent opportunity cost to the local landscape in terms of further visual encroachment into the countryside would be high. The outcome would be the introduction of a visually intrusive and discordant use at the expense of otherwise attractive open countryside.

42. The SPG identifies key features of the Plateau as including, amongst other aspects, a gently undulating landscape and a scattered and sometimes extensive dispersed pattern of settlement. Whilst the appeal site displays some wider similarities with these features, I agree that other defined aspects, such as densely hedged narrow lanes, are not representative of the local setting. In terms of its broader character and appearance, however, I find the site to be consistent with the wider Plateau and which the SPG seeks to generally improve and conserve.

43. The Dacorum Borough Council Stage 2 Green Belt Review and Landscape Appraisal (the Stage 2 Review) was published in December 2016 as a follow-up to the 2013 Review. The earlier 2013 Review identified the site within an area (Parcel 14A) as making a significant contribution to safeguarding the countryside. Further, the Stage 2 Review now places the site within Sub-Area BV-A3 and which it identifies as making a strong contribution to the Framework's Green Belt purposes and recommends no further consideration of possible release from the Green Belt in terms of both landscape and Green Belt.

44. The Framework requires that the planning system should contribute to and enhance the natural and local environment by protecting and enhancing valued landscapes. The appeal site itself enjoys no specific recognition in relation to any intrinsic landscape quality it may offer beyond the wider designations described but, for the reasons indicated, still makes an important contribution to the countryside character and appearance of the setting.

45. In summary, any form of development of the land would inevitably have some visual and character impact upon the site and adjacent countryside.

Notwithstanding limited public exposure and boundary treatment as proposed, and the relatively low-lying form of the caravans, a pre-existing and locally valued character and appearance of unoccupied countryside, as evidenced by the submissions of interested local parties, would be disrupted by a relatively cluttered and imposing appearance of mobile homes and day rooms and accompanying vehicles and other paraphernalia. The scale and disparate nature of the proposed use, in the particular physical context described, would lead to the harmful replacement of an attractive open rural form by an imposing and visually jarring urbanised character and appearance.

46. I therefore conclude the proposed scheme, including the introduction of sixteen caravans, eight utility buildings, and sundry attendant features, would incur very significant harm to the character and appearance of both the appeal site and its surroundings contrary to the SPG, and contrary to the Framework. I attach very significant weight accordingly.

Access

47. A plan attached to a land conveyance dated 2 July 1990 identifies a right of access into the appeal site along the adjacent private driveway to the east and between defined points A and B. The proposed point of access identified on the submitted layout drawing as part of the appeal proposal would appear to lie outside that particular length of the boundary.

48. That said, I saw at my visit that existing access along the track remains unrestricted well beyond the proposed point of entry/egress into the application site and up to the barrier serving the caravan park. I also heard no evidence of

any previous actions to preclude access.

49. I accept there may well be a legal issue regarding the need to formally clarify rights of access and any subsequent implications for the scheme access as proposed. It is not unusual for matters of access to be clarified following approval to the principle of a development but I find no material planning harm in relation to the proposed point of access itself. Even if the proposed access location were to prove unfeasible, it would still be open to the appellant to seek modification to any approved scheme as appropriate, but that is beyond the terms of the current appeal.

50. Nevertheless, rights to the access as proposed in the application remain an open question and, whilst I do not place significant weight in this regard as a factor against the scheme, I remain to be satisfied that the site may be considered available now for development as proposed in accordance with the terms of Footnote 11 to the Framework.

Living conditions of neighbouring residents

51. Highcroft Cottage and Highcroft Paddocks are adjacent dwellings with extensive gardens. I visited both properties at my accompanied inspection and observed the appeal site in views from both inside the dwellings and outside.

52. Occupation of the appeal site would introduce domestic activity to an otherwise unoccupied rural field, and there would be an undoubted change in adjacent views from these properties. Whilst the proposal would be clearly visible, I find the relative position and extent of the scheme would not be such as to create an over-bearing outlook from those properties and the caravans and other paraphernalia would be to some degree, but not totally, screened in limited private views from these dwellings.

53. Notwithstanding the more general and wider impact upon local character and appearance already described, I do not find such change in outlook would in itself be directly harmful in specific regard to the living conditions of neighbouring occupiers. Further, the Courts have generally held that safeguarding private views is not a matter to which weight is to be attached in planning decisions even though they may be of significance to occupiers.

54. Paragraph 17 of the Framework seeks to ensure a good standard of amenity for existing and proposed occupants of land and buildings. No commercial activity is proposed for the site and, in relation to noise, there is little before me to suggest the Framework's expectations would be offended by the proposal.

55. I therefore find that, whilst the presence of the development would be apparent to adjoining residents, it would not be specifically harmful to their living conditions, and the development would conform to the requirements of the Framework.

Intentional unauthorised development

56. The statement relating to Green Belt protection and intentional unauthorised development accompanying the letter of the Chief Planner of the Department for Communities and Local Government dated 31 August 2015 expresses the government's concern about the harm that is caused where development of land has been undertaken in advance of obtaining planning permission. It explains that, in such cases, there is no opportunity to appropriately limit or mitigate the harm that has already taken place. For these reasons, the Chief Planner's statement introduces a planning policy to make intentional unauthorised development a material consideration that would be weighed in the determination of planning applications and appeals received from 31 August 2015. The statement further explains that the government is particularly concerned about harm that is caused by intentional unauthorised development in the Green Belt.

57. The appeal site has been the subject of recent unauthorised development for purposes similar to that proposed by the application subject to appeal, and is occupied by some of the same proposed occupiers. The development took place only a few days prior to the Inquiry. Whilst acute circumstances around

housing need have been advanced in mitigation, little detailed evidence has been offered as to specific prior consideration given to possible transit sites serving Hertfordshire or elsewhere or to any such other specific temporary alternatives to possible site occupation immediately prior to the unauthorised development.

58. I also regard the principle of the Council's actions in serving a temporary stop notice and in seeking a High Court injunction precluding further breaches of planning control as evidence of the authority's very real concerns towards the possible implications of this unauthorised development. Reference to the unauthorised status was also made by an interested local party who addressed the Inquiry.

59. The harm to date has been relatively limited by virtue of its duration and, to that degree, I attach only moderate weight to this specific breach of national planning policy.

Need for sites

60. The periodical review of housing needs under section 8 of the Housing Act 1985 is a statutory requirement upon local housing authorities. This requires local housing authorities to assess and understand the accommodation needs of people residing in or resorting to their district, including the needs of people with respect to sites for caravans.

61. The Dacorum Borough Council and Three Rivers District Council Traveller Needs Assessment Report January 2013 prepared by Opinion Research Services (the GTAA) is the Council's latest assessment of gypsy and traveller needs. The GTAA identifies a need for 17 extra pitches between 2012 and 2031, of which 15 are required by 2022. Of these, 7 were identified for provision between 2012 and 2017 but were not delivered. A further 8 pitches are identified as being required between 2017 and 2022.

62. I also note a more recent letter from Hertfordshire Gypsy Section dated 26 January 2017 identifying 108 families on its waiting list and indicating very few pitches becoming available each year.

Supply of sites

63. Policy B of the PPTS requires local planning authorities, in preparing local plans, to set targets which address the likely permanent and transit site accommodation needs of gypsies and travellers in their area. Local planning authorities are encouraged to identify and update annually a supply of specific deliverable sites sufficient to provide five-years' worth of sites against their locally set targets, whilst protecting local amenity and the environment.

64. Policy CS22 of the Core Strategy states that new accommodation for gypsies and travellers will be met through a target for new pitches to be set according to the most recent Gypsy and Traveller Needs Assessment agreed by the Council. The target will be progressively met through the provision and management of new sites.

65. Policy CS22 states that new sites will be distributed in a dispersed pattern around settlements, will be located close to facilities, will not normally be planned to a site capacity exceeding fifteen pitches, and should be designed to a high standard, including landscaping or other physical features to provide an appropriate setting and relationship to existing residential areas.

66. The Inquiry was told that the Council's proposed Main Modifications to its Local Planning Framework Site Allocations DPD (the Modifications) were the subject of on-going public consultation, and the possibility of some further Examination in Public (EIP) of changes remains. The Modifications include deletion of a previously proposed site for gypsy and traveller accommodation at Icknield Way, west of Tring (proposal Ref: LA5) in response to the EIP Inspector's site-specific concerns. Proposals remain for development of five residential pitches at Marchmont Farm (proposal ref: LA1) and a further seven pitches at West Hemel Hempstead (proposal ref: LA3), both of which are available for development now but not yet for occupation. Delivery would be consistent with

the DPD's approach of seeking provision as part of wider housing sites. In each case delivery is proposed as part of an early, but as yet unspecified, phase of the scheme so as to ensure supply of gypsy and traveller provision within a five-year period.

67. Evidence submitted to the Site Allocations DPD EIP in the appellant's Appendix PBA3 sets out the assessment of proposed developers of LA3 in relation to both general delivery of gypsy and traveller pitches and their likely timescale. The evidence explains how the gypsy and traveller element needs to be properly planned and delivered in conjunction with the development of some 900 dwellings, and that for both financial and practical reasons, it is not realistic to bring forward the traveller element in advance of the rest of the development commencing. It does acknowledge that delivery of housing could reasonably commence on site in the fourth quarter of 2018, so allowing provision of the seven pitches before 2020. It further states that the developers are confident of the scheme's viability and have raised no objection to the Local Plan on that basis.

68. In cross-examination, the Council's planning witness conceded there was no guarantee that the gypsy and traveller element would comprise part of the first phase of LA3 which could involve some 300 dwellings and a delivery rate of some 85 dwellings per annum. Whilst this would mean the first phase may not be completed until 2022, the Council's intention was for the pitches to be delivered in the next five years.

69. The Council's witness further indicated that LA1 would involve some 700 dwellings. Details of programming are also not available but the gypsy and traveller element is again intended to be in the early stages and as part of a similar housing delivery rate to LA3.

70. It was common ground between the Council and appellant at the Inquiry that Dacorum is largely rural in character, and that much of the Borough comprises Green Belt or is part of an Area of Outstanding Natural Beauty. The appellant considers that future development of gypsy and traveller sites is likely to be within these protected areas. I note that the Main Modifications refer to provision at LA1 and LA3 as 'small-scale' and would be of a broadly comparable size to the appeal proposal, and that the identification of both sites will have reflected substantial research by the Council in relation to possible alternatives. Nevertheless, I do not have clear and direct evidence before me that such other small-scale sites could not be identified in the future outside the Green Belt or beyond other protected status. Further, unlike the appeal site, provision at LA1 and LA3 would be part of wider developments thereby yielding other housing benefits, and not in isolation.

71. The appellant also suggests that provision of eight pitches at the appeal site would offset the loss of the previously proposed five pitches at LA5, and so raise supply above the targeted figure of seventeen. I disagree, as I have little reason to find that the specific occupiers of the proposed eight pitches were, indeed, each identified in the survey which preceded publication of the GTAA in January 2013 and are reflected in that original figure.

72. In summary, I find that, even if the twelve pitches proposed for LA1 and LA3 were to be delivered within the next five years, allowing for under-delivery between 2012 and 2017 when no pitches were provided, a net shortfall of three pitches would remain. This finding reflects the seven pitches identified for provision between 2012 and 2017 and not delivered, and the further eight pitches identified as being required between 2017 and 2022.

73. Even so, this evidence sits in contrast to the up-to-date conclusions of the Inspector considering the recent DPD EIP as set out in her letter of 1 November 2016. The Inspector refers to the on-going process of preparing a comprehensive Local Plan based upon a range of updated evidence. The Inspector concludes that sites LA1 and LA3 can come forward immediately and that it would appear that a five-year supply of deliverable gypsy and traveller

sites would be provided by these two allocations. It remains unclear to me as to the precise calculation or other detailed basis upon which that conclusion was reached if allowance is to be made for the five-year backlog.

74. Given that provision of land for gypsy and traveller development at LA1 and LA3 is intrinsically related to wider development of these sites and we have no committed programme, I cannot be certain the pitches would be provided in the next five years. Nevertheless, the relevant tests of a deliverable site set out in Footnote 11 of the Framework include that it is available now and is viable, both of which are supported by the evidence. Further, Footnote 11 refers, not to a prerequisite of certainty, but to a realistic prospect of development, and the evidence submitted satisfies me in that regard.

Summary of need and supply

75. On the basis of the evidence before this Inquiry, including the absence of any further explanation by the Council as to how the previous backlog of seven pitches has been treated as part of the EIP, I remain to be satisfied that the Council is able to demonstrate a five-year supply of pitches based upon the 2013 GTAA if allowance is to be made for the historic under-supply.

76. Nevertheless, and notwithstanding the early stage of development of LA1 and LA3 and the absence of appropriate legal commitments, including the granting of planning permission, it is clear that good progress is being made by the authority towards provision of twelve pitches within the next five years. The Site Allocations DPD is at a very advanced stage, and I find prospects for delivery within the identified timescale to be reasonable. Whilst I am unable to fully appreciate and explain, I also have regard to the recent finding of the EIP Inspector. The Inspector has had regard to the Council's commitment to adopt the full, emerging local plan in the foreseeable future, and despite a possible shortfall of three pitches, has identified a five-year supply, the principles for which are clearly established through the DPD.

77. The difference in the two sets of findings is also relatively marginal. I am mindful of the importance of consistency, and have further regard to the degree of discretion identified for decision-making in the judgement of *Stonegate Homes Limited and Littleworth Properties Limited v Horsham District Council and Henfield Parish Council* [2016] EWHC 2512 (Admin). The GTAA was also some four years old at the time of this Inquiry and the EIP assessment would represent a far more up-to-date finding.

78. A further factor is any possible reduction in need for gypsy and traveller accommodation arising from the changes made to the PPTS Annex 1 definition of gypsies and travellers in August 2015 relating to adults who cease to travel. In particular, the GTAA identifies that 85% of respondents reported they had not travelled at all in the previous twelve months and a third of those had travelled in the past. The extent to which they may have ceased to travel temporarily or permanently is unclear, but some technical adjustment to need would appear likely, although that would also remain to be set alongside other factors raised by the appellant relevant to future need and referred to further below.

79. I also have regard to the advice set out in the government's Planning Practice Guidance (the Guidance). Paragraph 031 Reference ID: 3-031-20140306 confirms that deliverable sites could include those allocated for housing unless there is clear evidence that a scheme will not be implemented in five years. It further advises that planning permission is not a pre-requisite for a site being deliverable in terms of the five-year supply, and that local planning authorities will need to provide robust, up-to-date evidence to support deliverability.

80. Even though future supply would not meet existing and future need if defined at a level of fifteen drawing upon data pre-dating 2013, I find, on balance, that the authority is able to demonstrate a reasonable future supply no more than three pitches short of the minimum likely to be required and find that such a shortfall would be relatively marginal. Further, for the reasons indicated, I

place significant weight upon the more recent findings of the EIP.

81. All things considered, I find the likely future levels of need and of supply to be a factor which neither weighs significantly for or against the appeal scheme. Some further questions also remain regarding the qualitative aspects of proposed delivery, in terms of housing choice, and which I consider further below.

Availability of alternative sites

82. No details were presented to the Inquiry of any known suitable, acceptable alternative sites immediately available in the Borough. This is a factor in favour of the development to which I attach significant weight.

Failure of policy

83. The absence of any new pitches since 2012 is not disputed, and an outstanding need arises from the GTAA, and I received no indication of any currently available sites. I also received specific evidence of the surplus demand for existing gypsy and traveller sites within the Borough. In particular, reference was made to over-crowding at two public sites in Dacorum, at Three Cherry Trees Lane, and at Long Marston. I also heard evidence of an absence of private gypsy and traveller sites in Dacorum.

84. The general need to deliver a wide range of quality homes set out in paragraph 50 of the Framework applies to the gypsy and traveller community in the same way as it does to the settled community. Whilst the appellant considers that the Site Allocations DPD does not facilitate provision of any new small family-owned sites, the precise tenure and delivery of the LA1 and LA3 pitches remain to be resolved and it would be premature to criticise on those terms. Even so, implicit in the previous absence of any delivered sites is an accompanying absence of choice.

85. The significance of qualitative aspects of future supply are also recognised in a number of appeal decisions cited by the appellant. These are Appeal decisions Ref: APP/H2265/A/12/2182789 and APP/H2265/C/12/2182787 relating to Land at Orchard Farm, Well Street, East Malling, West Malling, Kent ME19 6JW and dated 26 March 2013, and Appeal decisions Ref: APP/H2265/C/12/2182585 and /2182586; /2182591 and /2182592; /2182595 and /2182596; and /2182600 and /2182601 relating to Land at Woodford, Old Lane, Ightham, Sevenoaks, Kent TN15 9AH and dated 24 July 2015.

86. In this respect, I also have regard to the Public Sector Equality Duty (PSED) contained in section 149 of the Equality Act 2010 which sets out the need to eliminate unlawful discrimination, harassment and victimisation, and to advance equality of opportunity and good relations between people who share a protected characteristic and people who do not. The proposed occupiers would be Irish Travellers and are thereby persons who share a protected characteristic for the purposes of the PSED. I further note in this regard reference to matters of equality in the judgement of *Wenman v the Secretary of State for Communities and Local Government and Waverley Borough Council* 2015 EWHC 925 (Admin), and have regard to Article 14 of the European Convention on Human Rights (the ECHR) which prohibits discrimination.

87. The appellant also considers the GTAA to have a number of further shortcomings and which undermine the Council's policies. Notwithstanding the EIP findings, the GTAA is suggested to under-estimate current needs by recognising turnover of existing pitches whilst making no allowance for in-migration. The appellant also suggests a danger of unduly discounting the change in the Annex 1 definition in relation to adults who cease to travel as this may under-represent possible natural population growth. Set against that, however, the GTAA found no households contained members who were expected to form new households in the next two years. I also note that the GTAA assumes a 3% per annum natural population growth and states that the identified target of seventeen pitches required to 2031 is drawn from both natural population growth on public sites and the needs of households currently

awaiting pitches on such sites in the area.

88. On balance, I consider the previous shortcomings in supply do reflect some failure of policy with associated equality implications, and this is a factor in favour of the development and to which I attach moderate weight.

Planning status of the proposed occupiers

89. Gypsies and travellers are defined in Annex 1 to the PPTS as persons of a nomadic habit of life whatever their race or origin. The Inquiry heard evidence from Michael Doran, Robert Lee, Margaret Hogan, Michael Nolan and Patrick Hogan, but little in relation to the other proposed occupiers. Whilst the Council and Rule 6 parties indicated they were satisfied as to the Annex 1 status of those occupiers who gave evidence and their dependants, they remained to be satisfied in relation to the others. Although some indirect evidence was offered, I concur with that assessment.

90. That said, even if there were to be remaining doubts regarding the proposed occupants' planning status, the relevance of this issue must be seen in context. In particular, this is not, in the first instance, an application for a personal permission. This appeal concerns an application to change the use of land to meet the general accommodation needs of gypsies and travellers. In the first instance, if permission were to be granted on that general, non-personal basis, a condition would be likely to follow requiring future occupants to meet the definition of Annex 1 and such terms would remain to be met. Any planning permission arising from this appeal would run with the land in accordance with the terms of the application.

Personal circumstances

91. The proposal would involve occupation of the site by an extended family of Irish Travellers, comprising some 17 adults and some 14 children. A number of the proposed occupants have pressing medical conditions, including Alice Doran, aged five, who is seriously autistic, as detailed in the letter from Kent Community Health NHS Foundation Trust dated 10 January 2017. David Nolan, the uncle of Michael Dolan and who lives with his nephew, is also suffering health issues as detailed in a discharge notification dating from 15 October 2012, and various medical conditions of other adults were also identified in the submitted evidence.

92. I also heard evidence of previous homelessness, of roadside existence, and of cultural aversion to more conventional 'bricks and mortar' accommodation.

93. Dismissal of this appeal would be likely to contribute towards the families' possible eviction from the site, thus interfering with their private and family life. In particular, it could result in the loss of their home, albeit unlawful, and the apparent lack of immediately available alternative accommodation makes such interference more serious. In the absence of other available sites, there would be a possibility of a roadside existence. These matters are relevant to the proposed occupants' rights under Article 8 of the ECHR in relation to respect for private and family life, and also Article 1 of the First Protocol as incorporated by the Human Rights Act 1998 in relation to protection of property.

94. The concern of the proposed occupiers to reside as one family unit does, however, place particular requirements in terms of the size of site required and that, in turn, will limit the suitability of smaller sites or of individual, unrelated plots. Given the limitations upon future supply, the practicalities and reasonableness of that expectation in terms of likely realisation are open to question. I also note the indications given by some of the proposed occupiers that enquiries for other sites took place after their financial commitments were made to the appeal site.

95. Whilst some association has been identified with Bovingdon, proposed occupiers have also been resident elsewhere in areas where other provision is made for gypsy and traveller accommodation. Michael Doran and his family, for example, have been based in Maidstone, Kent. I received extracts from the

Maidstone Borough Local Plan Publication (Regulation 19) February 2016 indicating provision being made in that area, but also indications from the appellant of similar problems regarding local availability.

96. Article 8 rights are not unqualified, and interference may be permissible where there is a clear legal basis as set out in the relevant article. This requires balancing the rights of the individual against the legitimate interests of others and of the wider community/public interest. Considerations of proportionality become critical, and overall assessment follows as part of my concluding planning balance.

97. Aside from the best interests of the children, I attach moderate weight to these personal circumstances and rights as a factor in favour of the scheme.

Best interests of the children

98. Where Article 8 rights are those of children, as in this case, they must also be seen in the context of Article 3 of the United Nations Convention on the Rights of the Child. This requires a child's best interests to be a primary consideration. More particularly, *Jane Stevens v SSCLG* [2013] EWHC 792 (Admin) identifies that, although a primary consideration, the best interests of a child are not a determinative planning issue, but no consideration must initially be regarded as more important or, in advance of the subsequent assessment of the individual circumstances, be given greater weight.

99. The judgement explains at paragraph 63 that, where it is the very function of a decision-maker to attach weight to considerations which are material to the decision he/she is required to make, as he/she proceeds with his/her examination of the circumstances of an individual case, he/she must adjust the relative weighting to that which, in his/her judgment, the circumstances of the case require. Further, paragraph 66 states that it is unhelpful and analytically wrong to say that the best interests of a child must continue to have more importance or weight than any other right or interest throughout a process in which that decision-maker is exercising his/her very function of attaching importance or giving weight to all material considerations, including those which are 'primary'.

100. Paragraph 028 Reference ID: 21b-028-20150901 of the Guidance advises that decision-makers need to consider whether children's best interests are relevant to any planning issue under consideration. In doing so, it similarly advises they will want to ensure their approach is proportionate. They need to consider the case before them, and need to be mindful that the best interests of a particular child will not always outweigh other considerations including those that impact negatively on the environment or the wider community.

101. Michael Doran stated very clearly to the Inquiry that his priority was the welfare of his daughter Alice. In particular, his priority was schooling. The Inquiry also heard how Alice's existing school in Kent, Five Acres Wood School, was considered by him to be a good school for treatment of autism.

102. Whilst there was little clear evidence of appropriate specialist schools or necessary other facilities nearby in Bovingdon, Mr Doran's concern is to establish a permanent base from which access may be sought to wider support services for Alice. Nevertheless, I was struck by the fact that over eighteen months had passed since submission of the planning application, and yet no details were available to the Inquiry of either proposed schooling nor of any necessary medical or other support services for Alice. Further, Michael Doran gave evidence that an enquiry regarding a possible school place was only made to the local authority days before the Inquiry and no formal application had yet been made, and no details were available of any proposed medical support. I accept that Alice's best interests may well be served by living amongst her wider family, but have little reason to find they will necessarily be addressed by this specific site, nor in the wider local area.

103. Similarly, Robert Lee indicated his family were very happy and settled in Nazeing, Essex and that his children were doing well at existing schools. The

benefit to his children of the move would be to live as part of the wider family. Margaret Hogan stated that her three children had received very little schooling in recent years. Michael Nolan indicated that some of his children were already in school elsewhere, and Patrick Hogan stated he had no children but was hoping to start a family.

104. I accept that the best interests of the children would be served by a permanent and secure home. Nevertheless, more specifically, I have little evidence for me to reasonably conclude that the educational and medical needs of the children, and particularly of Alice, would be best served by the appeal site or the wider area, particularly given the favourable circumstances of Alice's existing care, home arrangements aside. Explanation has been given as to why Alice cannot remain at her existing home, and similarly in relation to Robert Lee's family, but relatively little detailed evidence has been offered regarding any serious efforts to continue those existing services to the children whilst resident at other, alternative sites.

105. Further, the absence of specific actions and subsequent arrangements to address the medical and schooling interests of the children, and particularly the specialist needs of Alice, suggests to me this has not been a driving factor in either the selection of this particular site, nor of the wider location in and around Bovingdon. Rather, having heard and read all the evidence, the impression I draw is that the primary purpose of the scheme has been to develop a substantial site which eight related families could occupy as one larger family group and on land owned by them.

106. Whilst I regard no consideration to be of greater importance, the merits of the case presented are such that I can only afford the benefits of this development to the best interests of the children no more than significant weight. This reflects the scheme's benefits in generally preventing the children suffering homelessness and a possible roadside existence, and in delivering a safe and secure home base in which the children may thrive. The weight is tempered as I cannot be satisfied from the evidence before me that this particular site is necessary to serve the best interests of the children in terms of either their education or medical or any other needs.

Other Matters

107. A number of other factors have been raised by local interested parties, both at the Inquiry, and in writing, and these include the issues below.

Precedent

108. Reference is made to a possible precedent created by the proposed use of the appeal site with regard to development of other sites in the vicinity, and particularly in relation to further land to the south also owned by the appellant.

109. Any such proposals are not before this appeal. The planning circumstances of any individual site and of any proposed scheme will be different from others, and each proposal and site must be considered with reference to its own particular merits.

Services

110. A letter has been received from the Executive Principal of Bovingdon Primary Academy dated 14 July 2016. This letter states, amongst other things, that the primary school is over-subscribed, that there is no capacity to receive additional children, and that the site is not big enough to cater for additional accommodation. This representation was not substantiated at the Inquiry and appears to be inconsistent with the Council's own submitted evidence. In particular, page 67 of the Council's Site Allocations Background Issues Paper dated November 2015 states that the school's requirements for additional provision in Bovingdon to 2031 would be met through 'existing latent capacity'.

111. Whilst I respect the Principal's first-hand operational knowledge of the school itself, I have to defer to the wider, more strategically informed assessment of the local authority which may well reflect wider service considerations of resourcing, other schools and local demographics.

112. A site plan of Bovingdon Primary Academy was also submitted by Bovingdon Parish Council. Although this shows only parts of the site to be occupied by buildings, I am not in a position to make judgements around any future physical development capacity given attendant needs for play space and other open facilities.

113. No objection is raised by the Council in relation to possible impact upon schools and other services and I have little reason to conclude otherwise.

114. I also note the site is served by buses and so offers opportunities for connecting to wider public transport.

Other planning decisions

115. A range of other planning decisions and appeals have been cited. This includes the Council's decision to refuse planning permission for redevelopment of the adjacent Bobsleigh Hotel contrary to the recommendation of its officers (decision notice dated 25 June 2015 relating to Application Ref: 4/01088/13/MFA).

116. I have had regard to all such decisions, and note both similarities and distinctions with the appeal proposal. Even so, and whilst mindful of the importance of consistency in decision-making, and particularly in terms of fairness and expectation, the conclusions I have reached here are based upon the case-specific considerations relevant to this appeal as identified.

Other

117. A number of other issues have been raised by local interested parties. These include traffic, biodiversity and flooding. The Council has not raised these matters in objection and I have little reason to oppose the development on any of those grounds.

118. I have carefully considered the above and all other matters raised, but they do not dissuade me from the conclusions I have reached on the main issues, either individually or cumulatively.

Sustainable development

119. The Framework makes clear that housing applications should be considered in the context of the presumption in favour of sustainable development. The purpose of the planning system is to contribute to the achievement of sustainable development. Sustainable development is defined by the Framework with reference to the policies in paragraphs 18 to 219 taken as a whole.

120. Paragraph 13 of the PPTS states, in relation to plan-making, that local planning authorities should ensure that traveller sites are sustainable economically, socially and environmentally.

121. The scheme would undoubtedly provide significant and much needed housing with accompanying social benefits. In environmental terms, however, the scheme would carry a very high cost through definitional harm to the Green Belt by reason of inappropriateness, and by reason of loss of openness, encroachment into the countryside and merging of towns. It would also adversely impact upon local character and appearance.

122. In summary, the scheme would offer important social benefits to future occupants but would also incur a range of environmental harm. Overall Planning Balances Full planning permission

123. Paragraph 12 of the Framework reminds us of the statutory status of the development plan as the starting point for decision-making. It explains that proposed development which accords with an up-to-date Local Plan should be approved, and that proposed development that conflicts should be refused unless other material considerations indicate otherwise.

124. In the context of the Green Belt, paragraph 88 of the Framework requires me to consider whether there may be other considerations which might clearly outweigh any harm arising to the Green Belt by reason of inappropriateness, and any other harm, and whether they might amount to the very special circumstances necessary to justify the proposal in this location.

125. Policy E of the PPTS states that, subject to the best interests of the child, personal circumstances and unmet need are unlikely to clearly outweigh harm to the Green Belt and any other harm so as to establish very special circumstances. Paragraph 031 Reference ID: 3-034-20141006 of the Guidance similarly states that unmet housing need, including for traveller sites, is unlikely to outweigh the harm to the Green Belt and other harm to constitute the very special circumstances justifying inappropriate development on a site within the Green Belt. Even so, *Doncaster Metropolitan Borough Council v Secretary of State for Communities and Local Government*, AB [2016] EWHC 2876 (Admin) makes clear that the weight to be given to personal circumstances and unmet need is a matter for the decision-maker.

126. Policy H of the PPTS requires applications for gypsy sites to be assessed in accordance with the presumption in favour of sustainable development and with regard to the application of specific policies in the Framework and the PPTS. In accordance with paragraph 14 and Footnote 9, the presumption in favour of sustainable development is qualified as to the extent to which it applies in the instance as the scheme constitutes inappropriate development in the Green Belt and is thereby subject to specific policies in the Framework indicating that development should be restricted.

127. A number of factors weigh in favour of the development. The best interests of the children are a primary consideration to which I attach significant weight in this instance. Lack of immediately available sites is a matter to which I attach significant weight. I consider that the previous shortage of sites in this instance may also indicate a previous failure of policy and inequality of housing opportunity for gypsies and travellers in the Borough. These matters have further implications for my decision arising from the Equality Act and to which I attach moderate weight. I also attach moderate weight to the personal circumstances of the proposed occupants and their associated rights.

128. Nevertheless, the facts remain that both temporary and permanent traveller sites are inappropriate development in the Green Belt and, in this instance, would also incur other Green Belt harm as identified. In accordance with paragraph 88 of the Framework, substantial weight is attached to the totality of harm to the Green Belt. I also attach very significant weight to the serious harm to character and appearance as described, and attach moderate weight to the harm arising through intentional unauthorised development.

129. In summary, I find that the other considerations presented by the appellant, taken together, amount to significant collective weight in favour of the scheme but that, cumulatively, the factors in favour of the scheme, and inclusive of all personal considerations, do not clearly outweigh the substantial harm arising.

130. Dismissing this appeal or granting a time-limited permission would interfere with the occupants' various rights as identified, and the concept of proportionality is crucial, but interference would be in accordance with the law and in pursuance of a well-established and legitimate public aim of protecting the Green Belt. I am also satisfied that that the adverse impacts of dismissal would be proportionate relative to the rights of the children.

131. Very special circumstances therefore do not exist to justify the proposal on a permanent basis.

Temporary planning permission

132. Possibilities for a temporary permission require a second balancing exercise taking into account the reduced harm arising from the limited duration of any permission and any reasonable expectation of a change in planning circumstances, such as alternative sites becoming available through the development plan process within a specific period. Given the timeframe of the Site Allocation proposals, and subsequent interpretations of their likely delivery, the appellant considers a minimum of five years would be required for any temporary permission, the Council a minimum of three years.

133. Although the PPTS advises that the absence of an up-to-date five-year

supply of deliverable sites is a significant material when considering a temporary planning permission, it excludes this advice in relation to sites within the Green Belt. This again underlines the importance of safeguarding the interests of the Green Belt, even on a temporary basis.

134. I have particular regard to the best interests of the children, and the likely hardship arising from the practical difficulties of finding alternative, authorised accommodation, and of possible immediate disruption to home life. Having regard to the consequences of the families becoming homeless, and especially the best interests of the children, the lack of an immediately alternative site has significant weight.

135. I also have regard to appeal decisions Ref: APP/U4230/W/16/3146755 and APP/U4230/C/16/3149521 dated 15 December 2016 and relating to land around Lumns Lane, Swinton, Greater Manchester, M27 8LN. Whilst those decisions have some similarities with this appeal and involved a temporary permission, the particular circumstances appear materially different insofar as the scheme was assessed within the context of a fallback position involving significant authorised development.

136. Before planning permission can be granted for even a temporary period, however, it is still necessary to show that the other considerations clearly outweigh the harm to the Green Belt and any other harm, and that very special circumstances exist such as to justify the grant of planning permission.

137. Whilst the duration of the use may be shorter, the substantial weight to be attached to the harm arising by reason of inappropriateness and to the other harm to the Green Belt, and the harm to character and appearance and in connection with intentional unauthorised development, would still apply to the duration of a temporary permission.

138. Such would be the scale of planning harm inherent to this scheme, reflecting both the physical extent and character of the proposal and the importance of the Green Belt, that I find, even over a minimum temporary period of three years, that the considerations in favour of the development, and inclusive of all personal factors, would still not clearly out-weigh the adverse harms to the Green Belt and to other matters. Further, rejection of this option would be both a necessary and proportionate response.

139. Very special circumstances justifying the grant of a temporary permission, even for a three year period and personal to the circumstances of the occupants, do not therefore exist.

Conclusions

140. My overall conclusion, therefore, is that proposals for permanent and temporary use would be contrary to the development plan as a whole, and that this finding would not be out-weighed by other material considerations, including relevant provisions of the Framework and the PPTS.

141. The development should be resisted and protection of the public interest cannot be achieved by means that are less interfering of the proposed occupants' rights. Such interference is proportionate and necessary in the circumstances and hence would not result in a violation of their various rights, and would not be inconsistent with the expectations of the Equality Act, 2010.

142. In accordance with section 38(6) of the Planning and Compulsory Purchase Act 2004, the appeal is dismissed.

F. ALLOWED

None

