The Planning Inspectorate

Appeal Decision

Inquiry Held on 10, 11 & 12 May 2022, 30 August 2022, and 1 & 2 September 2022

Site visits made on 10 May 2022 and 2 September 2022

by Paul Freer BA (Hons) LLM PhD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 03 November 2022

Appeal Ref: APP/Q3115/C/19/3238398
Land at 12 (aka Plot 12) Kiln Lane, Garsington

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (the 1990 Act) as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Arthur McDonagh against an enforcement notice issued by South Oxfordshire District Council.
- The enforcement notice was issued on 27 August 2019.
- The breach of planning control as alleged in the notice is failure to comply with condition No 1 of a planning permission Ref P15/S/S1878/FUL granted on 29 April 2016.
- The development to which the permission relates is the change of use of the land to a private gypsy and traveller caravan site. The condition in question is No 1 which states that: The mobile home hereby permitted shall only be occupied by the appellant Mrs A. McDonagh and her immediate family. At the expiration of a period of 3 years from the date of this permission the use of the land as specified in the application shall cease and all structures, chattels and development associated with the use shall be removed from the land (for the avoidance of doubt, this includes mobile homes, touring caravan). The notice alleges that the condition has not been complied with in that over three years have elapsed since the permission was granted but the use of the land for the purpose specified in the notice has not ceased and the various structures, chattels and development associated with the use have not been removed from the land.
- The requirements of the notice are:
  (i) Stop using the land for residential purposes.
  (ii) Remove from the land the static mobile home and touring caravans stationed thereon, and all vehicles and/or machinery parked or stored thereon.
  (iii) Remove from the land the blue container and wooden dog pen stationed thereon.
  (iv) Take down the 2 metre and 1 metre high close boarded fencing to the north, east and southern boundaries of the Land and remove from the Land the materials used in the construction of the said fencing.
  (v) Take down the 2-metre high brick pillars and wrought iron gates and fencing to the front (western boundary) of the land and remove from the Land the materials used in their construction.
  (vi) Dig up and remove from the land the sceptic tank stationed on the Land and all associated drainage and resultant materials.
  (vii) Dig up and remove from the Land the materials comprised in the gravelled hardstanding and any other hardstanding laid on that part of the land situated in the approximate position shown hatched brown on the plan attached to the notice.
- The period for compliance with the requirements is 12 months
- The appeal is proceeding on the grounds set out in section 174(2) (a) and (g) of the Town and Country Planning Act 1990 as amended.

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

the Formal Decision.

Application for costs

1. At the Inquiry applications for costs were made by Mr Arthur McDonagh against South Oxfordshire District Council and Garsington Parish Council respectively. These applications are the subject of separate Decisions.

Procedural and preliminary matters

2. This is one of two appeals heard at the same Inquiry relating to different plots on Kiln Lane but occupied by members of the same wider family. The other appeal, Ref: APP/Q3115/W/20/3263366, is the subject of a separate Decision.

3. Evidence at the Inquiry was given under oath by way of affirmation.

4. In giving his evidence, the appellant explained that he travels for work for periods of around three to four months at a time. This is usually along the M5 corridor, in the Bristol and Birmingham areas, but also as far afield as a Cardiff and Torquay. In the light of evidence given by Mr McDonagh at the Inquiry, the Council now accepts that he and his dependants are gypsies and travellers within the definition in Annex 1 of the Planning Policy for Traveller Sites (PPTS). I see no reason to take a different view, albeit from the evidence before me it is apparent that Mr McDonagh operates one or more businesses from the appeal site when he is not travelling for work. That is a relevant consideration in the context of the appeal on ground (a).

5. Planning permission was granted on 29 April 2016 for the change of use of the land to which this appeal relates to a private gypsy and traveller caravan site (Council Ref P15/S/S1878/FUL). That permission was subject to several conditions, one of which (Condition 2) required that the development shall be carried out in accordance with the details shown on the approved plans, including Drawing Nos. 01299-2-rev 3 and 01299-5-rev 1. Those drawings respectively showed the approved site layout and the approved mobile home, including the internal layout and elevations of the mobile home.

6. At some point(s) before the enforcement notice was issued, the appellant erected some structures on the land. These include the blue container, the 2 metre and 1 metre high close boarded fencing to the north, east and southern boundaries of the site and the 2 metre high brick pillars and wrought iron gates and fencing to the front (western boundary) of the land. Those matters do not form any part of the breach of planning control alleged at paragraph 3 of the notice, but are included in the requirements to comply with the notice.

7. Then, at some point after the enforcement notice subject to this appeal was issued, the appellant removed the mobile home shown on Drawing No. 01299-5-rev 1 and replaced that with a larger mobile home. The appellant also erected a not-insubstantial building adjacent to that mobile home, described as a day room but nonetheless containing all the facilities required for day-to-day living. The appellant also made some significant alterations to the layout of the site, including a larger area of hardstanding compared with the layout shown on the approved drawing No. 01299-2-rev 3.

8. Section 177(1) of the 1990 Act provides that planning permission may be granted in relation to the whole or any part of those matters or in relation to the whole or any part of the land *to which the notice relates* (emphasis

added). The deemed planning application that arises from the appeal on ground (a) in this case is therefore for use of the land to a private gypsy and traveller caravan site without complying with Condition 1 imposed upon planning permission P15/S/S1878/FUL.

9. Because the replacement mobile home, the day room and the other alterations to the site (before and after the enforcement notice was issued) do not form any part of the matters to which the notice relates, they do not fall to be considered under the deemed planning application that arises from the appeal on ground (a) and are not before me in this appeal. For that reason, I have determined this appeal solely on the basis of the drawings initially approved as part of planning permission P15/S/S1878/FUL, including Drawing Nos. 01299-2-rev 3 and 01299-5-rev 1.

10. In the interests of clarity and for the avoidance of doubt, the above means that my Decision does not grant planning permission for the stationing of the replacement mobile home that is currently on site, the day room or the alterations to the approved site layout that have taken place (including the fencing and gates). It is a matter for the local planning authority in the first instance to determine whether those matters constitute a breach of planning control and, if so, whether it is expedient to issue an enforcement notice in relation to them.

11. There are further consequences that follow from the deemed planning application in this case, as dictated by the breach of planning control alleged in the notice and by the effect Section 177(1) of the 1990 Act. In order to benefit from any planning permission that arises from that deemed application, the appellant would need to revert to the scheme approved by planning permission P15/S/S1878/FUL. This would entail removing the mobile home that is currently on the site, together with day room. Any mobile home that replaced the current mobile home would need to accord with Drawing No. 01299-5-rev 1. The layout of the site would need to revert to that shown on Drawing No. 01299-2-rev 3.

12. This would also require the removal of some of the other structures and fixtures that are currently on site and which do not form part of the development approved by planning permission P15/S/S1878/FUL. These include the blue container, the 2 metre and 1 metre high close boarded fencing to the north, east and southern boundaries of the site and the 2 metre high brick pillars and wrought iron gates and fencing to the front (western boundary) of the land. Those are not matters stated in the notice as forming part of the breach of planning control that is alleged. It follows that my Decision cannot, and does not, grant planning permission for those matters. It is again for the Council to determine whether those matters constitute a breach of planning control and, if so, whether it is expedient to issue an enforcement notice in relation to them.

The Enforcement Notice

13. The requirements of the notice at paragraph 5 of the notice do not match the breach of planning control alleged in paragraph 3. In particular, the requirement at paragraph 5(i) to stop using the land for residential purposes does not properly reflect the breach of planning control alleged, which relates to the change of use of the land to a private gypsy and traveller caravan site. Had I been minded to uphold the notice, I could have corrected the notice in

that respect without causing injustice. However, given that I am minded to quash the notice in any event, there is no merit in doing so.

14. The Council did request that, in the event that I was minded to uphold the enforcement notice, the removal of the day room was added to the requirements of the notice. I am not entirely persuaded that would be open to me to do so but, in any event, I do not propose to uphold the notice.

The appeal on ground (a) and the deemed planning application

15. The ground of appeal is that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted. The appeal site is within the Green Belt. The Council has stated one substantive reason for issuing the enforcement notice, from which the main issues raised are:

- whether the breach of planning control alleged in the notice is inappropriate development in the Green Belt for the purposes of the National Planning Policy Framework (Framework) and the PPTS

  and

- if the breach of planning control alleged in the notice is inappropriate development in the Green Belt, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations, so as to amount to the very special circumstances necessary to justify the development.

Whether the proposal is inappropriate development for the purposes of the National Planning Policy Framework and the PPTS

16. Policy E of the PPTS makes it clear that traveller sites (temporary or permanent) are inappropriate development in the Green Belt. It is nonetheless necessary to consider the breach of planning control in terms of its effect on the openness of the Green Belt.

Openness of the Green Belt

17. The Courts have held that matters relevant to the openness of the Green Belt are a matter of planning judgement, and that openness can have both a spatial aspect as well as a visual aspect. I have considered the effect on the openness of the Green Belt against the development approved under planning permission P15/S/S1878/FUL, specifically Drawing Nos. 01299-2-rev 3 and 01299-5-rev 1.

18. According to the stated dimensions on Drawing No. 01299-5-rev 1, the mobile home approved under that permission had a length of 12.2m and width of 6.6m. The mobile home had a shallow roof and stood on a raised plinth, such that the maximum height was some 4m and a height of some 3m at the eaves. In spatial terms, the presence of that mobile home on its own had a significant adverse effect on the openness of the Green Belt.

19. In addition to the mobile home itself, the approved drawing shows a 2m close boarded timber fence running across the site perpendicular to Kiln Lane and 1.5m close boarded fence along part of the north-west boundary of the site. The site layout drawing also shows a shed sited adjacent to the mobile home, and an area of gravel between the site entrance to the site

on Kiln Lane and the mobile home sited towards the rear of the site. Individually and cumulatively, these structures and areas of hard surface further erode the openness of the Green Belt in this location.

20. I recognise that the Council's planning witness, conceded that the mobile home permitted by planning permission P15/S/S1878/FUL would not impact unduly on the openness of the Green Belt. However, I have undertaken my own assessment and have reached a different view.

21. In visual terms, the site is clearly visible from Kiln Lane. It follows that the harm to the openness in spatial terms would have been clearly experienced in visual terms.

Conclusion on inappropriateness

22. I conclude that the use of appeal site as a private gypsy and traveller caravan site fails to preserve the openness of the Green Belt in this location and conflicts with the purposes of including land within the Green Belt. Paragraph 147 of the Framework confirms that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.

Other considerations

23. A number of other considerations were advanced during the Inquiry, both in support of and objection to the breach of planning control that has occurred. The main considerations are as follows.

Character and appearance

24. The appeal site is within Landscape Character Area 1: Oxford Heights, as defined in the South Oxfordshire Landscape Character Assessment 2017 (SOLCA). The SOLCA describes the key characteristics of the Oxford Heights Landscape Character Area as comprising an undulating landscape, predominantly in agricultural use and sparsely settled, with blocks of mostly deciduous woodland scattered across the landscape.

25. The area surrounding the appeal site largely accords with those key characteristics, with large, mostly flat fields in agricultural use to south, east and west. The ground slowly rises to the north, and there are small pockets and lines of trees dispersed across the landscape. The landscape has a predominantly rural character, with the only permanent buildings in the immediate vicinity being a residential dwelling (No 11 Kiln Lane) and at Kiln Farm. Although now partially converted into residential unts, the latter still exhibits the appearance of a working farm, and to that extent reinforces the rural character of the surrounding landscape.

26. The location of the appeal site has been rightly described in other contexts as being edge of settlement. However, purely in relation to its relationship with the surrounding landscape, the appeal site is separated from the settlement of Garsington by a substantial field on the east side of Kiln Lane. There is an area of woodland to immediate east of the appeal site and fields to the south. To the north-west is Kiln Farm, with its rural character and appearance, with plots occupied by mobile homes north of that. Even then, there is an open area separating the northernmost plot from the permanent

houses on the southern edge of Garsington. I therefore consider that the appeal site itself sits in a rural setting.

27. Many of the local residents who gave evidence to the Inquiry described how the character of Kiln Lane has changed over recent years, becoming more urbanised and losing much of its previous verdant appearance. They describe a narrow lane, with no edging or kerbing, bordered by trees, shrubs and wild flowers and which was frequented by wildlife. They drew a direct comparison with the continuation of the lane southwards beyond Kiln Farm as it is today. The experience of walking down the lane, the residents say, was very much of being in the countryside.

28. Given the consistency with which that view was expressed, I attach considerable credence to the evidence given by those local residents. That evidence is further supported by aerial photographs of Kiln Lane dating from 1999 onwards, and photographs of the appeal site taken from ground level in 2015. Comparison of the latter with the appeal site as it appeared at the time of my site visits illustrates the extent of the change that has occurred in the character and appearance of the site since that time. However, whilst the use of the appeal site has a private gypsy and traveller caravan site has contributed to that transition, I recognise that it is not the sole cause.

29. Nevertheless, the use of the appeal site has a private gypsy and traveller caravan site, including the stationing of the mobile home, the erection of fencing, the area of gravel and the traffic movements generated, itself contributes in no small way to an urbanisation of Kiln Lane. The use of the site for this purpose, as approved by planning permission P15/S/S1878/FUL, is markedly different in character to the open countryside that surrounds it and is harmful to the rural character of the surrounding landscape.

30. A significant component of that change in character is the result of traffic movements generated by activity on the appeal site. Mr McDonagh states that he does not operate a business from the site. I have great difficulty in reconciling that position with other evidence that is before me. That evidence includes a detailed description of commercial vehicles using Kiln Lane (including registration plates) provided by the Parish Council and Mr Mathias. The Council has also provided photographs of large commercial vehicles parked on and/or exiting the appeal site together with photographs of numerous livered vans and pick-up trucks parked on the site, far more than would normally be associated with a residential use.

31. The former occupier of No 2 Kiln Lane, at the northern end of the lane, provides a series of photographs showing vans and other vehicles passing her property in the morning and returning in the other direction in the evening. At least one of the vehicles (which has a distinctive livery) recorded on those photographs is also shown on photographs provided by the Council parked on the appeal site. It is therefore more likely than not that this and the other commercial vehicles recorded on those photographs are associated with businesses being run from the appeal site.

32. The level of activity generated by those vehicular movements, and its effect on the character of Kiln Lane, is far removed from that resulting from the

conversion of two existing buildings on Kiln Farm to residential use in or around 2009. I therefore find that not to be a valid comparison.

33. The appellant claims that mobile homes have historically formed part of the character of Kiln Lane, pointing in particular to a period of some 16 years (between 1959 and 1972, and then between 2016 and 2019) when Plot 12 had planning permission for stationing residential caravans. The appellant also points to the stationing of caravans on other plots nearby, including 7/8, 9 and 10. The salient point, however, is that these are/were mostly temporary permissions. In relation to plot 12, there was gap of 44 years between 1972 and 2016 when no planning permission was in place: that is a period well in excess of the 16 years when planning permissions were in place. It is therefore not accurate to say that mobile homes have historically formed part of the character of Kiln Lane, and certainly not of Plot 12.

34. I conclude that the use of the appeal site as a private gypsy and traveller caravan site is harmful to the character and appearance of the area. I therefore conclude that the breach of planning control is contrary to Policies DES2 and ENV1 of the South Oxfordshire Local Plan 2011-2035 (Local Plan) which, amongst other things, seeks to protect the landscape, countryside and rural areas of South Oxfordshire. The breach of planning control is also contrary to criteria (iii) of Part 2 of Policy H14 of the Local Plan which, in relation to provision for gypsies and travellers, states that proposals will be permitted where it has been demonstrated that they will not have an unacceptable impact on the character and appearance of the landscape.

Living conditions

35. The residential property at No 11 Kiln Lane is occupied by Mr Mathias, his wife and daughter. In giving his evidence, Mr Mathias set out several examples of how, in his view, the living conditions enjoyed by his family as occupiers of No 11 Kiln Lane have been adversely affected by the use of the appeal site as private gypsy and traveller caravan site. Those impacts included noise disturbance, light pollution and flooding. I do not propose to rehearse all of the examples stated by Mr Mathias here, and will focus on what I consider to be the most serious impacts on his property that arise directly from occupation of the appeal site by Mr McDonagh and his family.

36. The most significant impact, it seems to me, is noise disturbance. Mr Mathias related several examples of where excessive noise affected his living conditions, including loss of sleep and inability to work from home. According to Mr Mathias, the sources of the noise include vehicle and machine noise, shouting, and the playing of loud music well into the night. The severity of these noise events is evidenced in a diary of nuisance events maintained by Mr Mathias on a pro-forma provided the Council's Environmental Health Department. On one occasion described by Mr Mathias, the noise inside the house was so loud that his daughter was unable to revise for her forthcoming exams, causing her considerable distress.

37. In addition to the above, Mr Mathias cites examples of rubbish being deposited on his land. Whilst it is not possible to be absolutely certain that the appellant was responsible, the position where the rubbish was deposited is a secluded and difficult-to-reach spot directly behind the fence

that separates Mr Mathias' property from the appeal site. This strongly suggests that the rubbish was thrown over the boundary fence and that the appellant was responsible, either directly or indirectly through the actions of others present on the plot which he is in occupation of. A photograph showing a discarded sign advertising a company with which Mr McDonagh is associated further supports that conclusion. The presence of beer bottles in other photographs is also consistent with the evidence given by Mr Mathias (and Ms Barbara Engstrom, see below) of noisy parties being held on the appeal premises.

38. I found Mr Mathias to be a credible witness, being calm in giving his evidence and very measured in response to questions put him in cross-examination. The harmful effect on his living conditions resulting the occupation of plot 12 as private gypsy and traveller caravan site is very apparent from his evidence and, in my judgment, is both significant and unacceptable. In reaching that conclusion, I acknowledge that the Council has not found noise levels emanating from the site to constitute a statutory noise nuisance for the purposes of Environmental Health legislation. However, noise disturbance does not need to reach the level of a statutory noise nuisance before potentially becoming injurious to residential amenity for the purposes of planning policy.

39. In addition to the evidence of Mr Mathias, I heard evidence on behalf of Ms Barbara Engstrom about the effect the occupation of Plot 12 by Mr McDonagh and his family has had on her living conditions. In a written statement read out on her behalf, she recounts examples, with dates, when loud music was being played or a raucous party was taking place. Her evidence is that the noise was so bad that she was unable to enjoy her garden, and was forced to close her windows during the summertime. She also describes how the lighting at Plot 12 shines right into one her bedrooms, resulting a loss of sleep to people using that room.

40. I am mindful that Ms Engstrom's property is some distance from the appeal site. However, because of the level of detail, I find Ms Engstrom's evidence to be compelling. Moreover, given that Ms Engstrom's property is some distance from the appeal site and yet still causes that level of impact, her evidence places in context the severity of the impact experienced by Mr Mathias immediately adjoining the appeal site.

41. In giving his evidence, Mr Gordon Roper indicated that he could hear traffic noise from the movements on Kiln Lane when in his garden. The former occupier of No 2 Kiln Lane also complains of noise disturbance from vehicles associated with the appeal site.

42. I conclude that the use of the appeal site as a private gypsy and traveller caravan site by Mr McDonagh and his family has unacceptably harmed the living conditions of the occupiers of No 11 Kiln Lane and others, specifically in relation to noise disturbance, light pollution and the deposit of rubbish. I therefore conclude that the breach of planning control is contrary to criteria (iii) of Part 2 of Policy H14 of the Local Plan which, in relation to provision for gypsies and travellers, states that proposals will be permitted where it has been demonstrated that they will not have an unacceptable impact on the amenity of neighbouring properties.

43. In the course of giving his evidence, Mr Mathias also made a number of allegations of a more serious nature against Mr McDonagh. Given that I found Mr Mathias to be a credible witness and, bearing in mind also that his evidence was given under oath, I am persuaded that encounters of some description between the appellant and Mr Mathias did occur. My view in that respect is reinforced by the fact that the appellant was offered the time and opportunity to refute the claims made by Mr Mathias but failed to do so, either by calling further witnesses or by providing witness statements. Nevertheless, Mr McDonagh denies emphatically and under oath that the events as described by Mr Mathias did occur. I am also mindful that other local residents, business owners and members of the wider community enjoy good relations with Mr McDonagh and his family. In the absence of any corroboration from independent witnesses, I cannot take an informed view either way and have therefore not taken that evidence into account.

Intentional Unauthorised Development

44. The Written Ministerial Statement (WMS) of December 2015 introduced a planning policy to make intentional unauthorised development a material consideration that would be weighed in the determination of planning applications and appeals. In considering whether the occupation of Plot 12 by the appellant constitutes intentional unauthorised development, it is first necessary to establish the nature of the development took place.

45. Planning permission was granted on 29 April 2016 for the change of use of the land to a private gypsy and traveller caravan site subject to conditions (Council Ref: P15/S/S1878/FUL). Condition No 1 required, amongst other things, that the mobile home permitted shall only be occupied by the applicant Mrs A. McDonagh and her immediate family, and that the use of the land as specified in the application shall cease at the expiration of a period of 3 years from the date of the permission.

46. For reasons that Mr McDonagh sets out in his evidence, it was decided that he and his wife Winnifred would take occupation of the site. This appears to have been a unilateral decision amongst the wider family. No approach was made to the Council in order to determine whether Mr McDonagh and his wife would be entitled to benefit from that permission. As it transpires, the original applicant (Mrs A. McDonagh) never took occupation of the site and the plot was occupied by the appellant and his family in breach of Condition No 1 of the permission from the outset. Then, at the expiration of 3 years from the date of the permission on 29 April 2019, Mr McDonagh and his family continued occupying the plot in further breach of Condition No 1 of the planning permission.

47. In response to my question, Mr McDonagh claimed that he was not aware at the time that the permission was limited to three years. I accept that answer. However, it is apparent from his own evidence that Mr McDonagh knew full well that permission to use the land as a private gypsy and traveller caravan site was granted to Mrs A. McDonagh. He therefore knowingly took first occupation of the plot in breach of condition No.1 of planning permission. There is also some evidence that work commenced on the occupation of Plot 12 before any planning permission was in place,

albeit Mr McDonagh denies this. The foregoing, in my view, constitutes intentional unauthorised development for the purposes of the WMS.

48. The WMS pre-dates the revised Framework, which does not include this provision. Nevertheless, the WMS has not been withdrawn and therefore remains a material consideration. The fact that the provision has not been translated into national policy in my view reduces the weight to be given to the WMS as a material consideration, but it does attract some weight. In the particular circumstances of this case, based on my assessment of Mr McDonagh's understanding of the consequences of his actions, I afford this matter only moderate weight.

The need for gypsy and traveller sites

49. Policy B of the PPTS states that local planning authorities should identify and update annually a supply of specific deliverable sites sufficient to provide 5 years' worth of sites against their locally set targets. The Council concedes that it cannot demonstrate an up-to-date five year supply of deliverable sites and that there is a need for further sites for gypsies and travellers nationally, regionally and locally.

50. The Gypsy, Traveller and Travelling Showpeople Accommodation Assessment (GTAA) produced by Opinion Research Services (ORS) for the Council was published June 2017. The appellant criticises the GTAA, including in relation to its methodology. In a later Addendum published in 2019, ORS revised the methodology and on that basis identified a need for 13 pitches. The appellant maintains that this revised figure in the Addendum is still insufficient but it was that figure which formed the basis for the allocations set out in Policy H14 of the Local Plan. The Local Plan was adopted relatively recently following the examination process and found to be sound.

51. The Council accepts that none of the sites allocated in the Local Plan currently meet the definition of a deliverable site for the purposes of the PPTS. Moreover, the Council indicates that development of the strategic sites at Culham and Chalgrove will not begin until 2025/26, and are unlikely to be delivered until after 2026.

52. It is evident that there is a local need for gypsy and traveller pitches. Even based on the need identified in the Addendum to the GTAA, the allocations set out in Policy H14 would not meet that need. Nevertheless, Policy E of the PPTS makes it clear 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. That is repeated in Policy H of the PPTS. For that reason, I attach only limited weight to the unmet need identified in the GTAA.

Alternative sites

53. Planning permission P15/S/S1878/FUL was granted, in part, because there was no capacity on existing Council sites at that time, for which there was already a waiting list. It was also considered that private traveller sites tend to be for single pitches or occupied by extended families, and therefore unlikely to be suitable for the applicant's family needs.

54. The Council accepts that it cannot point to any immediately available sites that are suitable and affordable. For the reasons set out by the Court of Appeal in *Clarke v SSTLR & Tunbridge Wells BC* [2002] EWCA Civ 819, I reject emphatically the suggestion made by the Council's witness in evidence that the family could move into bricks and mortar accommodation. The Council does, however, point out that only 20% of the district is within the Green Belt. Given the lack of a five-year supply of sites, the Council considers that there is an enhanced prospect of gaining planning permission on a site outside of the Green Belt.

55. There is more to finding a suitable site than being outside of the Green Belt. Much of the district is designated as an Area of Outstanding Natural Beauty (AONB). The Framework indicates that great weight should be given to conserving and enhancing the landscape and scenic beauty of AONB. That is a policy constraint which is likely to present an obstacle to obtaining planning permission. It is also likely that any site which might be available would be in the countryside. In addition to needing to comply with planning policies aimed at protecting the countryside, it is likely that such sites would not be sustainable locations. It may therefore not be an easy task to secure planning permission for use a gypsy and traveller site, even if one was available.

56. Overarching the above is that, in the process of adopting the Local Plan, the Council could only identify a total of 10 sites on the whole district. To my mind, that illustrates the difficulty of finding suitable sites. The appellant is a member of the gypsy and traveller community and, it seems to be, would be aware if a suitable site did become available. None have. Consequently, even if the appellant does have the resources to mount a search for sites, it is my view unlikely that any sites that are both suitable and available would be found.

57. There was a suggestion that the appellant and his family have access to alternative sites in Groby and at Blaby, and at Melton Mowbray, all in Leicestershire. The appellant claimed that he personally had no connections with those sites and, whilst he inherited a property in Berinsfield, he had never lived there and has since sold it on. Two other sites, known respectively as Redbridge Hollow and Oakview Park, were investigated but found to be full, albeit the supporting documentary evidence is very sketchy. Mr McDonagh indicated that the ex-Council property in Edgecombe Road was used by him and other travellers as a postal address.

58. I was not wholly convinced by the answers given by Mr McDonagh in this respect, which were largely unsupported by documentary evidence. Nevertheless, I have no evidence to counter that given by Mr McDonagh, under oath, and nothing before me to suggest that those sites are definitely available to the appellant and his family, or would be suitable if they were available.

59. The corollary is that, in the event that the notice is upheld, it is likely that the appellant and his family would be forced to return to living on the roadside, and/or the pattern of continual eviction from supermarket car parks that the family previously experienced. This would adversely affect

the health and well-being of the appellant and is family. That is a consideration to which I attach significant weight.

Sustainability of the appeal site.

60. The sustainability of the appeal site is accepted by the Council. In general terms, I concur with that assessment although the PPTS does not specifically refer to accessibility to services and facilities by foot and public transport as an aim. I therefore consider that the term 'accessibility' is more appropriate in this context.

61. Paragraphs 14 and 25 the PPTS implicitly accept that traveller sites may be located in rural areas when this will lessen opportunities for sustainable travel. The accessibility criteria set out for traveller sites in paragraph 13 of the PPTS do not include distance from or means of transport to shops and services, but do refer to considerations which are unique to traveller site applications: for example, the provision of a settled base can reduce the need for long distance travelling and that traditional lifestyles, whereby some travellers live and work from the same location, can omit travel to work journeys and contribute to sustainability.

62. In general terms, the criteria set out in the PPTS apply to the appellant and his family. It is, however, still necessary to consider the site-specific factors and how they relate to the personal circumstances of the appellant and his family. In that context, whilst there a convenience store located a short distance from the appeal site, much of Kiln Lane is unmade and lacks street lighting. There would therefore be occasions when accessing that facility on foot would be difficult and/or an unattractive proposition. The school attended by Mr McDonagh's children is some distance away, as is the church that the family regularly attend. Attendance at both require the use of a car. Other facilities are within 1 kilometre but equally require the use of a car, albeit the journey is relatively short.

63. Consequently, whilst the site is in a sustainable location, occupation of its does require use of a car for some if not most of day-to-day activities. Accordingly, the sustainable location of the appeal site is qualified and for that reason only attracts moderate weight in support of the development.

Personal circumstances of the appellant and his family

64. The personal circumstances of the appellant and his family are set out in great detail in the evidence before the Inquiry. Those circumstances are deeply personal and I do not propose to rehearse them here, but it is the advice of medical experts and social workers that the mental and physical health of the appellant and his family have greatly benefited from having a stable base provided by the appeal site. In the opinion of those medical experts, the return to a roadside existence would be injurious to their mental and physical health. It is also indicated that the health and development of their children would suffer in response to any decline in the parent's well-being.

65. I have no reason to question the evidence that is before me in this respect. This is therefore a matter to which I attach significant weight.

Best interests of the children

66. The appellant and his wife have two children of school age, and a younger son. The school-age children attend a school in Oxford. They are doing well there, having made friends and attend various school activities. It is indicated that one of the children is likely to benefit from speech/language therapy in due course, and for that reason the social worker liaising with the family considers it to be of great importance that this child remains at his current school to receive any support that he might need. In general terms, it is the opinion of the social worker that it is strongly in the best interests of all the appellant's children that they continue to reside on the appeal site.

67. I have no doubt that it would be in the best interest of all the children residing on the site to remain there as a stable base, not only from which to access education and medical facilities but also to remove the children from the dangerous environments of a roadside existence. The best interest of these children is a primary consideration, and inherently carries as much weight as any other consideration.

Human Rights and the Public Sector Equality Duty

68. Paragraph 3 of the PPTS states that the Government's overarching aim is to ensure fair and equal treatment for travellers, in a way that facilitates the traditional and nomadic way of life for travellers while respecting the interests of the settled community. In that regard, interference with rights held under the European Convention of Human Rights, as incorporated into domestic law by the Human Rights Act 1998 (HRA), is a key consideration. In this case, there is interference with rights under Article 8 (right for respect for private and family life, home and correspondence). That is a qualified right, and interference with it may be justified where it in accordance with the law and it is necessary in a democratic society.

69. In this case, the interference with the appellant's Article 8 rights arises from an enforcement notice issued under section 171 of the 1990 Act. The interference with the appellant's Article 8 rights is therefore lawful. The protection of the Green Belt is a legitimate and well-established planning policy aim and, as set out in the Framework, is a key element of national planning policy. The protection of the Green Belt is therefore in the public interest. The harm to the Green Belt in this case would be substantial, and there are others harms relating the character and appearance of the area and the living conditions of the occupiers of No. 11 Kiln Lane and others. I am also mindful that occupation of the appeal site by the appellant and his family was an act of intentional unauthorised development.

70. Against this harm, the Council cannot point to a five-year supply of sites. The allocation of sites in Policy H14 of the Local Plan, whilst found to be sound in the recent examination of that plan, does not meet the need for sites identified in the 2019 Addendum to the 2017 GTAA. There are no suitable alternative sites available. Upholding the notice would therefore result in the appellant and his family losing their home and, in all likelihood, would oblige the appellant to return to a roadside existence, with all the implications that would bring. I also have the best interests of the children residing on the site at the forefront of my mind.

71. Balancing all these factors, I consider that the interference with the Article 8 rights held by the appellant and his family would be significant, but would be both necessary and proportionate in the event that the notice is upheld or in refusing to grant a permanent planning permission. In reaching that conclusion, I am satisfied the policy objective could not be achieved by means that interfere less with the appellant's rights.

72. The appellants and his family share the protected characteristic of race for the purposes of the Public Sector Equality Duty (PSED) under section 149 of the Equality Act 2010. Upholding the notice or refusing to grant a permanent permission would impact negatively on the appellant's way of life and would reduce the opportunities available to him and his family. It would also deny or reduce the opportunities available to Mr McDonagh and his family to foster good relations with the settled community, including those of the children at their school. I am also mindful that a more positive outcome in respect of the aims of PSED exists in the form of a temporary planning permission.

73. I am of course mindful that local residents have rights under the HRA, and I have taken those rights into account in reaching my conclusions below.

Conditions

74. I have considered whether suitably worded conditions could make the development acceptable in planning terms. The first point to make is that it would be necessary for any permission granted to be subject to a condition requiring that it be accordance with the same drawings specified in planning permission P15/S/S1878/FUL.

75. I am not persuaded that the imposition of conditions could overcome the harm caused to the openness of the Green Belt and the character/appearance of the surrounding area resulting from the very nature of the development. A condition removing permitted development rights would not, in itself, be sufficient to achieve that purpose. Neither would a condition restricting the site to the provision of a single pitch. These are considerations that militate against granting a permanent planning permission.

76. The harm to the living conditions of the occupiers of No 11 Kiln Lane and others could to some extent be mitigated by conditions, including conditions restricting the number and type of vehicles parked on the site, preventing commercial activities from taking place on the site and controlling the external lighting on the site.

77. If I am to afford weight to the personal circumstances of the appellant and his family, including in relation to the best interests to the children living on the site, then a condition limiting occupation specifically to them in necessary. In the event that a temporary permission is appropriate, a condition requiring the full restoration of the land at the end of that temporary period would be necessary to restore the openness of the Green Belt

Green Belt balancing exercise and conclusion on the ground (a) appeal

78. In accordance with paragraph 148 of the Framework, I attach substantial weight to the harm to the Green Belt by reason of the inappropriate nature of the development. Furthermore, the presence of that mobile home approved under planning permission P15/S/S1878/FUL on its own had a significant adverse effect on the openness of the Green Belt. The fencing, shed and hardstanding that formed part that permission further eroded the openness of the Green Belt in this location.

79. The permanent use of the appeal site as a private gypsy and traveller caravan site in accordance with the terms of planning permission P15/S/S1878/FUL is harmful to the character and appearance of the area, contrary to policies in the development plan.

80. Similarly, the use of the appeal site as a private gypsy and traveller caravan site by Mr McDonagh and his family has unacceptably harmed the living conditions of the occupiers of No 11 Kiln Lane and others. That is also contrary to a policy in the development plan, and therefore subject to the force of Section 38(6) of the 2004 Act. Above and beyond that, I was struck from the evidence given by Mr Mathias of the severity of the harm to his living conditions and those of his family.

81. I am satisfied that the occupation of the appeal site by the appellant does constitute intentional unauthorised development for the purposes of the WMS, a matter to which I attach moderate weight.

82. Against this, it is evident that there is a local need for gypsy and traveller pitches. However, for the reasons set out above, I attach only limited weight to that unmet need. It is also evident there are no suitable and available alternative sites, a consideration to which I attach significant weight. I attach moderate weight to the sustainability of the site.

83. The personal circumstances of the appellant and his family are a matter to which I attach significant weight. The best interests of the children residing on the site are a primary consideration which attracts substantial weight.

Conclusion

84. I conclude that the harm by reason of inappropriateness and any other harm, is not clearly outweighed by other considerations, such that the very special circumstances necessary to justify a permanent planning permission do not exist. These harms could not be overcome by the imposition of suitably worded conditions. Given that the protection of the Green Belt is a key strand of national planning policy and in the wider public interest, I am satisfied the interference with the appellant's Article 8 rights would be necessary and proportionate. In reaching this conclusion, I have also taken into account my responsibilities under the PSED.

85. I further conclude that the use of the land as a traveller site would be contrary to policies in the development plan when read as whole. In relation to a permanent planning permission, I have not been advised of any material considerations of sufficient weight to indicate that determination should be made otherwise than in accordance with the development plan.

86. My conclusion that a permanent planning permission is not appropriate in this case is reinforced by the findings of the Inspectors in two previous appeals relating to gypsy and traveller sites in Kiln Lane.

87. In relation to Plot 8, the Inspector did not consider that the personal circumstances of the appellant and his family clearly outweighed the permanent harm to the Green Belt that she identified (APP/Q3115/C/12/2173778). Those considerations included the provision of a settled base from which the appellant's children could attend school on a regular basis and the family access medical facilities. The Inspector also found that the lack of alternative sites would force the appellant to return to a roadside existence. The Inspector went on to grant a temporary permission, given that the harm arising would only be for a temporary period.

88. In relation to Plot 9, the Inspector found that the personal need of the appellant and his family attracted significant weight but concluded that they did not justify permanent harm to the Green Belt (APP/Q3115/W/18/3209624). The Inspector again went on to grant a temporary permission.

89. I recognise that there are some differences between the circumstances surrounding those two appeals and the appeal now before me, principally the weight to be afforded to the best interests of the children residing on the site. Nevertheless, the conclusions of both Inspectors and their refusal to grant a permanent permission reflects the importance attached to the protection of the Green Belt in Government planning policy. Consistency is an important element of decision making, and on the evidence before me I see no reason to depart from the approach adopted in those two appeals.

90. The balance does, however, shift when a temporary planning permission is considered. In those circumstances, the harm by reason of inappropriateness and any other harm, although no less severe, would only be for a temporary period. The site would be required to be restored at the end of that temporary period, thereby also repairing the harm to the character and appearance of the surrounding area. The harm to the living conditions of the occupier of No. 11 Kiln Lane and others would potentially be extended for a further period but would be for a finite period and to some extent could be mitigated by the imposition of conditions that were not imposed on planning permission Ref P15/S/S1878/FUL.

91. A temporary planning permission would retain a settled base from which the appellant's children could attend the same school as at present on a regular basis whilst an alternative site is sourced. It would avoid the appellant and his family returning to a roadside existence, with all the disbenefits that would bring, until such time as a suitable alternative site was found. A temporary planning permission would be in the best interests of the children residing on the site.

92. The Council and the Parish Council both favour a temporary planning permission for two years at most. In that context, the Parish Council is concerned about the constant leap frogging of temporary permissions along Kiln Lane: for example, the temporary permission for plot 9 expires in July 2023. I see much merit in that argument.

93. The appellant requests a temporary period of five years. A temporary permission of that duration would provide the stability that the family seeks and needs. A temporary period of five years would also provide time for the Council to complete its work on identifying alternative sites and for those sites to be delivered.

94. The difficulty is that there is no definite timetable for when that work would translate into the identification of suitable pitches and/or when those pitches might become available. The earliest date is speculated to be in four of five years from now, although there can be no guarantee that the timetable would be met or that suitable sites would be forthcoming in any event.

95. The question is finely balanced. However, the determining factor, it seems to me, is the earliest date on which there is a reasonable prospect of a suitable alternative site becoming available. There is no guarantee that a suitable site would become available within the next five years, but equally there seems very little prospect that it would occur within the next two years. There would be no point in a temporary period that expired before a suitable site became available, thereby forcing the appellant to return to a roadside existence. It therefore seems to me that a temporary permission of five years represents the best option in terms of avoiding that outcome.

96. In reaching that conclusion, I remain mindful of the effect that the use of the land as a private gypsy and traveller caravan site has had to date on the living conditions of the occupiers of No 11 Kiln Lane and others, and of the severity of that harm. That harm would potentially continue but a temporary planning permission would enable conditions to be imposed to mitigate that harm which were not imposed on planning permission Ref P15/S/S1878/FUL. That is a benefit arising from granting a temporary permission. Subject to the imposition of those conditions, I am satisfied that a temporary permission of five years would be a proportionate response to the harm caused to the living conditions of the No 11 Kiln Lane and others.

97. I therefore conclude that, in the context of a temporary planning permission of five years, the harm by reason of inappropriateness and any other harm would be clearly outweighed by other considerations. Very special circumstances would exist, such that a temporary planning permission of five years would be appropriate. I am mindful that planning permission Ref P15/S/S1878/FUL was itself a temporary permission. The Planning Practice Guidance indicates that it will rarely be justifiable to grant a second temporary permission. However, in this case, the personal circumstances of the appellant are such that there is clear justification for doing so.

Conclusion

98. I conclude that the appeal should succeed on ground (a) and the enforcement notice should be quashed. I shall grant planning permission on the application deemed to have been made for the change of use previously permitted without complying with the condition enforced against but subject to new conditions. As a consequence, the appeal on ground (g) does not fall to be considered.

Formal Decision

99. The appeal is allowed, the enforcement notice is quashed and planning permission is granted in accordance with section 177(5) and section 177(1)(a) of the 1990 Act subject to the following conditions:

1. The site shall not be occupied other than by Mr Arthur McDonagh and Ms Shirley Winnifred Ward, and their dependants, and shall be limited for a period of five (5) years from the date of this permission. At the expiration of a period of five years, or when the premises cease to be occupied those named above, whichever shall first occur, the use hereby permitted shall cease and all caravans, buildings, structures, materials and equipment brought on to the land, or works undertaken to it in connection with the use, shall be removed and the land restored to its condition agreed in writing by the local planning authority in accordance with condition 5 below.

2. The development hereby permitted shall be carried out in accordance with the approved drawings – 01299/10 rev 2; 01299/2 rev 3 and 01299/5 rev 1 except as controlled or modified by conditions of this permission.

3. Within three months of this Decision, details of any external lighting shall be submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details. Other than that approved in writing by the local planning authority following submission of those details, no external lighting shall be installed unless first approved in writing by the local planning authority.

4. Within three months of this Decision, a foul water drainage scheme shall be submitted to and approved in writing by the local planning authority. The scheme shall include details of the size, position and construction of the drainage scheme. The scheme thereby approved shall be implemented and thereafter maintained in accordance with approved details.

5. Within three (3) months of the date of this decision, a scheme to restore the land to its condition before the development took place (or such other restoration as agreed in writing by the local planning authority) at the end of the period for which planning permission is granted for the use, or the site is occupied by those permitted to do so, shall be submitted in writing to the local planning authority. These details shall include an implementation programme. The restoration works shall be carried out in accordance with the details approved by the local planning authority.

6. There shall be no more than one pitch on the site and on this pitch no more than two (2) caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 as amended (of which no more than one (1) shall be a static caravan) shall be stationed on the site at any time.

7. The touring caravan shown on the approved plan, including any motorhome used in that capacity, shall not be used as separate residential accommodation.

8. No vehicle over 3.5 tonnes shall be stationed, parked or stored on this site.

9. No more than one commercial vehicle shall be kept on the land and that shall only be for use by the occupiers of the caravans hereby permitted.

10. No commercial activities shall take place on the land, including the storage of materials.

11. 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 shall be erected on the site unless details of their size, materials and location shall have previously been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.

Paul Freer
INSPECTOR

APPEARANCES

For the appellant

Mr Alan Masters	Of Counsel

He called:

Mr Arthur McDonagh	Appellant
Dr Angus Murdoch MRTPI	Planning Consultant

For the Local Planning Authority

Mr Robin Green	Of Counsel

He called:

Mr Jeremy Peter MRTPI	Planning Enforcement Consultant, South Oxfordshire District Council

For Garsington Parish Council

Mr Jack Parker	Of Counsel

He called:

Mr Christopher Wright	Chairman, Garsington Parish Council
Mr Roy Mathias	Occupier, No 11 Kiln Lane

Interested Persons

Ms Anne Eastwood	Local resident
Ms E Dain, on behalf of Ms Barbara Engstrom	Local resident
Mr Craig Bell	Local resident
Mrs Elizabeth Gillespie	District Councillor
Mr Gordon Roper	Local resident

DOCUMENTS SUBMITTED DURING THE INQUIRY

1. Opening Statement on behalf of South Oxfordshire District Council.
2. Opening Statement on behalf of Garsington Parish Council.
3. Copy of statement read out on behalf of Ms Barbara Engstrom.
4. Local Planning Authority Position Statement on 5 year supply of Gypsy and Traveller pitches in South Oxfordshire.
5. Copy of the planning permission dated 10 March 2016 in relation to the site known as Land off Sandy Lane, Melton Mowbray (Ref: 16/00164/COU).
6. Copy of Appeal Decision dated 28 February 2018 in relation to Watlings Paddock, Stadhampton, Oxfordshire OX44 7UQ (APP/3115/W/17/3176196).
7. Copy of Officer Report in relation a planning application P19/S1069/FUL, relating to a site known as Newlands, Platt Lane, Northend.
8. Copy of solicitors letter dated 10 May 2022, referencing the transfer of land at sandy Lane, Melton Mowbray, to Mr M McDonagh.
9. Partial extract (of poor resolution) of a letter from a local school confirming the attendance record of the appellant's children.
10. Character reference for Mr McDonagh from a local resident, undated.
11. Photograph showing part of the boundary of the appeal site with No 11 Kiln Lane.
12. Copy of message received by Mr McDonagh from a local resident, unsigned and undated.
13. Copy of the Approved Judgment in *Smith v First Secretary of State and Mid-Bedfordshire District Council* [2005] EWCA 859
14. Three documents all in relation to Appeal Ref: APP/T2405/W/20/3264047, relating to the site at Sycamore Street, Blaby, Leicestershire :(a) Witness Statement of Mr Michael McDonagh; (b) Agenda for the Hearing; (v) Appeal Form.
15. Full, unredacted Proof of Evidence of Mr Roy Mathias
16. Character reference for Mr Arthur McDonagh from a local resident.
17. Closing submissions on behalf of Garsington Parish Council.
18. Closing submissions on behalf of South Oxfordshire District Council.
19. Closing submissions and applications for costs on behalf of the appellant.