

**APPEAL BY DARREN SMITH
AGAINST THE REFUSAL OF PLANNING PERMISSION AND
SERVICE OF ENFORCEMENT NOTICE BY
SOUTH OXFORDSHIRE DISTRICT COUNCIL**

CHANGE OF USE OF LAND TO USE AS A RESIDENTIAL CARAVAN SITE FOR 3
GYPSY/TRAVELLER FAMILIES, EACH WITH TWO CARAVANS, TOGETHER WITH
THE LAYING OF HARDSTANDING

EMMANUEL RANCH, WINDMILL ROAD, TOWERSEY, OXFORDSHIRE, OX9 3QQ

LPA REF: P24/S0941/FUL
OUR REF: 24/DS/TOWERSEY

STATEMENT OF COMMON GROUND

1.0 INTRODUCTION

- 1.1 This Statement is divided into four parts: firstly, it describes the site and its surroundings; secondly, it summarises the planning history of the appeal site; thirdly, it gives a resume of relevant planning policies; and fourthly, it sets out matters agreed between the two main parties.

2.0 SITE DESCRIPTION

- 2.1 The appeal site comprises of about 0.5 hectare of land of which the proposed caravan site comprises about 0.2 hectare. It is located along the eastern side of Windmill Road, about 180 metres north of Towersey.
- 2.2 The appeal site contains an “L”- shaped range of stables and a barn, about 50 metres back from Windmill Road, enclosing the western and southern sides of a stable yard. There is a horse exercise arena, measuring about 38 x 20 metres occupying the south-eastern corner of the land, comprising of a sand surface over a hardcore base.
- 2.3 Access to the site is from Windmill Road, via a hard-surfaced driveway running east-west along the centre of the site to the stable yard. Land to the north of the access road, stable yard and manege is laid to grass, as is the area to the south of the access road, between Windmill Road and the stable buildings.
- 2.4 The appeal site is enclosed by hedgerows along its western (roadside), southern and, parts of the, northern boundaries. New fencing has been erected behind the hedgerows along the western and southern boundaries and, along parts of the northern and eastern boundaries. The original entrance gates were at least 2 metres high and, have been replaced with gates of similar height.
- 2.5 The site is surrounded by open fields on 3 sides and, there are open fields along the opposite side of Windmill Road. The village sewage treatment works are located about 70 metres north of the appeal site and, there is a large solar farm about 120 metres to the north-east.

3.0 PLANNING HISTORY

- 3.1 Planning permission was granted on 01 August 2019, under application No. P19/S0606/FUL, for conversion of part of existing stables and barn to residential use, providing a one-bedroom dwelling. A Phase 1 Ground Investigation Report was submitted with this application.
- 3.2 Planning permission was granted on 21 July 2022, under application No. P22/S2300/DIS, for the discharge of conditions 5, 6 and 7 attached to planning permission No. P19/S0606/FUL relating to ground contamination. A Phase 2 Ground Investigation Report and, Phase 3 Remediation Strategy were approved. Although the remediation strategy was implemented, the Council considered that this did not constitute a legal start and, that planning permission No. P19/S0606/FUL had expired.
- 3.3 Planning permission was granted on 21 November 2022, under application No. P22/S3712/FUL, for conversion of part of existing stables and barn into residential use, providing a 1-bedroom dwelling. Conditions attached to this permission include the following:

5. The development shall be carried out in accordance the STM Environmental Contaminated land Risk Assessment Phase 2 Environmental Site Investigation report PH2-2022-000026 dated 16 June 2022, satisfactorily addresses the requirements for submission of a Phase 2 comprehensive intrusive investigation. The submitted STM Environmental Contaminated Land Remediation Strategy and Verification Plan Windmill Meadow, Windmill Road, Towersey, OX9 3QQ Report Reference REM-2022-000017 dated 14 July 2022, approved under application P22/S2300/DIS dated 21 July 2022.

8. Prior to the first occupation of the development hereby approved a turning area and car parking spaces shall be provided within the curtilage of the site so that motor vehicles may enter, turn round and leave in a forward direction and vehicles may park off the highway. The turning area and parking spaces shall be constructed, laid out, surfaced, drained and completed to be compliant with sustainable drainage (SuDS) principles in strict accordance with specification details to be submitted to and approved in writing by the Local Planning Authority prior to the

commencement of development. The turning area and car parking spaces shall be retained unobstructed except for the parking and manoeuvring of motor vehicles at all times.

3.4 Planning application No. P24/S0941/FUL was submitted on 19 March 2024 for the change of use of part of the yard area, and a small paddock to the rear, for use as a residential caravan site for 3 gypsy households. Each household would have two caravans including no more than one static caravan/mobile home. The proposals also include the laying of hard-standing within the rear paddock. Planning permission was refused on 9 May 2024 for the following reasons:

1. The application site is situated in an unsustainable location in the open countryside, physically separate and remote from the nearest settlement and without safe and sustainable access to local services and facilities. The proposed development would be highly reliant on the use of private motor vehicle to access local services and facilities and does not benefit from any exceptions under either the National Planning Policy Framework or Development Plan that would justify its provision in such an isolated and unsustainable location in the countryside. The develop is therefore contrary to policies STRAT1, DES8 and TRANS5 of the South Oxfordshire Local Plan 2035; policy TOW1 of the Towersey Neighbourhood Plan; and government guidance contained in the National Planning Policy Framework and the Planning Policy for Traveller Sites in so far as these aimed at achieving sustainable development.
2. The lack of a 5-year supply of gypsy/traveller sites under the South Oxfordshire Local Plan 2035 and the personal circumstances of the applicant and his family are outweighed by other considerations, including the adverse impacts of the development in terms of the character of the landscape; the intrinsic value of the countryside; the character and visual amenity of the surrounding area; the unsustainable location of the site; the net loss of biodiversity; the failure to adequately address contamination risks; the lack of information regarding sustainable surface and foul water drainage; and the deliberate unauthorised nature of the development already undertaken. Furthermore, the proposed development would not positively enhance the environment and increase its openness. Rather,

it has been designed in a manner that encloses the site in a way that gives the impression that the site and its occupants are deliberately isolated from the rest of the community. The proposed development is therefore contrary to policy H14 of the South Oxfordshire Local Plan 2035; and government guidance contained in the Planning Policy for Traveller Sites aimed at achieving the suitable and sustainable location of gypsy/traveller sites; and the suitable design and assimilation of gypsy and traveller sites into their surroundings.

3. The proposed material change of use of the land and related operations have an urban character and appearance that sits uncomfortably in the existing rural landscape and countryside setting. The development is harmful to the landscape and the intrinsic character, beauty and tranquillity of the countryside, contrary to policies ENV1 and H14 of the South Oxfordshire Local Plan 2035; and government guidance contained in the National Planning Policy Framework and the Planning Policy for Traveller Sites in so far as these aim to protect the landscape qualities and intrinsic value of the countryside from adverse development.
4. The proposed development is of a character and appearance that sits uncomfortably in an otherwise open and tranquil rural setting. The multiple proposed caravans, by their very nature, do not respect the local distinctiveness of the area, being of a standardised, modern, utilitarian and non-vernacular design. The development does not physically or visually enhance or complement its surroundings and does not make adequate provision for any outdoor amenity space, including provision for landscaping or a play area for children. The development is therefore contrary to policies DES1, DES2, DES5 and H14 of the South Oxfordshire Local Plan 2035; policy TOW 16 of the Towersey Neighbourhood Plan; and government guidance contained in the National Planning Policy Framework and Planning Policy for Traveller Sites, aimed at achieving good design and respect for local distinctiveness.
5. Insufficient information has been submitted with the application to allow for a proper assessment of the impacts of outdoor lighting relating to the proposed development on the amenity of the area, the natural environment and dark sky character of the setting. This is

contrary to policies DES6 and ENV12 of the South Oxfordshire Local Plan 2035.

6. The potential harm to the health of the occupants of the proposed development from existing contaminants on the site has not been adequately addressed in the current application. This is contrary to policy ENV11 of the South Oxfordshire Local Plan 2035.
7. The unauthorised development already undertaken by the applicant and the additional development proposed to be undertaken has and will result in a net loss of biodiversity and likely harm to protected species. Insufficient information has been submitted with the current application to determine what mitigation or compensation would be required to achieve compliance with policies ENV2 and ENV3 of the South Oxfordshire Local Plan 2035; policy TOW7 of the Towersey Neighbourhood Plan; and government guidance contained in the National Planning Policy Framework aimed at protecting biodiversity.
8. Insufficient information has been submitted to demonstrate that the proposed development can be feasibly and sustainably drained in a manner that addresses flood risk and water quality concerns, having particular regard to the impermeable nature of the underlying geology, the natural fall of the land away from the highway and the absence of any water course or public sewer in proximity to the site. The development is therefore contrary to policy EP4 and H14 of the South Oxfordshire Local Plan 2035 and government guidance contained in the National Planning Policy Framework aimed at addressing flood risk and water quality

4.0 PLANNING POLICY

Local Planning Policies

- 4.1 The South Oxfordshire Local Plan was adopted in December 2020. Policy H14 of the adopted Local Plan sets out the Council's strategy for meeting the accommodation needs of gypsies and travellers. This strategy is based, in part, on the safeguarding of existing gypsy sites and the allocation of land for 10 pitches within strategic housing sites.
- 4.2 Policy H14 provides that additional proposals for pitches for Gypsies, Travellers and Travelling Showpeople not set out in Part 1 of this policy will be permitted where it has been demonstrated that the following criteria have been met:
- i) the capacity of the site can be justified to meet needs for further Gypsy, Traveller and Travelling Showpeople sites, or extensions to existing sites;
 - ii) the site is not located within the Oxford Green Belt unless very special circumstances are demonstrated;
 - iii) the proposal will not have an unacceptable impact on the character and appearance of the landscape and the amenity of neighbouring properties, and is sensitively designed to mitigate visual impacts on its surroundings;
 - iv) there are no adverse impacts on the significance of heritage assets;
 - v) the site has safe and satisfactory vehicular and pedestrian access to the surrounding principal highway network. The site will be large enough to enable vehicle movements, parking and servicing to take place, having regard to the number of pitches/plots on site;
 - vi) the site can be provided with safe electricity, drinking water, sewage treatment and waste disposal facilities; and
 - vii) no significant barriers to development exist in terms of flooding, poor drainage, poor ground stability or proximity to other

hazardous land or installation where other forms of housing would not be suitable.

4.3 Policy ENV 1 – Landscape and Countryside states, inter alia, that:

2. South Oxfordshire's landscape, countryside and rural areas will be protected against harmful development. Development will only be permitted where it protects and, where possible enhances, features that contribute to the nature and quality of South Oxfordshire's landscapes, in particular:

- i) trees (including individual trees, groups of trees and woodlands), hedgerows and field boundaries;
- ii) irreplaceable habitats such as ancient woodland and aged or veteran trees found outside ancient woodland;
- iii) the landscapes, waterscapes, cultural heritage and user enjoyment of the River Thames, its tributaries and flood plains;
- iv) other watercourse and water bodies;
- v) the landscape setting of settlements or the special character and landscape setting of Oxford;
- vi) topographical features;
- vii) areas or features of cultural and historic value;
- viii) important views and visually sensitive skylines; and
- ix) aesthetic and perceptual factors such as tranquility, wildness, intactness, rarity and enclosure.

Government Advice

4.4 The NPPF is intended to reinforce the importance of up-to-date plans and requires that due weight should be given to relevant policies in existing plans according to their degree of consistency with the NPPF. In assessing

and determining development proposals, local planning authorities should apply the presumption in favour of sustainable development (paragraph 11).

- 4.5 Paragraph 60 of the NPPF makes clear that, in order to support the Government's objective of significantly boosting the supply of homes, it is important that a sufficient amount and variety of land can come forward where it is needed, that the needs of groups with specific housing requirements are addressed and that land with permission is developed without delay. Paragraph 63 requires that, within this context, the size, type and tenure of housing needed for different groups in the community, including gypsies and travellers, should be assessed and reflected in planning policies.
- 4.6 *Planning policy for traveller sites (PPTS)* sets out the Government's aims in respect of traveller sites which include, *inter alia*, local authorities developing fair and effective strategies to meet need through the identification of land for sites; protecting Green Belt from inappropriate development; promoting more private traveller site provision while recognising that there will always be those travellers who cannot provide their own sites; and to increase the number of traveller sites in appropriate locations with planning permission, to address under provision and maintain an appropriate level of supply.
- 4.7 Local planning authorities are required to use a robust evidence base to establish accommodation needs to inform the preparation of local plans and make planning decisions (*Policy A*). In producing their local plans, local planning authorities should, *inter alia*, set pitch targets; identify and maintain a rolling 5-year supply of specific deliverable sites; and relate the number of pitches to the circumstances of the specific size and location of the site and the surrounding population's size and density.
- 4.8 Paragraph 13 sets out the wider sustainability benefits of providing permanent residential sites for gypsies and travellers which should be taken into account in plan-making and development control (*Policy B*).
- 4.9 Policy C suggests that gypsy sites may be located in rural or semi-rural areas, provided that they are of a scale appropriate to their specific location. This is reiterated in paragraph 25 of Policy H. Paragraph 24 of

Policy H sets out issues which should be considered in the determination of planning applications for gypsy sites. Policy H states that local planning authorities should very strictly limit new traveller site development in open countryside that is away from existing settlements or outside areas allocated in the development plan.

5.0 MATTERS THAT ARE AGREED

Preliminary Matters

- 5.1 The National Planning Policy Framework (NPPF) puts the presumption in favour of sustainable development at the heart of both plan-making and decision-taking. For decision-taking this means approving development proposals that accord with the development plan without delay; or, if the policies which are most important for determining the application are out-of-date, granting planning permission unless, *inter alia*, any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole; or the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed.
- 5.2 In the latter regard, the appeal site is not located within the Green Belt, or within a SPA, SSSI, Conservation Area, local greenspace, AONB or National Park. Furthermore, the proposed caravan site is not located within an area shown on the Environment Agency's flood maps as being at high risk from flooding.

Principle of Development

- 5.3 Paragraph 4 of the NPPF requires that the Framework should be read in conjunction with the Government's planning policy for traveller sites. Policy C of PPTS makes clear that some sites will be in rural areas and the countryside. This advice is qualified by Policy H (paragraph 25) which states that sites should be very strictly limited in the open countryside **away from** existing settlements.
- 5.4 PPTS does not define what is meant by "*away from*" or "*settlement*" and, does not infer that sites should be within or adjacent to existing settlements or, that the settlements that sites are not away from should be limited to designated settlements or, that they should contain services.
- 5.5 In this case, the appeal site is only 215 metres from a ribbon of residential development extending along Windmill Road to its junction with Thame Road, and 840 metres by road to the developed edge of Towersey.

- 5.6 Towersey contains a church, public house/restaurant, recreation ground and village hall. The appeal site is about 1.5 kms by road from the developed edge of Thame and, within about 3.5 kms of the town centre where there are supermarkets and post office. The closest medical centre is about 2.8 kms from the site. There is a choice of 3 primary schools in Thame.
- 5.7 The appeal site is within a convenient walking distance of Towersey and, of the bus stops along Thame Road (about 500 meters) which give access by public transport to the wide range of community services and facilities available in Thame. Although there are no footpaths for the first 250 metres along Windmill (from the appeal site), Windmill Road is straight, with good forward visibility, and has grass verges either side providing a safe pedestrian refuge. Notwithstanding this, the site is also within a reasonable cycling distance of Thame town centre along relatively flat terrain.

The Development Plan

- 5.8 Local Plan Policy H14 sets out the Council's locally specific criteria against which proposals for windfall traveller sites are to be considered. It provides that additional proposals for pitches for Gypsies, Travellers and Travelling Showpeople not set out in Part 1 of this policy will be permitted where it has been demonstrated that a total of 7 criteria can be satisfied. This is a permissive policy and, does not imply that, if one or other of the criteria is not satisfied, planning permission should be refused.
- 5.9 Policy H14 does not exclude traveller sites from the countryside and, nor does it require that sites should be accessible by means of travel other than the private motor vehicle.
- 5.10 In this case, the site is large enough to meet the accommodation needs of the extended Smith family, including the applicant, his two adult sons and their families (criterion i.).
- 5.11 The site is not located within the Green Belt (criterion ii.); there would be no adverse effects on any nearby heritage assets (criterion iv.); the site has safe access and, is large enough to accommodate adequate vehicle parking and manoeuvring space (criterion v.); and, the site already benefits from mains electricity and water, and can be connected to the

main sewer for the disposal of foul drainage (criterion vi.). The site is located within Flood Zone 1 and, according to the Environment Agency's flood maps, is not at risk from either fluvial or surface water flooding (part criterion vi.).

- 5.12 The outstanding issues raised by the Council's reasons for refusal relate to surface water drainage, ground contamination, loss of biodiversity and countryside harm.

Other Material Considerations

- 5.13 Other relevant matters for local planning authorities when considering planning applications for traveller sites are set out in paragraph 24 of PPTS as comprising:

- a) the existing level of local provision and need for sites;
- b) the availability (or lack) of alternative accommodation for the applicants;
- c) other personal circumstances of the applicant;
- d) the locally specific criteria used to guide the allocation of sites in plans or, which form the policy where there is no identified need for pitches/plots, used to assess applications that may come forward on unallocated sites; and,
- e) determining applications for sites from any travellers and not just those with local connections.

Need

- 5.14 Paragraph 7b) of PPTS requires that local planning authorities should *"prepare and maintain an up-to-date understanding of the likely permanent and transit accommodation needs of their areas over the lifespan of their development plan"*. In this case, the Council last commissioned a Gypsy and Traveller Accommodation Assessment (GTAA) in 2017. It is based on the 2015 definition of *"Gypsy and Traveller"* and, distinguishes between those that were deemed to satisfy the definition, those that did not and, those whose status was unknown.

- 5.15 The GTAA estimated a need for 9 additional pitches for "PPTS" gypsies; 8 for non-travelling gypsies; and 5 for unknowns (+ and concealed or

overcrowded households), i.e. a minimum of 22 additional pitches in the period 2017-2033. Of these, a minimum of 16 pitches should be provided by 2027. It is agreed that, following the change in definition in December 2023, it is the cultural need which must be provided for in order to avoid unlawful discrimination.

5.16 Three permanent residential pitches have been approved in South Oxfordshire since the beginning of the GTAA assessment period and, these have all been granted subject to personal occupancy conditions and do not contribute to meeting general gypsy accommodation needs. Site allocations in the Local Plan will not meet the shortfall and, consequently, the Council cannot demonstrate a five-year supply of deliverable land for traveller sites. This is conceded in the Council’s reasons for refusal. The unmet need for traveller sites and absence of a five-year supply are each material considerations which weigh in favour of the proposed development.

Alternative Sites

5.17 In *Doncaster MBC v. FSS & Angela Smith* [2007] the Court decided that to be a realistic alternative, accommodation has to be suitable, affordable, available and acceptable. Notwithstanding this, there is no requirement in planning policy, or case law, for an appellant to prove that no other sites are available or that particular needs could not be met from another site (*SCDC v. SSCLG and Julie Brown [2008] EWCA Civ 1010 at paras 24,27-36*).

5.18 It is agreed that about two-thirds of land outside of settlement boundaries in South Oxfordshire is subject to Green Belt and/or AONB designation.

Signed on behalf of the District Council:

Dated:

Signed on behalf of the Appellant:

Dated:

