

BEENHAM 12/01547 Pins Ref 2195239	Land Adjacent The Olde Forge House Bath Road Beenham Mr B Biddle	Stationing of caravans for residential purposes for 1no gypsy pitch together with the formation of additional hard standing and utility/ dayroom ancillary to that land.	Approval	Allowed 12.12.13
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The main issues in this case are as follows:

- i. the effect of the proposal on the character and appearance of the area having particular regard to the location of the site within the North Wessex Downs Area of Outstanding Natural Beauty (AONB);
- ii. whether the location of the site is acceptable having regard to local and national planning policy;
- iii. the impact of the development on the living conditions of the adjoining occupier and on an existing business at The Old Forge House;
- iv. whether the financial contributions sought by the Council for infrastructure provision are necessary to make the development acceptable in planning terms, directly related to the development and fairly and reasonably related in scale and kind to the development proposed;
- v. whether any harm arising from the proposal would be outweighed by other considerations weighing in favour of the development.

Impact on character:

The character of the site is defined by a mix of open countryside, commercial and residential development with a busy main road fronting the site. In this context the addition of a further residential use would not conflict with the character of the surroundings. The Inspector explored the requirement for new development to enhance the AONB as required by Core Strategy Policies. It was recognised that the site did not enhance the area however there was no substantial harm caused.

Location of development:

Planning policy for traveller sites states that new traveller site development in the open countryside should be strictly limited. However, it does not rule out countryside locations and recognises (in Policy C and paragraph 23) that such sites may be acceptable subject to considerations relating to their scale and impact on the nearest settled community, and their impact on local infrastructure. There is no suggestion in this case that the development, of one pitch, would dominate the nearest settled community.

Concern was raised for the enclosed nature of the site isolating future occupiers. The inspector however highlighted that integration and co-existence does not come simply from being able to see a gypsy site. Indeed, in this case, greater visibility of the site

would be likely to increase the visual impact on the AONB. Rather, integration happens over time by communication between the site occupants and the settled population. This happens gradually through contact at schools, shops, post-offices, pubs and so on. The provision of a settled base would assist in this.

When considered in the round having regard to *Planning policy for traveller sites* and the Framework, the development would satisfy many of the matters to be taken into account in the consideration of whether a site would be sustainable economically, socially and environmentally. The location of the site is not therefore a matter which weighs against the development having regard to local and national planning policy.

Impact on the adjoining occupier:

The inspector concluded that the relationship/separation distances were typical of many residential areas and the proposal would not have a harmful impact.

Infrastructure Contributions:

The Inspector agreed that these were necessary and a unilateral undertaking was agreed.

Need and personal circumstance:

One of the Government's aims is to increase the number of traveller sites in appropriate locations with permission, to address under provision and maintain an appropriate level of supply. Authorities are to do this by making their own assessment of need and developing fair and effective strategies to meet that need through the identification of sites. There is a national, regional and local need for additional gypsy sites. The West Berkshire Gypsy and Traveller Accommodation Needs Assessment (GTAA) April 2013 sets out the need for 20 additional pitches between 2012 and 2027 of which 4 are to be provided in the period 2012 to 2017. Consequently the Council agree that there is an established unmet need for the 1 pitch which is proposed on this site.

The acknowledged need for gypsy sites, the lack of a 5-year supply and the ongoing failure of policy to meet the identified need all weigh in favour of the appeal.

Personal circumstance:

Together with their baby the applicants are currently doubling-up on the transit site in Paices Hill. They will have to move from that site in November and will then have to resort to unauthorised roadside encampments. Mary has ongoing health issues which require monthly check-ups at the hospital in Basingstoke. The baby will also require regular healthcare checks. Having a settled base from which to ensure a continuity of healthcare is important for the family and provides weight in favour of the appeal.

Human Rights:

The High Court judgement in *AZ v Secretary of State for Communities and Local Government and South Gloucestershire District Council* [2012] confirms that the Article 8 rights of the family as a whole must be taken into account in the overall planning balance. The best interests of the child must be a primary consideration.

Article 8 of the European Convention on Human Rights is engaged in this case and the judgement in *Chapman v UK* [2001] which places a positive obligation to facilitate the gypsy way of life is also relevant.

The planning balance:

The proposed development would not harm the character or appearance of the AONB. However, it cannot be said to enhance it and in this respect there is a degree of conflict with the Core Strategy policies and the Framework. Given the lack of actual harm the weight given to this conflict is limited.

The undisputed need for additional gypsy pitches in the locality and the lack of a 5-year supply of sites, together with the failure of policy to meet the need all weigh in favour of the appeal. These factors alone are sufficient to outweigh the limited harm caused by the above conflict with AONB policy. Whilst not determinative in this appeal, additional weight in favour derives from the appellant's personal circumstances, the best interests of the child; which can only be the provision of a settled site on which to grow up, and the consideration of Article 8 rights.

For these reasons the appeal was allowed.

Costs: An application for an award of costs made by the appellant was allowed for the following reasons:

- The debate appears to have concentrated primarily on the potential harm that would be caused and there is little to suggest that the proposal was considered in a balanced manner which would have involved weighing these factors against the matters in favour.
- Whilst the Committee was not bound to accept the officer's recommendation, paragraph B20 of the Circular explains that authorities will need to show reasonable planning grounds for taking a contrary decision and to produce relevant evidence on appeal to support the decision in all respects. Paragraph B23 also expects planning authorities to give thorough consideration to relevant advice. Members failed to have regard to the clear advice of their officers relating to flooding, the availability of alternative pitches at Four Houses Corner, the need for an assessment of the impact on the AONB and matters relating to the accessibility of the site. The failure to subsequently provide any, or any convincing, evidence to substantiate the reasons for refusal amounts to unreasonable behaviour in accordance with paragraph B20 and B23.
- Paragraphs B21 and B22 of the Circular state that while planning authorities are expected to consider the views of local residents, the extent of local opposition is not, in itself, a reasonable ground for resisting development. The Minutes of the Committee Meeting indicate that Members stated, in relation to the impact on the adjoining business, "should the application be refused and taken to appeal, then objectors could communicate their concerns in this regard". This amounts to unreasonable behaviour having regard to paragraphs B21 and B22.
- Reason for refusal 6 relates to Green Belt policy. The site is not in the Green Belt and the same policy considerations do not apply in AONBs. Paragraph B16 of the Circular states that reasons for refusal should be complete, precise, specific and relevant to the application. It is unreasonable of the Council to have sought to introduce Green Belt considerations in relation to a development which is not located in the Green Belt.
- There is no indication that the possibility of granting a temporary permission was considered, contrary to paragraph B25 of the Circular.
- A partial award of costs was made in respect of the preparation of all evidence for the appeal and in respect of attendance at the hearing, apart from any expense relating to the preparation of evidence in respect of reasons for refusal 1 (character of the area) and 8 (developer contributions).