



Appeal Decisions

Hearing Held on 4 October 2022

Site visit made on 4 October 2022

by Laura Renaudon LLM LARTPI Solicitor

an Inspector appointed by the Secretary of State

Decision date: 20 February 2023

Appeal Ref: APP/P0240/C/21/3280952 ('Appeal A') **Seven Acre Field, 115 West End, Haynes MK45 3QU**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Christopher Reilly ("the enforcement appellant") against an enforcement notice issued by Central Bedfordshire Council.
- The enforcement notice, numbered CB/EN/21/0284, was issued on 23 July 2021.
- The breach of planning control as alleged in the notice is *Without planning permission, the unauthorised material change of use of agricultural land to a residential caravan site with the stationing of caravans for residential purposes, and portable amenity block*.
- The requirements of the notice are to:
 - (i) Cease using the Land as a residential caravan site;
 - (ii) Remove from the Land all caravans associated with the residential use;
 - (iii) Remove from the Land the portable amenity block, associated with its use; and
 - (iv) Restore the Land to its former agricultural use.
- The period for compliance with the requirements is four months.
- The appeal is proceeding on the grounds set out in section 174(2)(e), (a), (f) and (g) of the Town and Country Planning Act 1990 as amended.

Summary Decision: the appeal is dismissed and the enforcement notice is upheld with a variation to the period for compliance and a substitute plan.

Appeal Ref: APP/P0240/C/21/3280899 ('Appeal B') **Seven Acre Field, 115 West End, Haynes MK45 3QU**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Christopher Reilly ("the enforcement appellant") against an enforcement notice issued by Central Bedfordshire Council.
- The enforcement notice, numbered CB/EN/21/0284, was issued on 23 July 2021.
- The breach of planning control as alleged in the notice is *Without planning permission, the unauthorised operational development consisting of laying of gravel*.
- The requirements of the notice are to remove the gravel standing from the land and restore it to its former condition.
- The period for compliance with the requirements is four months.
- The appeal is proceeding on the grounds set out in section 174(2)(e), (a), (f) and (g) of the Town and Country Planning Act 1990 as amended.

Summary Decision: the appeal is dismissed and the enforcement notice is upheld with a variation to the period for compliance and a substitute plan.

Appeal Ref: APP/P0240/W/22/3301891 ('Appeal C') **Seven Acre Field, 115 West End, Haynes MK45 3QU**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.

- The appeal is made by Moses Smith ("the planning appellant") against the decision of Central Bedfordshire Council.
- The application Ref CB/21/02896/FULL, dated 18 June 2021, was refused by notice dated 31 May 2022.
- The development proposed is, as amended, the continued use of land for the stationing of 3 x static caravans, 3 x touring caravans, parking for 6 vehicles, water treatment plant, hardstanding and associated infrastructure.

Summary Decision: the appeal is dismissed.

Preliminary Matters

1. I carried out unaccompanied visits to the vicinity of the site the day before the hearing and again, as well as to nearby service centres, the day following it. I was accompanied on site and at nearby observation points by the parties on the afternoon of the hearing.
2. The appeals involve different appellants, and the land parcel covered by the enforcement notices is considerably larger than that the subject of the planning appeal. Nonetheless there is a significant overlap. The land the subject of the planning appeal is also subject to the notices. The planning appeal concerns, to some extent, retrospective development that is the subject of the notices. The appellants live together as an interdependent group (together with Jason Smith and his family). Thus I considered all the appeals at the same hearing and now in this decision letter.
3. It transpired at the hearing that notice of the planning application had not been given to one of the owners of the land. I therefore directed that such notice be given, with an opportunity for that owner to make representations. As the position has now been rectified, I am satisfied that no resulting prejudice to that landowner's interests arises from the lack of prior notice.
4. The enforcement appellant's case on ground (e) consisted in substance of a complaint about the plan of the land that was attached to the notices. This did not amount to a claim that proper service of the notices had not been effected and, on consideration at the hearing, the appeals on ground (e) were withdrawn.
5. The land covered by the enforcement notices comprises a substantial field occupying much of the 'triangle' of fields to the east of Haynes West End and to the west of the A6. It appears in recent years to have been subdivided and marketed for sale as potential residential plots, and some of those persons having acquired such plots appeared and made representations at the hearing.
6. As yet, however, the only residential development of the site has occurred on the part that is the subject of the planning appeal. There was some discussion at the hearing as to the extent to which other persons acquiring plots had received copies of the enforcement notices or were otherwise kept apprised of the Council's actions.
7. The allegation in Appeal A is of a material change of use of the whole 'seven acre field' to a residential use. It appeared to me on site that this, in relation to that extensive site, had not occurred. Although not all other plots can be said presently to be put to an active agricultural use, no other discernible use is taking place and they appeared to be distinct plots that are not in a residential use; or, put another way, the planning appeal site appears a distinct plot that is in a residential use. The appropriate planning unit to which the allegation

- should apply is commensurate with that of the planning appeal: I observed no material change of use of the remainder of the site.
8. Accordingly, and at the express invitation of the Council, I shall substitute the plan attached to the enforcement notices with a plan akin to that submitted with the planning application, and without amending any allegation.
 9. This means that the notices, if upheld, will no longer apply to the other plots (being the remainder of the 'seven acre field') and I am satisfied that, given the Council's obligation to rectify the enforcement register accordingly, there will be no prejudice to the interests of any other plot owner. The only known remaining land interest, other than that of the appellants, is that of the owner not served with the planning application referred to above; however, that owner was served with the enforcement notices and thus no prejudice arises there.
 10. The final requirement of the 'use' notice requires the former agricultural use to be restored. Requiring the resumption of any particular use of land appears to me excessive. Although not put to me on the ground (f) appeal, I shall delete this requirement from the notice. The requirement to restore the land to its former condition arises in the 'operations' notice and, although the notices are technically distinct, they are in practice interdependent and should stand or fall together.
 11. The 'use' enforcement notice alleges in general terms the unauthorised change of use to a residential caravan site, without specific reference to the number of caravans then on site: and this unrestricted residential use is thus the deemed application under the ground (a) appeal. I was informed at the hearing that the situation on site has not changed significantly since the notice was issued, it presently consisting of three caravans and an amenity block. The planning appeal seeks (in particular) an additional three mobile homes and further hard surfacing.
 12. Although additional operational development comprising the hardstanding or any additional buildings could not be authorised on either deemed application on ground (a), if the use as a caravan site is permitted then the number of caravans could be controlled by the imposition of a planning condition. Essentially the appeals seek the same outcome: the provision of three traveller pitches each consisting of a static and a touring caravan. Where there are differences between the appeal schemes I shall deal with them below.
 13. The hearing was adjourned for the parties' consideration of, in particular, noise and environmental reports. In the event, following a subsequent exchange of written representations, I was satisfied that I had sufficient information on which to base my decisions without resuming the hearing.
 14. I also asked the parties to comment on any implications for the case in the light of the Court of Appeal's judgment in *Smith v SSLUHC and others* [2022] EWCA Civ 1391, and their responses are considered below.
 15. Accordingly I subsequently closed the hearing in writing.

Main Issues

16. The gypsy or traveller status of the appellants and those residing on the land is not in dispute, and accordingly I consider the appeals in the light of the

national Planning Policy for Traveller Sites ('PPTS') although with reference also to the Court's judgment in *Smith*. The land lies in open countryside but outside of any area of national protective designation. Thus the principal main issue in the appeals is to assess the developments against the Local Plan criteria-based policy applying to the provision of 'windfall' traveller sites, being Policy H7, which applies whether or not the PPTS definition is met. Whether or not the development has amounted to 'intentional unauthorised development', and if so the amount of weight attributable to that, also falls for consideration, as does compliance with other relevant development plan policies.

17. The need for and supply of traveller sites in the area, and the availability of alternative sites to the appellants, is also relevant, although how significant these matters are may depend on the outcome of the policy criteria analysis. Also relevant will be the particular personal circumstances of the appellants, and human rights and PSED (public sector equality duty) considerations including the identification and consideration of the best interests of the children on the site.
18. These considerations apply, potentially to different degrees, to whether any permissions granted are to be permanent or temporary. Additional considerations arising under the ground (f) and (g) appeals are whether the time stipulated for compliance with the notices, if either or both of them are to be upheld, is too short.

Reasons

Policy H7

(1) Relationship to nearest settled community

19. The first criterion of the policy requires that the scale of the site bears an acceptable relationship to the nearest settled community. This requires a consideration of any cumulative impact with other nearby Traveller sites.
20. On its own, as a site for 3 Traveller pitches, the scale of the development does not place any unacceptable impacts on the settlement of Haynes West End, which is a small linear settlement, a hamlet with no facilities other than a farm shop. The Council counsel some caution, given the aspirations of others to develop further plots on the 'seven acre field'. However, the policy question relates to a combination of Traveller sites, rather than to a combination with other forms of residential development, and I am not informed that any of the other plot purchasers have an intention to develop the land as Traveller sites. Hence I do not find any conflict with this aspect of policy H7.

(2) Character and appearance of the wider landscape

21. The appeal site falls within the 'Mid Greensand Ridge' character area, a large scale ridge sweeping SW – NE across Central Bedfordshire. Although intersected by some significant transport corridors, the area is of a distinctly rural character with sporadic small settlements ('ends') and contrasting arable fields and densely wooded areas.
22. The site itself lies adjacent to the A6 at a point opposite the Four Winds Industrial Estate, an isolated industrial site characterised in appearance by metal boundary fencing and large sheds, with a dilapidated building at the site of a former filling station to the road frontage. Nonetheless it lies in open

countryside, the intrinsic character and beauty of which is required to be recognised by the National Planning Policy Framework ('the Framework'). The site falls outside any settlement envelope recognised by the Local Plan or the Haynes Neighbourhood Plan, and lies within open countryside. Haynes West End is itself a linear hamlet typical of the area, with dwellings and occasional farm or other buildings standing close to the road running through the settlement and branching off on Limbersey Lane towards Maulden.

23. Development unrelated to the road frontage is untypical of the hamlet. The appeal site consists of a track leading some 50 metres away from the road to the squarish plot of land of around half an acre in the middle of the 'seven acre field' at a point away from the roadside properties but adjacent to the A6. It is an unexpected development in the area, isolated from the settlement and surrounded as it is on three sides by remaining pastoral land, so disturbing the pre-existing field pattern that Neighbourhood Plan policy NE1 seeks to protect. Whilst it is not 'away from' the settlement so as to offend paragraph 25 PPTS it bears no legible relationship with the settlement in character terms and does not represent an organic expansion of the settlement but an unusual intrusion into the countryside that does not recognise or accord with existing patterns of development and thus does not conserve the area's identity.
24. To create the access, it is clear that a considerable extent of roadside hedgerow has been removed. It appears that previously the field was accessible on foot and by horseback, although the entrance had become overgrown in recent years. The works to create the vehicular access have led to the site being highly visible from the adjoining West End Road, with hardstanding leading from the roadside to the main appeal site. A track had however existed for a number of years, so this in itself does not represent a significant change.
25. Additional concerns would arise if I were to accept that the noise levels at the site could satisfactorily be overcome by the installation of an acoustic fence: this matter is dealt with below.
26. On either the existing development or that as proposed in Appeal C, which would involve additional hardstanding and tree removal, I find the development to be harmful to the existing landscape character contrary to this criterion of policy H7 and to policy EE5, as well as contrary to the Neighbourhood Plan in which the site is not allocated for development and seeks to protect existing field patterns.
27. Although the policy refers only to the effects on the character and appearance of the wider landscape, related environmental policies EE2 and EE8 of the Local Plan seek to secure net gains to biodiversity. Whilst at the hearing the appellants suggested that the hedge screening proposals and the potential to provide bat boxes on the mobile homes could result in biodiversity gains, there has been no assessment using the Defra metric or otherwise and no demonstration of how a net gain can be achieved, whether on or off the site. It was suggested that this could be dealt with by way of a planning condition, but without the relevant assessments it is not possible to know whether this can be achieved on land within the appellants' control to which a condition might apply. I therefore find that there is conflict with the relevant policies on this issue. I acknowledge that the application was submitted, and the development begun, slightly in advance of the Council's adoption of the current policies,

meaning that a baseline assessment was not strictly required; but the continuing absence of any assessment means the weight I attach to this policy conflict is not diminished.

(3) Provides a good standard of amenity for occupants

28. The distance of the site from the properties in Haynes West End means that I am satisfied that the amenities of existing occupiers of the hamlet will not be unacceptably affected by the development of the site. The Council's concerns relate to the amenities to be enjoyed by the occupants of the site itself. These comprise two principal concerns; noise, mainly from the adjacent A6 traffic and from the Four Winds Industrial Estate; and contamination risks arising from the legacy industrial estate and filling station. Also relevant here is policy CC8 which requires any pollution impacts to be minimised to an acceptable level.

(i) noise

29. The appellant's 'Jostec' noise report notes that noise levels to the development site are moderate to high and comprise primarily of contributions from passing road traffic on the A6 and to a lesser extent Haynes West End Road and industrial noise from the Four Winds Estate that lies to the opposite site of the A6. The report suggests that the noise can be adequately mitigated by either an acoustic fence or by improved glazing and ventilator specification in the caravans.

30. Neither would result in desirable guidance values being met for external amenity space at all times. The provision of acoustic fencing would result in upper guidance values being met, however, and the noise levels into the rooms of the development would comply with BS 8233 guideline values. The alternative of providing improved sound insulation to the caravans themselves could result in BS 8233 guideline values being met internally, but without an acoustic fence would not result in guideline external amenity noise level criteria being adhered to.

31. The Council raise a number of concerns with the report; principally that insufficient attention is paid to the noise emanating from the Four Winds Estate. However, even accepting the Jostec report at face value, whilst the provision of an acoustic fence could result in broadly acceptable noise levels at the site, it would create other problems.

32. The recommendation is for a close-boarded timber fence to a height of 3m installed on three sides of the site perimeter. Apart from any landscaping impacts, this would plainly contradict the PPTS advice (paragraph 26) that sites should not be enclosed with so much fencing as to give the impression of deliberate isolation from the rest of the community. It would in itself create unacceptable living conditions by reason of such hemming in of the site by such a large fence. It would also result in further unacceptable impacts on the character and appearance of the wider landscape, where such types of fencing are not observed. It would adjoin the existing hedgerow to the south west of the A6 and as such could threaten the health of the hedgerow.

33. Without the provision of acoustic fencing, however, I find the noise levels in the external areas of the site to be unacceptably high, considerably exceeding upper guidance values as explained in section 5.5 of the Jostec report, and would not result in an acceptable standard of living for the site's occupants.

(ii) *contamination*

34. The appellant's submission of an environmental report concerning the contamination risks to the site occupants has failed to satisfy the Council. The report concludes that there are negligible risks to human health or to controlled waters from the development of the site.
35. A subsequent round of correspondence results in the report's authors (Wesson Environmental) explaining that potential pollution pathways from outside the site (mainly the Four Winds Estate) do not warrant further investigation, because the relevant waste types at the industrial estate are largely inert, with a low potential for impacting soils, and the distance of the site means that aerial deposits are unlikely. The landfill site discussed is more than 300m from the appeal site at a lower elevation, and the report's authors consider impacts unlikely because any migration would be dictated by gravity, and geological records indicate low permeability.
36. As to the migration of fuels, hydraulic gradient is thought unlikely to be counter to gravity and therefore topographical gradient. The classification of the site as being highly vulnerable is questioned, in view of the likelihood of clay soils, and thus soil permeability is anticipated to be lower than the classification suggests.
37. The applications are largely retrospective and thus ground conditions prior to development are not available. The past agricultural use of the site, in the authors' view, has not resulted in the presence of likely agrichemical contaminants such as sheep dips.
38. I have not had the benefit of any further response from the Council's Pollution Control officer, but given the position as to the lack of a previous vehicular access to the site I accept that on-site contaminants are not sufficiently likely to have resulted from any previous agricultural use so as to warrant an intrusive investigation.
39. Ground conditions and pollution are matters dealt with by Local Plan Policy CC8 and by the Framework. The Framework explains that planning decisions should ensure that a site is suitable for its proposed use taking account of ground conditions and contamination risks. Adequate site investigation information should be available to inform this assessment.
40. Although the appellants' consultant has explained the position in relation to many of the Council's criticisms of the report, I remain concerned that the site's classification as highly vulnerable has not been sufficiently explored, especially in the light of any pre-development assessment and its very close proximity to the industrial estate and former filling station with underground fuel tanks, at which a large scale fire is said to have occurred some years ago with the types of fire retardants used unknown.
41. As the appellants' consultant suggests, it may be necessary to carry out a limited intrusive investigation to establish conditions relating to these uncertainties. I consider that this would be needed here in order to be satisfied that the site is suitable for its intended use, as required by the Framework and the relevant Local Plan policies.

(4) Site design

42. Although not expressly mentioned in the policy, this is the appropriate juncture also to consider the effects on highway safety. Policy T2 requires that proposals for new development must not have a detrimental effect on highway safety and patterns of movement, must provide appropriate access and have regard to the Council's relevant design standards.
43. The Council raise two particular concerns about the access: first, that inadequate sight lines are provided and the second that an inadequate access onto the site is provided, mainly by reason of insufficient width. On the first issue, whilst the Highway Authority accept that the necessary visibility splays are achievable, the parties dispute the extent of the requirement to remove trees and vegetation in order to provide them. I am therefore satisfied that (notwithstanding any impacts on trees or landscaping) this concern can, from the perspective of highway safety, be overcome.
44. The access is presently around 3.0m wide, with the Highway Authority requiring a width of 4.8m for shared accesses for at least 15m, in order to allow for the two-way flow of vehicles to avoid obstructions to the carriageway. Land outside the access as shown on the planning application plan (but within the 'seven acre field') is possibly beyond the appellants' control; despite the assertions of the appellants' highways expert that the appellants have access rights to a 6.8m strip, there is no documentary evidence before me that the appellants are able to achieve this.
45. The site entrance lies to the north of the Haynes West End road, which is a fairly narrow unclassified road leading through the hamlet, meeting the A6 at both ends. The road runs east—west at the point of the site access. From the north/west, the site lies shortly after a nearside curve in the road; whereas from the east, the site lies along a straight section some 100m from the junction with the A6.
46. From either approach, I consider it is possible to view the accessway into the site to establish the existence of emerging any vehicles before making a turn into it. Therefore if there is emerging traffic, whilst a vehicle might need to wait in the carriageway I consider it unlikely that reversing back into the carriageway would be necessary. I also consider the risk of two-way traffic along the access materialising to be very limited, given the small number of occupants and their relationships by which they are essentially living as an extended single family. Therefore whilst I find there to be technically a departure from the Council's standards on this issue, I give the conflict only minor weight against the proposal because I consider the overall policy aim of preserving highway safety to be reasonably achieved on this issue.
47. The Council's other concern relates to the proposed turning areas and whether these are sufficient for all vehicles including delivery or emergency vehicles. Plan PT-01-2022 shows the proposed layout including turning areas applicable to the planning appeal. No alternative proposals are given in relation to the enforcement appeal. Although it may be possible to reconfigure the site layout to achieve different turning and parking arrangements, no such proposals are before me.
48. On the existing proposals I accept the Council's case that the turning areas shown are insufficient for emergency vehicles, given their dimensions, to be

able to enter and leave the site in a forward gear. On this issue I find there to be the conflict with highway safety raised by the Council and a failure to comply with policy T2. I give no weight to the lack of objection from National Highways as their response related to the strategic, rather than local, highway network and specifically to any impacts on the M1 motorway.

49. As to the site design requirements of policy H7 itself, the pitches are of a sufficient size to accommodate the needs of the occupants and (in the absence of the proposed acoustic fence) I detect no residual conflict with the requirements of this policy.

(5) Travelling distance to community facilities

50. The policy requires that adequate schools, shops, healthcare and other community facilities are within a reasonable travelling distance of the site. What is meant by a 'reasonable' travelling distance falls for assessment in each case, although the supporting text acknowledges both that some travellers prefer to live in the countryside and that first preference should be given to sites that are located close to existing settlements.
51. Whilst the hamlet of Haynes West End has a farm shop, I consider it inevitable that accessing almost any facilities or services will involve a car journey, notwithstanding a nearby bus service between Luton and Bedford. Whilst the appellants referred to the recent 'internet revolution' resulting in many more home deliveries of goods, and some services being available on-line, it is nonetheless a policy requirement that such facilities and services should be a reasonable travelling distance away from the site.
52. Whilst rural, the site is not unduly remote: the policy does not expressly require any facilities or services to lie within walking distance, and all services are reasonably commutable. It lies around 2 miles from Clophill, containing a primary school and small shop and pubs, and a filling station with small shop to the south. The children living on the site are however educated elsewhere, the nearest at Maulden, a settlement lying on the road out to Ampthill, itself a sizeable Georgian town around 5 miles away from the site. I do not consider the site's location to conflict with this requirement of the policy.

(6) Drainage, sanitation and access to utilities

53. It is not suggested that this requirement of the policy could not be complied with and accordingly I find no conflict here. The remaining criterion relates to mixed residential and business proposals and so has no application.

Overall conclusions on compliance with policy H7 and the development plan

54. I conclude that there is substantial compliance with several aspects of policy H7 but there are particular conflicts that mean I am unable to find there is overall compliance with the policy. The character and appearance of the wider landscape are detrimentally affected, contrary both to criterion 2 and to related policies including HQ1. I also find conflict with policies EE2 and EE8 and with policy T2 in respect of biodiversity and highway safety. I further find that conflict with criterion 3 arises, in that a good standard of amenity for existing and future occupants would not result, and that conflicts with policy CC8 also arise in this regard.

55. It follows that I find the developments comprised in each of the appeals to conflict with the development plan when taken as a whole.

Intentional Unauthorised Development

56. As well as referring to policy conflicts, the Council consider that significant adverse weight attaches to the development having been carried out intentionally without planning permission having first been obtained.

57. An incomplete planning application was submitted to the Council the day before the development was begun. Thus the appellants can be taken to have been aware of the need for planning permission, and I accept that the development was intentionally unauthorised and the Written Ministerial Statement applies.

58. The Ministerial Statement explains that the Government is concerned about the harm that is caused where the development of land has been undertaken in advance of obtaining planning permission. In such cases there is no opportunity to appropriately limit or mitigate the harm that has already taken place.

59. Here, the works that have taken place do not go significantly beyond what was needed to create a habitable environment for the appellants. It was acknowledged by the Council at the hearing that the land is remediable to a similar condition prior to the development, and that the extent of the hardstanding laid to date is not excessive in relation to the caravans that have already been brought onto the site. The clear exception to this is the removal of the roadside vegetation in order to provide the site access, which will take some time to restore, to the extent that it is replaceable. It was acknowledged by the appellants at the hearing that no investigation of any other sites had taken place, although it was said the appellants' situation was desperate, having been evicted from a previous site and the site purchased in a state of some urgency.

60. Thus in the circumstances I do not ascribe the significant adverse weight contended for by the Council. The roadside hedge removal is an element that could not be readily rectified if the development were to be undone. The statutory regime does however make provision for retrospective applications, and the enforcement regime is designed to be remedial rather than punitive. I find that the development could not be entirely remediated here, or at least not for some considerable time, because of the removal of the roadside vegetation. Hence I attribute moderate adverse weight to my finding that the development has been intentionally unauthorised.

Need for and supply of sites

61. It is contended by the Council that issues such as the need for sites and the availability of alternative sites in Central Bedfordshire should not be considered as material considerations in this appeal. This strikes me as unrealistic. The existing level of local provision and need for sites, and the availability (or lack) of alternative accommodation for the applicants are matters requiring consideration by paragraph 24 of the PPTS. If a local planning authority cannot demonstrate an up-to-date five year supply of deliverable sites, this should be a significant material consideration in any decision whether to grant temporary planning permission.

62. The notice was issued shortly after the Council's adoption of its Local Plan following receipt of the Examining Inspectors' Report of 15 July 2021. The Inspectors accepted the 2016 Gypsy and Traveller Accommodation Assessment of 2016 as robust, and found that the Council had an ample supply of sites such that no allocations were required. The Council aver that they have a supply of sites in excess of 18 years, although this is derived from the Local Plan hearing statement of now some three years' vintage, and a GTAA now six years old.
63. The Council's estimate of an ample supply of sites relates to the PPTS need. The supporting text to the Plan notes that the need identified for Central Bedfordshire is potentially subject to change as a result of testing of the new definition found in PPTS 2015. Policy SP8 records that the Council has already approved a sufficient number of pitches to meet the Gypsy and Traveller accommodation need in Central Bedfordshire over the Plan period; but that is expressed to relate to the PPTS-identified need only. Windfall applications are to be assessed under policy H7, which applies to all Gypsies and Travellers whether or not falling within the PPTS definition.
64. No express allocations are made (or considered) in the Plan to meet the needs of non-PPTS Gypsies and Travellers. The GTAA revealed a need over the Plan period for non-travelling households of 96 pitches, as well as an additional need for 'unknown' Gypsies and Travellers of 48 pitches over the Plan period.
65. I have also been supplied with the ONS Caravan Count for the last four years. That shows that, in Central Bedfordshire, the number of caravans has increased by 91 whereas the number of caravans on authorised sites (whether private or socially rented) has increased by 139, the latest available figures showing 43 unauthorised caravans in the district of which 36 were 'not tolerated'.
66. This is suggestive of some local need although the Caravan Count does not distinguish 'PPTS' travellers from others, and the Inspectors' Report into the Local Plan agreed that only 13% of Travellers in the district are likely to meet the PPTS definition. The appellants produced an 'Unmet Need Update' document at the hearing which suggests a local shortage of 51 pitches based on the agent's own personal knowledge. By itself this reveals very little, although the Council did not dispute it for the purposes of the appeal. The Council's understanding is that the waiting list is currently around 50 households, but that a number on the lists are resident on existing sites both within and outwith the district or on multiple waiting lists. Since the beginning of the Local Plan period 44 new pitches have been permitted by the Council, with 11 outstanding traveller appeals including this one.
67. Those 44 pitches amount to an oversupply of the 29 pitches derived from the needs assessments informing the Local Plan, from which the Examining Inspectors found the Plan to be sound. Notwithstanding the Caravan Count and the Update provided by the appellants, I find the Council's position to be robust in relation to PPTS need, given the recent adoption of the Local Plan. However, the position in relation to meeting the accommodation needs of Gypsies and Travellers as a whole is considerably less certain.
68. The parties were asked to comment on any implications of the *Smith* litigation, to which the Council responded pointing out that the GTAA has assessed the needs of all Gypsies and Travellers and as such is still a robust assessment of

need. The appellant contends that the *Smith* decision shows the current GTAA to be unsound on account of its reliance on the PPTS definition; however, as other needs are in fact assessed I do not find this to be the case. The appellants also contend that the Gypsy site targets contained in the Local Plan are not sound. I have no reason to consider that this is the case, insofar as the 'targets' (of which there are none, as explained by policy SP8) expressly relate to PPTS need.

69. Although no site allocations to meet non-PPTS need have been made, neither has it been explained to me why the windfall policy H7 should not be capable of meeting those needs. A fairly large number of permissions have been granted during the Plan period to date (although I am not informed how those newly-permitted pitches may have related to the PPTS definition). However, as the Council did not dispute (for the purposes only of these appeals) the appellant's suggested figure of a local shortage of 51 pitches, and the existing waiting list figure of around the same number, I find that there are some existing unmet accommodation needs for Gypsies and Travellers in the area. This lends considerable weight in favour of the appeals.

Alternatives

70. The appellants were evicted from a previous site and moved onto this one without investigating the availability of any alternative sites. It is anticipated by them that dismissing the appeals will result in a roadside existence.
71. Whilst no alternative site has been identified by any party to the appeals, given the large number of permissions granted in the area over recent years I am not satisfied that dismissing these appeals will inevitably lead to a roadside existence of a significant duration. I attach moderate weight to the lack of any identified alternative site, however.

Personal circumstances

72. I have had regard to the personal and health circumstances of the site's occupants presented in the documents and at the hearing. As explained at the hearing, it is not appropriate to reveal the precise details in this decision letter, available as it is to the world at large. Broadly, however, there are adult male occupants in two of the caravans, and a young family in the third. One of the adult males is elderly and has had a number of health issues, recently requiring treatment in Guildford, although is presently in remission. One of the children on the site has behavioural and eye diagnoses and another has a significant stomach condition. A third child on the site is presently of pre-school age and no significant health matters were brought to my attention.
73. The school aged children on the site have moved schools to Maulden, and attendance has improved since moving onto the site. Some extra support is provided at school. The family's General Practitioner is in Ampthill, and one of the children attends Luton Hospital around once a month.
74. Having heard the family circumstances I consider that the provision of a settled base in the area would be likely to result in a more stable education for the children. Whilst this attracts considerable weight in favour of the appeals, overall I do not consider it to be in the children's best interests to live at this site. The relative proximity to the existing medical practitioners at Ampthill and Luton is not of sufficient benefit to outweigh the failure of the site's location to

provide reasonably healthy living conditions because of the noisy environment. I consider the adverse impacts arising from the site's location to outweigh its advantage of providing a settled base for the occupants.

Overall conclusions and planning balance

75. Although not in an area of designated national protection (such as Green Belt or AONB) I have found the landscape character of the area to be intrinsically important, and that the development of the site in the way it has occurred to have been considerably detrimental to that. I attach substantial weight to this harm. There is some risk to highway safety, and the outcomes for biodiversity and the risks of contamination on the site each require further assessment. I attribute moderate additional weight to these risks and uncertainties.
76. Although the Council's five year supply position is generally robust, there is some evidence of local unmet need as discussed above, and there is no identified alternative site to which the appellants and other site occupants could presently resort. These factors together carry considerable weight in favour of the appeals.
77. I am mindful of the need to keep the interests of the children on the site to the forefront of my considerations, and some of those children's needs are very significant and require careful consideration. Having a settled base would undoubtedly assist them in attending school and resorting to appropriate medical care, and these benefits attract considerable weight. However, these benefits are not of a magnitude that would justify allowing them to continue living at such an unsuitable site, opposite an industrial estate and immediately adjoining a busy main road where road traffic noise is the predominant feature, with the attendant risks to their health and well-being that result from the site's location.
78. I note the appellants' contention that the advent of electric vehicles is likely to reduce these noise effects from the passing traffic; however, that is some years off and in any event the traffic speeds are such that the traffic noise is unlikely to reduce significantly, because at higher speeds it is largely tyre and aerodynamic rather than engine or exhaust noise that is audible. Having regard to the particular needs of these children, and the Council's uncontradicted references to research considering the particular health impacts of traffic noise on children, I am unable to conclude that their interests are best served by living at this site whether temporarily or permanently.
79. Unfortunately the only ways in which the unacceptable noise impacts could be mitigated would result in an unacceptable development for other reasons. High fencing around three sides of the site would unacceptably isolate the site and its occupants from the nearby properties, would result in an unreasonable degree of enclosure to those living on the site, and would add to the adverse landscape impacts of the development already identified. Therefore I am unable to find that the development can be made acceptable.
80. Dismissal of the appeals will result in the site occupants losing their homes and this would constitute an interference with their human rights under Article 8 of the European Convention on Human rights and under Article 1 of the First Protocol, which concern the right to respect for private and family life and of the protection of property. An obligation arises from Article 8 to facilitate the Traveller way of life. The Public Sector Equality Duty also requires me to have

regard to the need, amongst other matters, to advance equality of opportunity between those with and without protected characteristics. The best interests of the children are a primary consideration.

81. Interference with human rights may be lawful where the interference arises in pursuit of a legitimate objective and is proportionate to that. Avoiding the harm to the landscape is a legitimate objective, as are the pursuit of safe highway arrangements and measures to improve biodiversity but I would not have found avoiding those harms in themselves to amount to a proportionate interference if the development were to result in acceptable living conditions for the site's occupants. However, I do find the interference to be proportionate overall because I am not remotely satisfied that it is in the best interests of any of the site's occupants, particularly the children, to live there. This is because of the unacceptable noise environment, which I find cannot be satisfactorily mitigated in a way that would produce acceptable living conditions.
82. Therefore I shall uphold the enforcement notices and refuse to grant planning permission.

The appeals on grounds (f) and (g)

83. The appellants' case is essentially the same on both grounds: more time is sought to comply. As to ground (f), the purpose of the notice in each case is plainly to remedy the breach of planning control that has been identified. I perceive of no lesser steps than those set out that would achieve the purpose of either notice. Therefore the appeals on ground (f) do not succeed.
84. As to ground (g), no specific complaint is taken by the appellants that the time for carrying out the steps required by each notice is too short: rather, the extension of time is sought because of the lack of any identified alternative site to which the site's occupants might resort. Whilst accepting this to be the case, for the reasons set out above this has carried only moderate weight in the ground (a) and section 78 appeals and I am not satisfied that two years would be a reasonable time to comply with the notice. Mindful of the date of my decision letter and the potential for the children needing to change schools again as a result of my decision, I shall extend the period of compliance to allow for the completion of the present academic year; so to six months.

Conclusions

85. For the reasons given above I conclude that the appeals should not succeed. I shall uphold the enforcement notices with varied compliance periods each with a substitute plan and refuse to grant planning permission on the deemed applications and on the section 78 appeal, which I shall dismiss.

Formal Decisions

Appeals A and B

86. It is directed that each of the enforcement notices is varied:
- (1) At paragraph 6 by deleting "4 (Four)" months as the time for compliance and replacing it with "6 (six)"; and
 - (2) By replacing the plan attached to each notice and referred to at paragraph 2 of each notice with the Site Location plan drawing no. LP-01-2021 submitted with planning application CB/21/02896/FULL.

87. Subject to those variations the appeals are dismissed and the enforcement notices are upheld, and planning permission is refused on the applications deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal C

88. The appeal is dismissed.

Laura Renaudon

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Joseph G Jones	Agent
Christopher Reilly	Appellant (Appeals A and B)
Moses Smith	Appellant (Appeal C)
Jason Smith	

FOR THE LOCAL PLANNING AUTHORITY:

Philip Hughes BA (Hons) MRTPI FRGS Dip Man MCIM	Consultant
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Steve Jarman	ORS
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Ian Cotterell
Benjamin Tracy
Helen Heanes
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INTERESTED PERSONS:

Beata Guizani
Rebekah Sarella
Vijaya Andukuri