
Appeal Decision

Inquiry held on 8, 9 & 10 October 2013

Site visit made on 9 October 2013

by Susan Heywood BSc (Hons) MCD MRTPI

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

Decision date: 7 February 2014

Appeal Ref: APP/L3245/A/13/2196615

Adbo Farm, Rosehill, near Market Drayton, Shropshire TF9 2JF

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Paul Brooks against the decision of Shropshire Council.
 - The application Ref 12/03581/FUL, dated 21 August 2012, was refused by notice dated 19 October 2012.
 - The development proposed is the use of land for the stationing of caravans for residential purposes for 4no. gypsy pitches together with the formation of additional hard standing and utility/dayrooms ancillary to that use.
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Decision

1. The appeal is allowed and planning permission is granted for the use of land for the stationing of caravans for residential purposes for 4no. gypsy pitches together with the formation of additional hard standing and utility/dayrooms ancillary to that use at Adbo Farm, Rosehill, near Market Drayton, Shropshire TF9 2JF in accordance with the terms of the application, Ref 12/03581/FUL, dated 21 August 2012 subject to the conditions set out in the Annex to this decision.

Application for costs

2. At the inquiry an application for costs was made by Mr Brooks against Shropshire Council. This application is the subject of a separate decision.

Procedural matters

3. Two further representations were brought to my attention after the inquiry. These were copied to the parties and the appellant's comments on the matters raised have been taken into account.
4. The Council indicated prior to the start of the inquiry that they did not wish to pursue matters relating to highway safety (reason for refusal 3) or ecology (reason for refusal 4). Outstanding issues relating to these matters are addressed below as necessary.
5. The Council confirm that they do not dispute the gypsy status of the proposed occupiers of the site. From what I heard, and the statements submitted by the appellant and his brothers, I agree that they are gypsies as defined in *Planning policy for traveller sites* (PPTS).

Main Issues

6. The main issues in this case are as follows:
- i. whether the location of the site is acceptable for the proposed development having regard to:
 - policies relating to exception sites for affordable, local needs accommodation;
 - matters relating to sustainability;
 - ii. the effect of the proposal on the character and appearance of the surrounding area;
 - iii. the impact of the development on the living conditions of nearby occupiers;
 - iv. the impact of the development on highway safety, having regard to the use of the access and visibility;
 - v. whether any harm arising from the proposal would be outweighed by other considerations weighing in favour of the development.

Reasons

Exception sites

7. The Core Strategy for Shropshire was adopted in March 2011, prior to the publication of the *National Planning Policy Framework* (the Framework) in March 2012. Policy CS5, Countryside and Green Belt, restricts housing development to that for countryside workers; affordable housing / accommodation to meet a local need in accordance with national planning policies and policies CS11 and CS12; conversion of rural buildings for affordable housing and open market residential conversions in certain circumstances. Policy CS11, amongst other things, permits exception schemes for local needs affordable housing on sites in or adjoining Shrewsbury, Market Towns, Other Key Centres, Community Hubs, Community Clusters and recognisable named settlements. Policy CS12 relates to Gypsy and Traveller site provision. Amongst other things it states that sites will be allocated to meet identified need; proposals for sites close to Shrewsbury, Market Towns, Key Centres, Community Hubs and Community Clusters will be supported as will small exception sites of under 5 pitches where a strong local connection is demonstrated.
8. The appellant states that policies CS5 and CS12, in combination, discriminate against the Gypsy and Traveller population because, unlike for the settled population, they do not allow for the consideration of general needs gypsy housing on sites outside settlements. It is therefore claimed that the policies breach the Equalities Act. I shall deal firstly with this point.
9. Further explanation on the operation of policies CS5, CS11 and CS12 is to be found in the *Type and Affordability of Housing Supplementary Planning Document* (SPD). In relation to affordable housing for the settled population, paragraph 5.13 indicates that, in general, exception sites must be demonstrably part of, or adjacent to, a recognisable named settlement. Paragraph 5.14 states that sites that do not lie in a settlement, constituting

- isolated or sporadic development, are not considered acceptable. The SPD states that exception sites are approved in order to meet a local need for affordable housing. It goes on to set a list of criteria which occupiers are required to demonstrate in order to lay claim to a local connection and therefore qualify for affordable housing on an exception site.
10. Part 6 of the SPD relates to Gypsy and Traveller sites. Paragraph 6.11 states that sites that are not close to settlements in which development is allowed will be subject to normal restrictions on development in the open countryside. It goes on to explain that residential development in such areas is tightly controlled. However, it sets out the exception that the Core Strategy makes for local needs affordable housing (under policies CS11 and CS5), which includes small exception sites where a strong local connection is demonstrated.
 11. On careful scrutiny of these policies and SPD, it seems that none of them would support unrestricted 'open market' housing, outside of defined settlements or other identified areas, either for the settled or the gypsy community. For the settled population, policy CS11 would support exception sites of 100% affordable dwellings *in or adjoining* settlements and other identified areas. Such developments require a demonstration of local need (as set out in the SPD) and a restriction on affordability in perpetuity. For the gypsy population, policy CS12 allows for development *close to* identified settlements (bullet point 2) and for small exception sites (bullet point 3), where a strong local connection is demonstrated as identified in the SPD. In accordance with CS5, the latter can be considered in the countryside.
 12. Therefore, it would appear that the policy for housing for the settled population is more restrictive than that for the gypsy population as even affordable, local needs, housing sites for the settled population are only considered acceptable in and adjoining identified settlements. Conversely, more remote sites will be considered for the gypsy community provided that they are for affordable, local needs accommodation. The SPD explicitly recognises that gypsy sites "may be further outside settlements than would normally be allowed for other developments" (page 43).
 13. The only consideration to be given to general open market housing in the countryside, under policy CS5, would be for residential conversions in certain circumstances. There is nothing in any of the policies which would preclude a gypsy from carrying out such a conversion under the terms of policy CS5.
 14. In summary, the policies (CS5, CS11 and CS12) and SPD do not support the proposed development of four 'open market' gypsy pitches in their proposed location away from defined settlements or other identified areas. However, neither would those policies support the construction of four 'open market' dwellings for the settled community. For these reasons, I do not consider that the policies discriminate against the gypsy and traveller community.
 15. I turn now to consider the policies in the light of their compliance with the Framework and PPTS. PPTS states that new traveller sites in the open countryside, away from existing settlements or outside areas allocated in the development plan should be strictly limited. The Framework also states that new isolated homes in the countryside should be avoided. However, PPTS goes on to set considerations to be taken into account for sites in rural areas. Accordingly, it is evident that PPTS envisages that rural sites may be considered acceptable in certain circumstances. In not acknowledging the

possibility of any development being located in the countryside, unless it is for affordable local needs provision, the Council's policies (CS5, CS12 and the SPD) are more restrictive than PPTS.

16. The Council sought to refuse the development of this site because the proposed site occupants could not demonstrate local connections in accordance with policies CS5, CS12 and the SPD. However, paragraph 22(e) of PPTS states that Councils should determine applications for sites from any travellers and not just those with local connections. The promotion of rural exception sites to meet local affordable housing need is in compliance with both the Framework and Policy D of PPTS. But, this application is not seeking to provide affordable housing and it does not therefore fall to be considered as a rural exception site under Policy D of PPTS.
17. Policy CS12 states that sites will be allocated to meet identified need. As will be addressed later in this decision, the Council have not done this. There is therefore no dispute that the Council cannot demonstrate a 5-year supply of specific deliverable sites for gypsies and travellers. Paragraph 21 of PPTS states that applications should be assessed and determined in accordance with the presumption in favour of sustainable development. That principle is set out at paragraph 14 of the Framework where it says that if a development plan is absent, silent or relevant policies are out of date, planning permission should be granted unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits. Paragraph 49 of the Framework indicates that relevant policies for the supply of housing should not be considered up to date if the local planning authority cannot demonstrate a 5-year supply of deliverable housing sites. Accordingly, policy CS12, and those elements of the SPD that relate to it, are not up to date and the proposal should be considered on the basis of the presumption in favour of sustainable development outlined in the Framework and PPTS.
18. I note the other appeal decisions referred to by the parties. APP/L3245/A/12/2168380 for six plots at Henlle Lane was dismissed in June 2012. In consideration of the policies (CS5, CS12 and CS11), the Inspector noted that there was no dispute regarding any conflict between the Framework, PPTS or the policies. At that time, the Framework indicated that full weight should be given to policies adopted since 2004 despite any conflict with the Framework. Having regard to these two factors, full weight was given to those identified policies in that appeal. Clearly, the appeal before me differs in both of these respects¹. In that appeal it is also clear, from paragraph 27 of the decision, that the Council did not pursue its second reason for refusal relating to the lack of local connections. As a result the issue was not addressed in that appeal.
19. In APP/L3245/A/12/2186880 for stationing of caravans at Warrant Road, it would appear that the appellants were able to demonstrate strong local connections (paragraph 26 of the decision) and there appeared to be no dispute between the parties having regard to that fact. It would not therefore have been necessary for the Inspector to consider this aspect of the policy in relation to that appeal.

¹ Paragraph 215 of the Framework states that, after a 12 month period following its publication, due weight should be given to relevant policies in existing plans according to their degree of consistency with the Framework.

20. My conclusion in relation to this issue does not therefore conflict with those previous appeal decisions when viewed in the context of the matters before me in this appeal.

Sustainability

21. Local residents raise concerns in relation to the accessibility of the site's location. The nearest primary school lies nearly two kilometres away on Rosehill Road. There is a small convenience store located around two and a half kilometres along the A41 to the north west. Other facilities are located in Market Drayton, Hodnet and Hinstock. There is a limited bus service which runs to Market Drayton and some of the surrounding villages. The bus stop is within walking distance of the site, on Rosehill Road. A footpath links the site with the bus stop.
22. The site cannot be said to be in a highly accessible location and I consider it likely that the occupiers of the site would be reliant on private vehicles for most of their day to day needs. Nevertheless, the site is not in an isolated countryside location and there is at least some prospect that alternative modes of transport could be used for some journeys.
23. The Framework sets out, as one of its core principles, that patterns of growth should be managed to make fullest possible use of public transport, walking and cycling. However, there is no requirement in PPTS that gypsy sites should be close to facilities. Paragraph 7 of the Framework sets out the three dimensions of sustainable development – economic, social and environmental. The Council confirmed that their concerns primarily relate to the environmental impact of the proposal ie. its impact on the character of the surrounding area. This matter is addressed separately below. PPTS includes a list of criteria (at paragraph 11) to be used in plan making to ensure that sites are sustainable economically, socially and environmentally. These criteria are also useful in the consideration of the suitability of sites which come forward through the development management process.
24. Paragraph 11(a) relates to the peaceful and integrated co-existence between the site and local community. I recognise that there are objections to this development from nearby residents. However, that does not mean that it would not be possible for the occupants of this site to integrate into the wider community over time. Integration happens gradually through communication between the site occupants and the settled population. This takes place through contact at schools, shops, post-offices, pubs and so on. The provision of a settled base can help to break down the barriers between the settled and the gypsy communities. The proposed development would therefore provide the opportunity to promote the peaceful and integrated co-existence between the site occupants and local community in accordance with paragraph 11(a) of PPTS.
25. Local residents have raised the concern that the development would increase crime in the area. However, the courts have held that the fear of crime is only a material consideration where the use, by its very nature, would provide a reasonable basis for concern. It is not a foregone conclusion that the use of land as a gypsy site would inevitably result in an increase in crime. Existing residents say that they are currently familiar with everyone who lives nearby and this helps to ensure a sense of a secure community. But, this development is not proposed as a transit site where the occupants could be

- expected to change frequently. Given the modest size of the development, and its permanent nature, it would be possible for familiarisation between existing and proposed residents to build up over time. There is no evidence to suggest that criminal activity in the area would increase as a result of the proposal.
26. The suggestion was also made that the proposal would have a detrimental impact on local businesses. Again, there is nothing to demonstrate that the use of land as a gypsy site would necessarily have any harmful impact on local businesses.
 27. Paragraph 11(b) seeks to promote access to appropriate health services. A number of the proposed site residents have no settled base on which to live and I heard evidence that many of the proposed occupiers do not have a registered GP, relying on walk-in centres when health issues arise. It was accepted for the appellant that the nearest surgery was nearly 8 kilometres from the site. Nevertheless, the provision of a settled base would help the families gain access to continuous and stable healthcare provision. As the families who intend to occupy the site have children (one of whom is a young baby), and another child was expected at the time of the inquiry, this continuity of care is likely to be important. The proposal would therefore be in accordance with paragraph 11(b) of PPTS.
 28. Paragraph 11(c) seeks to ensure that children can attend school on a regular basis. A number of the children who would be living on the site are of school age. I heard that some have attended schools whilst some have not. The provision of a settled base would provide the opportunity for the children to attend school regularly and this benefit would be in accordance with paragraph 11(c). I accept that it would be disruptive to move those children who may already be settled in schools elsewhere. But, in the longer term, it would be beneficial to those children to have a settled home life. This would make it less likely that they would have to move schools at short notice in the future.
 29. Paragraph 11(d) recognises that a settled base can reduce the need for long-distance travel and environmental damage from unauthorised encampment. I heard that the families travel around the Midlands and elsewhere to find work and there is no suggestion that this would change as a result of having a settled base on the appeal site. Accordingly, there is no evidence that such a benefit can be claimed in this case. Nevertheless, the provision of a settled base would be likely to reduce the potential for unauthorised encampment as, other than the appellant, none of the proposed occupants currently have an authorised base on which to settle.
 30. Having regard to the remainder of paragraph 11, matters raised in sub-section (e) impact on health and well-being, (f) impact on infrastructure² and services, (g) flooding, and (h) living and working in the same location, are not relevant in this appeal and do not therefore need to be considered further here.
 31. I note the proposals to create a Community Hub possibly at Warrant Road nearby. The Residents' Action Group argues that this would be a more sustainable location for further gypsy site provision. This is being proposed through the SAMdev process and limited weight can therefore be afforded to it at this stage in the process. In any case, there are no current proposals for

² The impact on the living conditions of nearby residents and on highway safety do not fall to be considered under sub-sections (e) and (f). These are considered separately below.

- sites to be allocated in such a location. The presence or otherwise of a Community Hub here would not therefore affect the considerations in this case.
32. In summary, when considered in the round having regard to PPTS 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 development can therefore be considered to be sustainable development. The proximity of the site to facilities and services is not therefore a matter which weighs against the development having regard to local and national planning policy.
33. One further aspect to be taken into account in the assessment of the suitability of the site's location is the size of the proposed development having regard to the size of the settled population. Policy C and paragraph 23 of PPTS states that, when assessing the suitability of sites within rural or semi-rural settings, regard should be had to their scale and impact on the nearest settled community.
34. Neighbouring residents have indicated that there are currently 11 people living in the existing four residential properties close to the site³. It is likely that the number of people living on the appeal site would be around 24. This is because there would be a number of children living on the site. Therefore, it is more appropriate to consider the number of households that would be created. The provision of four pitches would be the equivalent number of households to those living in the existing four residential properties nearby. In addition, there is no specified distance in which to consider 'the nearest settled community'. The settled community surrounding the appeal site is scattered. There is a concentration of properties along Rosehill Road, but there are numerous clusters of development in the vicinity of the site. Each of these properties could be described as being part of the wider community which would be served by community facilities such as the school at the south of Rosehill Road, the shop along the A41 to the west, or the nearest medical facilities in Market Drayton or Hodnet. Whichever basis is taken for the assessment of the nearest settled community, the proposed development would not tip the balance of development in favour of housing for the gypsy population. It would therefore respect the scale of the nearest settled community and would not dominate it. Neither is there any evidence that it would place undue pressure on local infrastructure.
35. I note the evidence relating to the number of gypsy sites within a 15 mile radius of the appeal site. Such a radius would cover a wide area and the number of gypsy sites within it is not surprising given the high level of need in the Council's administrative boundary, as addressed below. Furthermore, such an area would encompass a very large number of dwellings for the settled population as it covers many villages and larger towns. It cannot be said that the number of gypsy sites within that area would be out of scale having regard to the size of the settled population.
36. For the above reasons, I consider that the location of the site would be acceptable for the proposed development having regard to policies relating to exception sites for affordable, local needs accommodation and matters relating to sustainability.

³ 52 people in 17 properties taking in a wider area.

Character and appearance

37. The appeal site adjoins the A41, a short distance to the east of the small settlement known as Rosehill. The character of the surrounding area is that of a mixture of open fields, crossed with hedgerows and interspersed with small clusters of development which is residential, agricultural and commercial in nature. The appeal site adjoins an existing cluster of development. To its west is an existing two storey dwelling. To the south west are agricultural buildings and associated hardstanding belonging to the appellant and I understand that one of these buildings had planning permission to be converted to a live / work unit. Part of the field to the west of these agricultural buildings is used as a touring caravan park. Immediately opposite the site, on the other side of the A41, lie two dwellings, one two-storey and one bungalow, and a number of poly-tunnels to the rear.⁴ An additional dwelling at Old Abbey Farm lies further to the north.
38. According to the Council, the site lies within an area identified as 'Principal Settled Farmlands' and close to the 'Enclosed Lowland Heaths' in *The Shropshire Landscape Typology* document (2006). The former category identifies the characteristics of the area as being defined by a clustered settlement pattern of hamlets and smaller villages and a medium to high density dispersal of farmsteads and wayside cottages. These combine with the small, sub-regular fields to create medium scale landscapes with predominantly filtered views. The 'Enclosed Lowland Heaths' have a gently rolling character and medium to large scale agricultural landscapes. Again, clusters of cottages with associated blocks of smallholdings are identified as being common. The Council state that the document gives a picture of the characteristics of the area but that little weight should be given to it as a material consideration in this case. Nevertheless, the assessment of the character of the area set out in the landscape document broadly accords with my assessment above.
39. The appeal development, comprising four mobile homes, four utility buildings, four touring caravans and hardstanding and fencing in connection with the residential use of the site, would add further properties to the existing cluster of development immediately surrounding the site. It would not impact on the medium scale landscape identified in the landscape document, and filtered views of surrounding fields and existing dwellings would still be available through the development. Although the Council state that proposed landscaping along the frontage of the site would be alien, roadside hedges and trees are a familiar sight in the area. Supplementing the existing hedge would be unlikely to appear out of character with the surroundings, providing that care is exercised regarding the species to be planted. The proposal would not therefore appear out of character with the surrounding area.
40. Publicly accessible views of the proposed development would be gained from the A41. In these views, the development on the site would be softened and filtered by existing hedges along the road boundary. Whilst these will be less effective in the winter, they will still provide a reasonable level of screening. Additional planting is proposed along the frontage of the site to further soften the views of the development. More open views would be gained of the mobile homes and utility buildings, on Plots 1 and 2 in particular, through the access to the site. These views could also be softened by appropriate planting along

⁴ Whilst there is hardstanding between the two dwellings, I saw that this is not as extensive as that indicated on the appellant's plans.

the edge of the driveway which could be required by condition. The site is bounded on its eastern edge by an evergreen hedge which screens views from the public footpath to the east⁵ to some extent, although the upper parts of the mobile homes and utility buildings would be visible over the top of that hedge. Proposed planting to the south of the site would soften and filter any public views across the open field to the south.

41. The proposed development would be set within a spacious site layout. The Council confirmed that they had no concerns regarding the design or layout of the site. The development would add to the existing built development in the existing cluster of buildings. It would reduce the currently open nature of the appeal site; turning it from an open field into one which would contain structures, hardstanding, vehicle parking and ancillary domestic paraphernalia. In this respect it would increase the urbanisation of the area. On site lighting would exacerbate this harm, although this could be minimised by the imposition of a suitable condition. For these reasons, I consider that the proposal would cause harm to the appearance of the surrounding area. This would be contrary to policies CS6 and CS17 in so far as those policies relate to the protection of the area.
42. However, these policies also refer to the need for development to enhance the natural environment. Paragraph 24 (b) of PPTS states that weight should be attached to whether a site is well planned or soft landscaped in such a way as to positively enhance the environment and increase its openness. The Framework sets out the requirement to seek positive improvements in the quality of the natural environment (paragraph 9) and one of the core planning principles, at paragraph 17, is to recognise the intrinsic character and beauty of the countryside. At paragraph 109 it states that the planning system should contribute to and enhance the natural and local environment by protecting and enhancing valued landscapes (amongst other things). However, it states, at paragraph 113, that distinctions should be made between the hierarchy of international, national and locally designated sites. Protection should be commensurate with the status of the area.
43. The proposed development cannot be said to 'enhance' the area and in this respect, it would conflict with policies CS6 and CS17. However, PPTS and the Framework do not require that any development should enhance any area. They express these considerations in terms of the weight to be given to them in the overall balance of factors. Thus, whilst weight in favour of the development could result from any proposals to enhance the environment, the lack of such enhancement should not necessarily weigh against a proposal.
44. *The Shropshire Landscape Typology* document identifies the general characteristics of a wide area, but it does not attempt to distinguish between the value of specific areas. Nor does the site lie within an area which has any local, national or international designation identified within the Core Strategy. Accordingly, it is not part of any recognised 'valued' landscape which, in accordance with the Framework, development should seek to enhance. I have no doubt that local residents value the landscape of the area and would prefer to see the existing open field than the proposed development. But, the interpretation of whether a landscape is 'valued' turns on more than its value to individuals or groups of people.

⁵ I heard that this footpath is not currently accessible, although it has been assumed that public access is likely to be secured in the future.

45. Accordingly, I place greater weight on the guidance in the Framework rather than policies CS6 and CS17 with regard to the assessment of impact on the landscape of the area. As set out above, the development would not harm the character of that landscape, but it would harm its appearance. This would conflict with the aims of policies CS6 and CS17, in so far as they require the protection of the surrounding environment, and with the Framework as set out above.

Living conditions

46. Nearby residents raise concerns that the proposal would harm their living conditions due to noise and disturbance from the site occupants and glare from vehicle headlights. The closest residential property is the existing dwelling to the immediate west of the access. The proposed development would share the access with that property and the nearest mobile home on Plot 1 would be some 25 metres from the side of that existing dwelling. Views into the site could be gained from the first floor side and rear windows on that property. The other residential properties are located on the opposite side of the A41 and are themselves set back from the highway behind modest front gardens. Views into the site would also be possible from the first floor windows of the two storey dwelling opposite.

47. The comings and goings associated with four residential units on the site would undoubtedly increase the activity in the area. Additional noise would come from children playing on the site and any outdoor socialising which may take place. In addition, the existing access runs alongside the side and front garden to the adjoining property and the proposal would result in an increase of vehicle movements along that shared access. However, the site, and the nearby properties, lies adjacent to the busy A41 and the noise of traffic on that road is very noticeable. This is not therefore a quiet countryside location where the additional noise created by further residential occupation would be very noticeable. I appreciate that during the evening and night-time the traffic (and therefore the noise level) is likely to die down, however, the activity associated with residential uses also tends to be less during these hours. Some outdoor socialising may take place and, in a location such as this which in the absence of road traffic would be otherwise quiet during the evening, this would be likely to be a noticeable change for nearby residents. However, it is not a foregone conclusion that such outdoor socialising would be a significant and regular feature of the occupation of the site. This is likely to be a seasonal factor. As the proposed pitches would not be unduly close to existing residential properties, any harm caused by outdoor socialising would be likely to be modest.

48. Turning to the impact of glare from vehicle headlights; vehicles exiting the site would face the living room window of the bungalow opposite the access road to the site⁶. During the hours of darkness, glare from vehicle headlights would be likely to result in some disturbance to the occupier of the bungalow. However, as the proposal is only for four residential units, the number of vehicles exiting the site during the hours of darkness would not be significant. Furthermore, there is a limited period of the year during which headlights are necessary during the early evening or early morning periods. During the summer months, only night-time movements would be likely to cause such disturbance

⁶ The bedroom window would be screened by existing vegetation within the front garden of the bungalow.

and the number of these movements would be even less. In addition, I noted that there is a recently planted hedge along the front boundary of the bungalow opposite the site. Whilst this will take some time to mature, in time, it will screen the exit to the site and minimise the impact of glare from headlights.

49. The appellant stated that a close boarded fence could be erected at the end of the internal access road in order to avoid any possibility of headlights shining across the road towards the front of the two-storey dwelling. However, there are currently two hedges between the proposed internal access road and that dwelling (on the frontage of the site and on the frontage of the dwelling). Supplementary planting is also proposed behind the hedge on the site boundary. Any headlight glare would only be glimpsed through those hedges and it would be unlikely to cause harm that would require mitigation by the erection of a fence.
50. In summary therefore, I conclude that noise from the proposed residential occupation may be noticeable at times, as would glare from headlights into the living room window of the bungalow opposite. These factors would cause some harm to the living conditions of nearby occupiers. Policy CS6 states that development should safeguard residential and local amenity and this is in line with the guidance in the Framework to seek to secure a good standard of amenity for existing occupants. The proposal would conflict with these provisions.

Highway safety

51. One of the reasons for refusing the planning application related to the lack of adequate visibility from the access road. The Council subsequently indicated that they were satisfied that this matter could be resolved and a Statement of Common Ground (SCG) between the Council and the appellant setting out agreement on this matter was submitted to the inquiry. However, local residents remain concerned about this aspect of the proposal.
52. The required sight lines for the proposed development would be 215 metres in both directions when measured from a point 2.4 metres into the access road. At present vegetation within the visibility splay to the east of the access restricts visibility in this direction to below this level. However, as this vegetation lies within the highway verge, the Council has powers to remove or require the removal of this in order to prevent the obstruction of visibility. The Council acknowledges its powers and responsibilities in this regard in the SCG.
53. The Council state that visibility splays to the west are acceptable following the removal of a telegraph pole that was within the splay. However, at the inquiry the appellant indicated that this would require some cutting back of the hedge on the boundary of the adjoining property, where it adjoins the access road. The occupier of that property objects to this work being carried out. Nevertheless, as the hedge projects into the highway verge, the Council can require this to be carried out in any case in order to ensure adequate visibility for the use of the existing access.
54. I note that there have been a number of accidents in the vicinity of the site in the past. I can therefore understand the local residents' concern that additional use of the existing access, particularly by slow moving vehicles, would increase this risk. However, that does not automatically follow and an

assessment needs to be made regarding the circumstances of those accidents, their causes and contributory factors. The evidence that I have relating to the accidents is limited. Local residents included information from a source known as 'crashmap' but this only indicates where accidents occurred and their severity and gives no additional information about those incidents. Many of the accidents occurred some considerable distance to the west of the site, beyond Rosehill Road. These do not therefore indicate that there are any inherent difficulties on the stretch of road close to the appeal site. I note that there has been one fatal accident within the visibility splay to the west of the site since 2005. Mr Fleet, representing the Residents' Action Group, stated that in that case one of the vehicles had been travelling on the wrong side of the road. It is likely therefore that this accident was the result of driver error. That accident does not therefore indicate that additional use of the access would necessarily cause highway safety problems.

55. The submitted information indicates that there was one accident close to the appeal site access, classified as slight in severity. Again, I have no further details of this accident, but it can be assumed that at the time of that accident the sightlines were sub-standard, at least in the easterly direction, as they are now. The provision of the required visibility splays would, as far as possible, ensure that the use of the access for the additional traffic now proposed would not cause highway safety problems. It is also reasonable to assume that the Council will have been aware of the accidents which had occurred in the vicinity of the site when they decided not to defend this reason for refusal. It is normal for highway authorities to check such information and if they had had residual concerns, I would have expected them to have been raised.
56. I note that there was an improvement scheme planned for the A41 in the vicinity of the site, but that this did not go ahead. The Environmental Statement⁷ indicated that the existing road at Rosehill 'does not adequately meet the needs of traffic, both present and future, nor pedestrians or cyclists'. Reference was made to a total of seven injury accidents having occurred between 1987 and 1991. I have no doubt that these improvement works, had they gone ahead, would have eased traffic flow and improved safety along the wider stretch of road to which it referred. However, the absence of implementation of that scheme does not mean that development proposals along the road would be unacceptable. If the access and visibility requirements are acceptable, or can be made so as in this case, then no harm would be caused despite the absence of an improvement scheme.
57. Concerns were also raised that the highway narrows, and the footpath disappears, to the west of the site as it crosses a bridge. However, this is some considerable distance from the site and it is unlikely that anyone from the site would be walking that distance in order to gain access to the shop further to the west. Furthermore, this situation is no different to that which exists for existing residents of Rosehill should they wish to walk to the shop. This would not therefore pose any significant highway safety concern for occupants of the appeal site or other road users as a result of the development.
58. I note that other developments along the A41 have been refused planning permission because of the impact on highway safety. I have no evidence relating to the achievable visibility at either of those proposed accesses, nor do

⁷ Non-technical Summary provided by Rosehill Residents' Action Group

- I have details of the likely levels of traffic that the proposals would have generated. However, the proposed developments were for a haul road to a quarry and a builder's merchants. These would have been likely to generate a different level and type of traffic to the residential use proposed in this appeal.
59. I note that the occupier of Old Abbey Farm closed off their access to the A41. Again I have no details of the visibility splays here, but I do note that their original access was on the opposite side of the A41 to the appeal site and in a different location having regard to the bends in the road.
60. Bringing together the above matters, the evidence demonstrates that acceptable visibility can be secured. However, as it currently stands, it is agreed that the visibility is below the required level and, given the busy nature of the road and the speed of traffic that I observed, it would not be appropriate to allow the increased use of the access unless the visibility splays are first provided. I acknowledge that the Council have a duty in respect of the provision and maintenance of the visibility splays for the existing access. However, their duty in this regard has not been exercised to date and unless the required visibility splays are provided, the intensification of the use of the existing sub-standard access would cause harm to highway safety.
61. The Council suggested a condition to ensure the provision and maintenance of the required visibility splays. This was included within the agreed SCG. Although the necessary work, and the land on which it is to be carried out, is outside the control of the appellant, there is a reasonable prospect that the work will be carried out. The mechanism for ensuring that this is done is a matter between the Council and the appellant separately from this planning decision. But, as it is an existing access to the appellant's property and the Council have a statutory duty in regard to the visibility splay, the Council cannot reasonably refuse to carry out the work. Accordingly, it is appropriate for a 'Grampian' condition to be imposed to ensure that the development does not take place until the visibility splay is provided. Subsequent maintenance of the splay will however be the responsibility of the Council.
62. On the basis of the above, the proposed development would not harm highway safety. It would not therefore conflict with the Framework which requires safe and suitable access to the development. Other than policy CS12, no specific Core Strategy policies relating to highway safety were drawn to my attention.

Other considerations in favour of the development

Need for gypsy sites

63. I have concluded that policy CS12 is not up to date. Nevertheless, the explanation to that policy states that the Council will aim to facilitate provision for 79 residential pitches through the Core Strategy up to 2017. This figure derives from the Gypsy and Traveller Accommodation Assessment (GTAA) 2008. At the inquiry, the Council and appellant agreed that the updated figure in relation to outstanding need for pitches to 2017 is 47. There is no up to date, robust assessment of need and therefore no indication of the need for sites beyond 2017. The Council indicate that there is no timescale for updating the 2008 needs assessment.
64. The Council's Site Allocations and Development Management Plan (SAMdev) is not intending to allocate sites for gypsies and travellers. This is being dealt

with through a separate Plan. However, there is no timetable for the development of such a Plan and the Plan is not identified in the Council's adopted Local Development Scheme. In addition, the Council's witness indicated that work has been put on hold in order that they may progress the SAMdev. Accordingly, the Council accepted that there is no 5-year supply of deliverable sites for gypsies and travellers, which conflicts with paragraph 9 of PPTS.⁸ Furthermore, the Council are a considerable way off the production of any Plan which would attempt to address the situation. Thus, there is no mechanism in place to meet the identified need through planned provision of sites. Nor is there even the prospect of a mechanism being put in place within a reasonable timeframe.

65. I note that the Inspector in the Warrant Road appeal (APP/L3245/A/12/2186880) concluded that granting a permanent planning permission would be premature and would undermine the plan preparation process. That hearing was held in March 2013 and at that time the Council indicated that work would commence on the gypsy and traveller Plan in late 2013. At the time of the inquiry into this appeal, in October 2013, the Council had progressed no further in this regard. Government guidance⁹ indicates that it will only be justifiable to refuse planning permission on the grounds of prematurity either when the development is substantial or would have a significant cumulative effect, or where the emerging plan is at an advanced stage. Clearly, neither of these circumstances applies in this case.
66. I note that a previous gypsy site at Warrant Road is in the process of being converted to a general residential caravan site. I understand that many of the gypsies have therefore moved off it. However, this does not demonstrate that there is no need for a site in this area. All this serves to demonstrate is that that site is no longer available for gypsy use.
67. As stated earlier in this decision, paragraph 49 of the Framework indicates that the lack of a 5-year supply of deliverable sites means that the presumption in favour of sustainable development, set out in paragraph 14, is engaged. In addition, paragraph 25 of PPTS states that the lack of a 5-year supply of deliverable sites should be a significant material consideration for the grant of a temporary planning permission. However, there is no reason why this should not also be a material consideration for the granting of a permanent planning permission and I am aware that the Secretary of State has taken this view in recent planning decisions relating to gypsy sites elsewhere.¹⁰
68. The current substantial unmet need for gypsy sites, the lack of a 5-year supply of specific deliverable sites and the ongoing failure of the Council to meet the identified need through site allocations all provide significant weight in favour of the appeal.

Personal Circumstances

69. The appeal site is owned by the appellant: Paul Brooks. He currently lives in a mobile home on land adjoining the site with his wife and three children.¹¹ He indicated that, in the longer term, the proposed pitches are intended for his

⁸ The Council agreed that the 5 year supply would amount to the current level of need to 2017 of 47 pitches plus one further year calculated on the basis of a 3% growth rate.

⁹ The Planning System: General Principles

¹⁰ See appellant's appendices

¹¹ That mobile home is not part of the appeal proposal.

daughters to occupy when they are of an age to need a pitch of their own. In the meantime, the pitches would be rented out to his brothers and to one other family in need of a pitch.¹²

70. I heard that none of the appellant's brothers currently have settled bases on which to live. They travel generally around the West Midlands Area but also further afield. Together with their families, they stay wherever they are able, in lay-bys, supermarket car parks, wasteland etc. There is no suggestion from any party that the proposed occupiers' needs can be met by any other alternative site.
71. The proposal would provide a settled base to enable the families to live together as a group where they would be able to provide support to one another. This is part of the gypsy way of life which PPTS seeks to facilitate. PPTS also recognises that settled accommodation can provide benefits in terms of access to health, welfare and employment. I have noted above the educational needs of those intended occupiers of the site. I heard that some of the proposed occupiers have health problems, although these are not so severe that they provide weight in favour of the appeal in themselves. In general terms however, access to continuous healthcare for the site occupants would be a benefit of the proposal. Whilst it is not necessary for these needs to be met from this particular site, there is no suggestion that there are any alternative sites available to meet those needs. These general benefits provide further weight in favour of the appeal and would apply to any members of the gypsy community who were to live on the site in the future.

Human rights, the rights of children and equality considerations

72. 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 rights¹³ of the family as a whole must be taken into account in the overall planning balance. The best interests of the children must be a primary consideration in the determination of this appeal.
73. Dismissing the appeal will result in the appellant's three brothers and their families continuing their itinerant lifestyles. This would represent an interference with their home and family life and would engage the operation of Article 8. In this case, it would not result in the direct loss of any of the proposed occupiers' homes. However, the judgement in *Rafferty & Jones v SSCLG & North Somerset CoA EWCA Civ 809* [2009] held that Article 8 rights are capable of being infringed even if the caravans are not already on the land. The interference would be in accordance with the law and would be necessary in a democratic society as development management is recognised as an important function of Government. However, it is necessary to consider whether such interference would be proportionate in the circumstances of this case.
74. The appellant and each of his brothers gave evidence to the inquiry. The best interests of the children generally align with those of the adults who represented them. They wish to live on a settled site where they can have a stable home-life and the children can gain access to continuous education and healthcare. This applies even to those children who have to move from

¹² No details of this other family were available to the Inquiry.

¹³ Article 8 of the European Convention on Human Rights.

existing schools. In the longer term, the benefits of having a settled base, from which they will not be required to move at short notice, would far outweigh any short-term disruption which would occur from them moving schools.

75. Against this must be balanced the public and community interests. In the balancing of these interests, *ZH (Tanzania) v SoS Home Department [2001] UKSC 4* established that the best interests of the children are a primary consideration and must be considered first. This does not mean that the best interest of the children is a factor of limitless importance in the sense that it will prevail over all other considerations. Nonetheless, it is a factor that must rank higher than any other.
76. I have set out above my conclusions that the proposal would cause harm to the appearance of the surrounding area and to the living conditions of nearby occupiers. However, the best interests of the children, which would be to allow them to settle on this site, carry very great weight which outranks the harm that would be caused in this case.
77. Having regard to the balance of considerations outlined above and the effect of the proposal upon the public interest, I conclude that dismissal of the appeal would have a disproportionate effect upon the rights of those families without a permanent base under Article 8 of the European Convention on Human Rights.
78. The Equality Act 2010 places a Single Equality Duty on decision makers in respect of planning permission. The proposed occupants are Romany Gypsies and there is a duty to have due regard to the need to eliminate unlawful discrimination and to promote equality of opportunity and good relations between different racial groups. The requirements of this Single Equality Duty have been followed in considering this appeal. Dismissal of the appeal would perpetuate the disadvantage suffered by the proposed occupants due to the absence of suitable, available alternative sites to accommodate them. This would reduce equality of opportunity and the fostering of good relations.

Other considerations

79. The appellant submitted an Ecological Assessment in response to the Council's reason for refusal 4. This concluded that the site itself provided a low value habitat and there would be no significant ecological issues associated with the development. The report recommended control over lighting in order to protect any potential bat flight corridors. This can be controlled by a suitable condition. Other recommendations with regard to landscaping can also be controlled through the landscaping condition. The report suggested that a hedge could be planted outside the site, on land to the south within the appellant's ownership. This does not form part of the proposals in the appeal before me. The Council suggested that a condition be imposed to ensure the implementation of the recommendations in this report. However, whilst this hedge would undoubtedly have been a benefit of the scheme, it is not necessary in order to make the development acceptable. Accordingly, a condition which required the implementation of this part of the report's recommendations would not be in accordance with the tests in Circular 11/95 *The Use of Conditions in Planning Permissions*.
80. The provision of the visibility splay to the east of the site access requires the removal of shrubbery surrounding, and to the east of, an existing tree within

the highway verge. Local residents raise concern regarding the loss of ecological habitat which would result from the removal of this shrubbery. I acknowledge that the shrubbery could be home to, and provide foraging and cover for, wildlife. The ecological survey did not cover this area of vegetation. However, given its location between a busy road and a large agricultural field, it is unlikely to be a particularly important habitat and there is no evidence to suggest that it provides home to any protected species. In addition, the Council could remove this vegetation in any case due to the presence of the existing access. Accordingly, the loss of this vegetation does not provide weight against the proposal.

81. I note concerns about future expansion of the site. However, the appeal before me must be determined in accordance with the facts in this case. Any further applications will be assessed having regard to the circumstances at that time.
82. I heard that the appellant has a right of access along the driveway into the site. Any issue regarding ownership of this land is a matter between the appellant and adjoining land-owner.

The planning balance and overall conclusion

83. The proposal must be considered in light of the presumption in favour of sustainable development. I have concluded that the development can be considered to be sustainable development. The Framework requires that such development proposals should be approved unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits.
84. The proposal would not harm the character of the surrounding area but it would harm its appearance. In addition it would cause some harm to the living conditions of nearby occupiers. In these respects the proposal would conflict with Core Strategy policies CS6 and CS17 and advice in the Framework.
85. On the other hand, the substantial unmet need for gypsy sites, the lack of a 5-year supply of specific deliverable sites and the ongoing failure of the Council to meet that need through the development plan process all provide significant weight in favour of the proposal. These factors alone are sufficient to outweigh the harm in this case.
86. Although not determinative in this appeal, additional weight in favour (for 3 pitches) derives from the personal circumstances of the appellant's brothers, the consideration of the best interests of the children and the consideration of Article 8 rights.
87. For the reasons given above, I conclude that the adverse impacts of the proposal are not sufficient to outweigh the benefits and the appeal should be allowed.

Conditions

88. The standard three year period within which the development is to commence will be imposed. Development is to be carried out in accordance with the approved plans in the interests of proper planning and for the avoidance of doubt. Occupation of the site is to be restricted to gypsies and travellers, in accordance with the definition given in PPTS, as the need for such sites has been held to outweigh other considerations. The external materials to be used in the construction of the utility/dayrooms will need to be agreed and used in

the development to ensure that the buildings are visually acceptable. In order to ensure that the use of the access does not cause harm to highway safety, no development shall begin until the visibility splays of 2.4 metres x 215 metres at the site access junction have been provided.

89. Conditions are imposed to control the number of caravans and mobile homes on the site and to ensure the submission of details of hard and soft landscaping, in order to limit the visual impact of the proposal. The latter includes a specification to retain the existing hedge along the frontage of the site at a height of 2.5 metres, or as otherwise agreed. A maintenance schedule will also be required. Commercial activities and the parking of larger vehicles will not be permitted in order to safeguard the character and appearance of the area and the living conditions of nearby occupiers. However, it is not necessary to control the number of smaller vehicles on the site. Details are required of the proposed foul and surface water drainage schemes in order to ensure that these are acceptable, as limited details are provided. A condition is imposed to ensure that details of lighting are agreed. This will protect potential bat flight corridors, as set out in the Ecological Assessment, and will also ensure that the impact on the appearance of the area is minimised.
90. It is not necessary to impose a condition requiring that there be no change to the position of the mobile homes as there is a condition that the development complies with the submitted plans. A condition restricting the development to a temporary period is not necessary as the matters in favour of the development outweigh the harm such that a permanent permission can be granted. Neither is it necessary to impose a condition restricting it to named occupiers as the personal circumstances of the occupiers have not been determining factors in this appeal. A condition to secure the recommendations in the Ecological Assessment is not necessary or reasonable, as set out above.
91. I have re-ordered and/or redrafted some of the suggested conditions for improved clarity and precision.

Susan Heywood

INSPECTOR

Annex 1 – Schedule of Conditions

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 11_412_001; 11_412_003; 11_429_005.
- 3) The site shall not be occupied by any persons other than gypsies and travellers as defined in Annex 1 of *Planning policy for traveller sites*.
- 4) No development shall take place until samples of the materials to be used in the construction of the external surfaces of the utility buildings / dayrooms hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 5) No development shall begin until the visibility splays of 2.4 metres x 215 metres have been provided at the site access junction.
- 6) No more than 8 caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 (of which no more than 4 shall be static caravans) shall be stationed on the site at any time.
- 7) No development shall take place until full details of both hard and soft landscape works (hereafter referred to as the landscaping scheme) have been submitted to and approved in writing by the local planning authority. These details shall include tree and shrub planting including species, number, sizes and positions; proposed finished levels or contours; hard surfacing materials; details of existing trees and hedgerows to be retained together with measures for their protection during the course of development. The landscaping scheme shall include a specification to retain the existing hedges around the site at a minimum height of 2.5 metres, or such other height as may be agreed. The landscaping scheme shall also include a timetable for implementation. The landscaping scheme shall be carried out in accordance with the approved details and timetable.
- 8) At the same time as the landscaping scheme required by condition 7 above is submitted to the local planning authority there shall be submitted a schedule of maintenance for a period of five years of the proposed planting commencing at the completion of the final phase of implementation as required by that condition; the schedule to make provision for the replacement, in the same position, of any tree, hedge or shrub that is removed, uprooted or destroyed or dies or, in the opinion of the local planning authority, becomes seriously damaged or defective, with another of the same species and size as that originally planted. The maintenance shall be carried out in accordance with the approved schedule. The existing hedges around the site shall be retained at the agreed minimum height for the lifetime of the development.

- 9) No external lighting shall be installed on the site unless details of the position, height and type of lights have been submitted to and approved in writing by the local planning authority. The external lighting shall be installed and operated in accordance with the approved scheme and no other lighting shall be installed or operated.
- 10) No development shall take place before a scheme for the disposal of foul and surface water drainage has been submitted to and approved in writing by the local planning authority. The scheme shall be implemented as approved prior to the occupation of the site.
- 11) No vehicle over 3.5 tonnes shall be stationed, parked or stored on this site.
- 12) No commercial activities shall take place on the land, including the storage of materials.

End of conditions

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Jack Smyth	Barrister instructed by: Miranda Garrard, Solicitor, Shropshire Council
He called	Karen Townend Principal Planning Officer (Development Management), Shropshire Council

FOR THE APPELLANT:

Matthew Green	Green Planning Solutions
Paul Brooks	Appellant
Luke Brooks	Proposed occupier
Bill Brooks	Proposed occupier
Lance Brooks	Proposed occupier

INTERESTED PERSONS:

Christine Williams	Christal Planning Services Limited
She called	Mr Quinn, Rosehill Residents' Action Group Mr Dixon, Rosehill Residents' Action Group Mr Fleet, Rosehill Residents' Action Group

DOCUMENTS

- 1 Opening statement - Rosehill Residents' Action Group
- 2 Statement of Common Ground between appellant and Shropshire Council
- 3 Appeal decision APP/L3245/A/12/2168380, submitted by Council
- 4 Appeal & Costs decisions APP/P1940/C/11/2164949, submitted by appellant
- 5 Footpath map, submitted by appellant
- 6 Updated assessment of need for gypsy and traveller pitches, submitted by Council
- 7 Witness Statements submitted by appellant: Lance Brooks, Bill Brooks, Luke Brooks and Paul Brooks
- 8 E-mail from Mr Plews, dated 3 October 2013
- 9 E-mail from Mr Peirson, dated 8 October 2013
- 10 Appellant's response to documents 8 & 9
- 11 Closing submissions on behalf of Council
- 12 Closing statement on behalf of Rosehill Residents' Action Group
- 13 Summary closing submissions on behalf of appellant
- 14 Costs application on behalf of appellant and supporting documents
- 15 Response to costs application on behalf of Council