
Appeal Decisions

Inquiry held on 5 and 6 April 2016

Site visit made on 6 April 2016

by Diane Lewis BA(Hons) MCD MA LLM MRTPI

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

Decision date: 11 August 2016

Land at The Oaks, Meadow Road, Willingham, Cambridgeshire CB24 5JL

Appeal A Ref: APP/W0530/X/14/3001710

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Mr and Mrs Tom Buckley against the decision of South Cambridgeshire District Council.
- The application Ref S/1476/13/LD, dated 4 July 2013, was refused by notice dated 12 March 2014.
- The application was made under section 191(1) of the Town and Country Planning Act 1990 as amended.
- The use / development for which a certificate of lawful use or development is sought, as stated on the application form, is use of building as a dwelling.

Summary of Decision: The appeal is allowed and a certificate of lawful use or development is issued in the terms set out below in the Decision.

Appeal B Ref: APP/W0530/W/14/3001030

- 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 Thomas Buckley against the decision of South Cambridgeshire District Council.
- The application Ref S/1451/14/FL, dated 16 June 2014, was refused by notice dated 14 November 2014.
- The development proposed, as described on the application form, is change of use to Gypsy and Traveller residential [use], involving the siting of two caravans of which one would be a mobile home, together with associated hardstanding.
- An application for costs was made by Mr Thomas Buckley against South Cambridgeshire District Council. This application is the subject of a separate Decision.

Summary of Decision: The appeal is allowed and planning permission granted subject to conditions set out below in the Formal Decision.

Appeal C Ref: APP/W0530/W/15/3004411

- 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 Ms Phoebe Buckley against the decision of South Cambridgeshire District Council.
 - The application Ref S/1514/14/FL, dated 26 June 2014, was refused by notice dated 7 October 2014.
 - The development proposed is upgrading the existing equestrian development by the installation of a horse exerciser and a riding arena, together with the siting of a
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residential mobile home as a dwelling to support the rural based enterprise.

Summary of Decision: The appeal is allowed and planning permission granted subject to conditions set out below in the Formal Decision.

BACKGROUND

The Land

1. The Oaks, covering an area of some 2.2 hectares (ha), is on the north side of Meadow Road and is a rectangular parcel of land with a frontage of some 80 metres (m) and a depth of some 280 m. A track towards the western boundary provides vehicular access to the rear part of the land. Mr Thomas Buckley acquired The Oaks in 1999/2000. In 2012 land parcels on the northern half of the site were transferred into different separate ownerships.

Planning history

2. The planning history dates back to 1989 when The Oaks was included in a larger area of land granted planning permission for use as an equestrian centre. Further permissions were granted in 1994 and 2000 for stables, a barn, an arena and hardstanding. After Mr Buckley became the owner of The Oaks he erected a barn and stables on the site now the subject of Appeal C. Mr and Mrs Buckley lived in a part of the stables which was converted for residential use.
3. An enforcement notice was issued on 25 March 2003, affecting the whole of The Oaks and alleged the use of the land for siting caravans for residential occupation. The notice was upheld on appeal and after initial compliance with the requirements the land was reoccupied.
4. In December 2007 an injunction was secured affecting a substantial area to the east of Willingham, including The Oaks. In summary, the injunction prevented the use of the land for the siting of residential mobile homes or caravans or for residential use without an express grant of planning permission.
5. In September 2008 planning permission was granted for the siting of two gypsy mobile homes on The Oaks for a three year period. Conditions required only two caravans to be on site at any one time and restricted occupation to Tom and Susan Buckley and their resident dependants. A subsequent permission allowed the use to continue until 30 October 2012. An application to in effect remove the time limiting condition was subject to an appeal against non-determination. The appeal was dismissed (the 2013 appeal decision). In all applications 'the site' comprised the 2.2 ha of land known as The Oaks.
6. In addition, in March 2011 planning permission was refused for four pitches on land to the east of the access track. A later proposal for a long stay caravan site for two gypsy families also was refused and was upheld on appeal by a decision dated 30 October 2012. The appeal site was described by the inspector as comprising two adjoining plots located roughly mid-way along the field, alongside the access road.
7. The planning history shows that the Council has accepted development on the land. The main considerations to the fore in decision making included safeguarding the countryside character, the cumulative impact of traveller sites

on the services of Willingham and ensuring no prejudice to the allocation of land for traveller sites through the development plan process.

Appeal sites

8. Appeal A concerns an existing structure located in a fairly central position near to the southern boundary adjacent to Meadow Road. Appeal B concerns an area of land to the west of the track, which also extends a short distance eastwards along the frontage. On the land is a static caravan occupied as a home and a small shed. Appeal C covers the northernmost part of The Oaks, where there are stables, a barn and a residential caravan.

The inquiry

9. For the reasons set out in more detail below, the Council did not contest Appeals A and C at the inquiry. Therefore the oral evidence presented at the inquiry primarily focussed on Appeal B. In addition, to support his case on Appeal A, Mr Buckley gave oral evidence about the works carried out to provide and complete the structure.

APPEAL A

The development

10. The application was under section 191 for 'use of building as a dwelling'. The development was described on the appeal form as 'development of a building more than 4 years prior to 4 July 2013 and continuous residential use as a single dwelling since before May 2009'. The Council's decision notice in the First Schedule described the development as "Development and use at the site, for continuous residential occupation, as an independent dwelling, of a timber cabin structure described as a bungalow and asserted to comprise a building for a continuous period in excess of 4 years prior to the date of the application."
11. In relation to the use, the Council's initial assessment and the appellant's case were on the basis of a four year period of continuous residential use. Subsequently, relying on the *Welwyn Hatfield* Supreme Court judgement¹, the Council (in its proof of evidence) considered the use as a dwellinghouse would not become lawful until after the passage of 10 years continuous residential use. On 10 January 2016 a request was made by the appellant to amend the description of the certificate application so that it only refers to the construction of a building and not its use. This reflected an acceptance that (i) the structure has always been used as a dwelling and no change of use occurred, and (ii) the relevant time period to achieve a lawful residential use in such circumstances is ten years and not four years. At the inquiry the appellant confirmed that he wished to revise the description to "Development of a building more than 4 years prior to 4 July 2013". With reference to Procedural Guidance, an LDC is now being sought for only part of the development described in the original application².
12. The Council confirmed that an amendment of the description of the development so as to refer solely to the construction of the chalet building in

¹ *Welwyn Hatfield Borough Council v Secretary of State for Communities and Local Government* [2011] UKSC 15

² Planning Inspectorate Procedural Guide – Certificate of lawful use or development appeals – England March 2016 at paragraph 1.9.4

the location shown on the relevant application plan would be acceptable and would allow the issue of a certificate on the ground that the chalet had been substantially completed more than four years before the application was submitted³. The Council also accepted that having regard to its size, permanence and degree of attachment to the land the chalet is a building for the purposes of the 1990 Act. In fact a conclusion to this effect was stated in the reasoning of the decision notice refusing the LDC.

13. If it is thought that amending an LDC application will overcome the local planning authority's reason for refusal of a certificate then it is good practice to make a fresh LDC application⁴. In this instance the appeal was in progress by the time the period of immunity for the residential use was agreed between the parties. Therefore I will proceed on the basis that the appellant now accepts that the Council's refusal was well founded in part, namely in respect of the use of the building as a dwelling.
14. Consequently, in view of the common ground now established between the appellant and the Council, the main issues I have to be satisfied on are: is the structure a building and if so, was it substantially completed on or before 4 July 2009.

Reasons

The structure

15. The meaning of development includes the carrying out of building operations in, on, over or under land (s55(1))⁵. For the purposes of the 1990 Act building operations include demolition, rebuilding, structural alterations of or additions to buildings and other operations normally undertaken by a person carrying on business as a builder (s55(1A)). A building includes "any structure or erection, and any part of a building, as so defined..." (s336(1)).
16. In the evidence a lot of attention was given as to whether the structure is a caravan as statutorily defined, applying tests regarding size, construction and mobility. My approach is to ask first whether what has been done has resulted in the erection of a building. Case law has identified three primary factors relevant to this question: size, permanence and physical attachment. None of these factors is decisive and whether a structure constitutes a building is a matter of fact and degree.
17. The structure required construction on site and Mr Buckley explained that the materials came in kit form in 4 or 5 packs, which were fork lifted onto a large trailer for transport to the site. The dimensions of the structure are: 12.19 m x 6 m with an internal floor to ceiling height of 3.2 m and it is large enough to provide a reasonably sized living/dining room with a kitchen, two bedrooms and a bathroom.
18. The single storey structure has timber clad walls, a number of doors and windows and a shallow pitched tile clad roof with a generous eaves overhang. The appearance is of a domestic timber chalet that has an air of permanence, a

³ The time limit for taking enforcement action against the erection of a building is four years beginning with the date on which the operations were substantially completed (section 171B(1) of the 1990 Act as amended).

⁴ Planning Inspectorate Procedural Guide – Certificate of lawful use or development appeals – England March 2016 at paragraph 3.1

⁵ Unless otherwise stated the numbers in brackets refer to sections of the 1990 Act as amended.

characteristic that in part is derived from the means of construction and the physical attachment to the ground.

19. Mr Buckley described how the land was levelled, trenches were dug and covered with stone materials and a rubber seal provided to protect against damp. A square timber frame was laid on top of the base and attached to the ground by steel pins. The first pieces of the cabin were then bolted to the frame and the cabin built up from the bottom. The individual pieces of timber had grooves and were slotted together like pieces of lego. The windows were already made and slotted into the gaps. The roof was formed from timber sections and tiles. Internally, stud work and plasterboard were put up, a timber floor laid and a kitchen and bathroom installed. Mr Buckley was assisted by his friend Mr Wesson and also an electrician and a plumber were employed. The work to put the structure together took around 6 weeks.
20. The evidence of Mr Buckley is reasonably consistent with the information in the statutory declaration of Mr Wesson. Statements from Ms Phoebe Buckley, Jean Langford and Shirley Wilson refer to the assembling of parts and work extending over a number of weeks. The site inspection confirmed that the chalet is attached to the ground and that it is not of a sectional prefabricated type of construction. By reason of the means of its construction movement of the chalet would require it to be disassembled into its component parts. Mr Buckley described the building falling like a pack of cards if the pins were removed.
21. Having regard to size, permanence and physical attachment I conclude as a matter of fact and degree that the timber chalet is a building and development in the form of a building operation was carried out.

Substantial completion

22. Mr Buckley stated that he bought the chalet in February 2009. The assembly and other works took some 3 months to complete. This timescale is supported by the evidence from relatives, friends and Council officers, who all visited the site and confirmed occupation around spring 2009. Therefore on the balance of probability the structure was substantially completed before 4 July 2009. The time for taking enforcement action has expired and the operation is lawful (s191(2)(a)).

Conclusions

23. For the reasons given above I conclude, on the evidence now available, that:
 - the Council's refusal to grant a certificate of lawful use or development in respect of the use of a building as a dwelling was well founded;
 - the Council's refusal to grant a certificate of lawful use or development in respect of 'Development of a building more than 4 years prior to 4 July 2013' was not well-founded and the appeal should succeed in part. I will exercise accordingly the powers transferred to me under section 195(2) of the 1990 Act as amended.
24. Using the power under s191(4) I intend to make the wording of the description of the development more precise by specifically stating 'the carrying out of development by the erection of a building'.

APPEAL B

The development and main issues

25. In view of the planning history I raised various matters about the wording of the description of the development. After due consideration the appellant confirmed at the inquiry that the description should read "use of the land as a gypsy and traveller caravan site, involving the siting of two caravans, of which one would be a mobile home, together with associated landscaping".
26. The caravan site is to accommodate Rose and Thomas Humphrey and their two children. Following the 2012 and 2013 appeal decisions, advice was sought from a landscape architect on the siting of the mobile home. As a result the mobile home was proposed to be positioned end on within a narrow paddock area on the west side of the site. The location also was chosen with the young children in mind, being away from the road and the parking area. The touring caravan would continue to be sited east of the site entrance. In September 2015 the mobile home was relocated from the central area of The Oaks to the proposed position.
27. Thomas Humphrey travels looking for work associated with trees and gardening and is away from The Oaks for some 3 or 4 months a year. At the inquiry Rose Humphrey explained her family background and that before they had children she travelled with Thomas and helped with light labouring work. Now they travel as a family during the school holidays. In the future the likelihood is that their son will help his father when he leaves school and they have every intention of maintaining their travelling lifestyle.
28. With reference to Annex 1 of the Planning Policy for Traveller Sites (PPTS) I am satisfied that Rose and Thomas Humphrey have gypsy status for the purposes of applying planning policy. The Council formed a similar conclusion, as confirmed by the statement of common ground.
29. The proposal is a new chapter in the history of The Oaks, taking into account the change in ownership and occupation, the creation of a new planning unit by the reduced size of the caravan site and the confirmation that on adjacent land the chalet is a lawful building (not a caravan). Therefore the development at issue is a material change in the use of the land to a residential caravan site for occupation by a gypsy family.
30. Against this background the main issues are:
 - The effect of the development on the character and appearance of the surrounding area.
 - Whether the development would place an undue pressure on the local infrastructure, including community facilities.
 - The existing level of local provision and need for sites.
 - The availability of alternative accommodation for Thomas and Rose Humphrey and their family.
 - Other personal circumstances of the family, including the best interests of the children.

31. Human rights and equality issues are integral to my assessment. Of particular relevance is the Article 8 right to respect for private and family life and the home and the requirements arising out of the public sector equality duty.

Planning policy

32. Development plan. In refusing planning permission for the proposal the Council relied on policies applicable to all types of development in its Local Development Framework Development Control Policies Development Plan Document adopted in July 2007 (the DPD). Preparation of a Gypsy and Traveller Development Plan Document ceased in 2012. The only development plan policy concerned with the provision of traveller sites in the district is saved Policy CNF6 of the South Cambridgeshire Local Plan 2004. This policy, which confines gypsy site development to Chesterton Fen, is out of date.
33. As regards Government policy, the PPTS document published in August 2015 should be read in conjunction with the National Planning Policy Framework (the Framework).

Reasons

Character and appearance

34. The site is in a rural setting but it is not located in open countryside away from existing settlements because of its proximity to and the visual awareness of housing on the edge of Willingham. It is not in a type of location where PPTS says that new traveller site development should be very strictly controlled. The Council confirmed that within the district a traveller site is a use which needs to be located in the countryside and hence in principle would be acceptable within the terms of policy DP/7 of the DPD. In this case the effect on the local landscape is the critical consideration.
35. The Inspector in the 2013 appeal decision referred to the countryside east of Willingham being described by the Council as a fen edge landscape. He described The Oaks as a deep parcel of land extending into an open landscape on the north side of Meadow Road. He concluded that wherever the mobile homes were sited, "its permanent use as a gypsy site would result in the retention of urban features in this area of open countryside to the detriment of the fen edge landscape" and would represent "an encroachment into the rural landscape, which given the position and depth of the site, would cause serious harm."
36. The Council in its assessment of the current appeal proposal considered the open, rural fen edge description of the site remained accurate and despite the relocation of the caravan and proposed landscaping the encroachment would result in serious harm. A main concern of the Parish Council was the location of the caravan site in open countryside to the north of Meadow Road, where there currently are no traveller sites.
37. The District Design Guide Supplementary Planning Document places Willingham parish within the fen edge landscape character area, a mostly flat low lying landscape with open views. There is acknowledgement that scatterings of clumps of trees, shelterbelts and occasional hedgerows sometimes merge together to give the sense of a more densely treed horizon.

38. As a result of my site inspections I agree with the evidence of the appellant's landscape architect that the site is an area of countryside near to Willingham village characterised by a flat landscape of small fields (relative to their fenland context) separated by hedgerows with trees and ditches. There are areas of disturbance and some neglect, as seen on the land to the east of The Oaks. I found that on Meadow Road and Spong Drove views across the countryside are interrupted by boundary vegetation. Open panoramas, level horizons and large skies are not dominant. In views out from the site residential development north of Daniels Close is visible, whilst a group of traveller pitches immediately to the south of Meadow Road is prominent in views eastwards from Rockmill End.
39. A fundamental and distinguishing feature of the current site, in comparison to the previous proposals considered on appeal at The Oaks, is its small size (approximately 65m long by 10m west of the track) and its position within the larger 2 ha area. The site is a narrow, roughly L shaped parcel, largely contained by the access track and by boundary hedgerows. The southern end of the site would be retained as a paddock and new planting is proposed as mitigation in views from Meadow Road and the west. The mobile home and residential paraphernalia would be sited, as now, on the least visible part of the land. The hardstanding and touring caravan would be visually related to the vehicular entrance and access track on the road frontage and be well screened by the boundary hedge.
40. Referring to PPTS, I attach significant positive weight to the well planned site, which would incorporate a limited amount of hardstanding, rely on hedgerows as the main form of enclosure and soft landscaping to enhance the environment. The development on a relatively small narrow land parcel would be very different to the 'in depth' encroachment highlighted in previous decisions, where caravans and the associated domestic paraphernalia and residential curtilages were prominently sited and covered a much more extensive area east of the track.
41. There is a contrast between the appearance of the developed parcels of land to the south of Meadow Road and the more open land to the north. However, by reason of the size, position and layout of the site the change resulting from the proposal would not be unduly harmful to the open character of much of The Oaks. Furthermore, The Oaks is not devoid of lawful development. Circumstances have changed in that the timber chalet is a lawful building and there is the likelihood that the northern part of The Oaks will be developed as an equestrian enterprise, leading to some additional activity and facilities (see Appeal C).
42. With reference to the DPD, I conclude that the caravan site complies with policy DP/2(1) criteria (a) and (f) in that the development would preserve the character of the local area, enhance environmental assets of the site and include good quality landscaping and be appropriate in relation to the surrounding area in terms of scale, siting and layout. The development would not have an unacceptable adverse impact on village character, on the countryside and landscape character and therefore does not offend policy DP/3(2)(m). The distinctiveness of the landscape character area would be retained in accordance with policy NE/4.

Local infrastructure

43. There is no evidence to suggest that a traveller site for one family would place undue pressure on utility service provision or the local highway network. The Council's concern is directed towards the effect on community facilities, more particularly open space and indoor community facilities. Applying policies SF/10 and SF/11 of the DPD and guidance in the relevant supplementary planning document (the SPD) the Council sought a financial contribution of £2,444.90 towards public open space improvements. Applying policy DP/4 of the DPD and Council policy a sum of £371 was sought in respect of indoor community facilities. The appellant has entered into a deed dated 11 April 2016 whereby he undertakes to pay these sums in the event planning permission is granted provided that the obligations are accorded weight and satisfy the tests set out in paragraph 204 of the Framework.
44. After the close of the inquiry the main parties were invited to make further submissions in light of the Court of Appeal's judgement of 11 May 2016 *Secretary of State for Communities and Local Government v West Berkshire District Council and Reading Borough Council* [2016] EWCA Civ 441. The effect of the judgement was to reinstate the terms of the Written Ministerial Statement of 28 November 2014 (the WMS) regarding contributions to affordable housing and tariff style planning obligations and self-build development. Subsequently new and updated paragraphs were added to the Planning Practice Guidance section on Planning Obligations.
45. Policy DP/4 establishes that to be acceptable, proposals should make suitable arrangements for the improvement or provision of necessary infrastructure. Planning obligations should be related to the form of the development and its potential impact upon the surrounding area. Policy SF/10, regarding open space provision, applies to all residential developments, subject to the exceptions stated in the policy (such as sheltered dwellings and residential homes). Therefore the policy applies to a residential caravan site. Policy SF/11 prescribes open space standards. The SPD, part of the Local Development Framework, provides details of implementation. The development plan policies, and SPD, promote healthy inclusive communities and plan positively for recreation facilities. To this extent the local policies are consistent with policy in the Framework.
46. In this case the site is close to Willingham where there is a range of public open space provision. An assessment in 2013 identified a deficit of sports space, children's play space and informal open space. Willingham Parish Council has been active in securing improvements and has identified future projects. The Council confirmed at the inquiry that there are the mechanisms in place to ensure that any contributions would be directed to the Parish Council to enhance provision within the parish.
47. Mrs Humphrey in her evidence referred to going with the children to the park in the village. Permanent occupation of the appeal site would reasonably be expected to increase to a small degree the use of the existing open spaces and indoor community facilities and contribute in a very limited way towards the need for improved provision. The financial sums in the obligation are based on the anticipated number of residents generated by the new development, in this instance the equivalent to a 2 bedroom house, with a view to ensuring the contribution is proportionate. The obligations ensure the development

complies with policies DP/4, SF/10 and SF/11 of the DPD and policy in the Framework on promoting healthy communities.

48. The Planning Practice Guidance, with reference to the policy set out in the WMS, states that tariff style contributions should not be sought from developments of 10 units or less. Where this threshold applies, planning obligations should not be sought to contribute to pooled funding pots intended to fund the provision of general infrastructure for the wider area. Policy SF/10, which applies to 'all residential developments' (including caravan sites), is not up to date and fully in line with Government policy. Its weight is consequently reduced.
49. The reasoning in the WMS highlights that the policy changes are to promote delivery of small housing schemes and to reverse the decline in this sector. As a matter of fact there is no specific reference to gypsy and traveller caravan sites and much of the wording of the justification contained in the WMS is not readily applicable to the development of traveller sites in general or the circumstances related to the appeal site in particular. However, with the *Wenman* judgement in mind, there is a strong case for a broad interpretation of 'small housing schemes' and 'units'. I also attach weight to the appellant's argument that it would be inequitable not to extend the same relief to small scale providers of traveller site accommodation. Accordingly, there is good justification for concluding the policy relief applies to the development on the appeal site.
50. The Council, although accepting the basis of the contributions sought in this case are formulaic, maintains they not within the definition of tariff-style contributions set out in the Planning Practice Guidance. There is no explanation to support this statement. My understanding from the evidence of the Council's witness Mr Fisher is that the contributions for open space and indoor community facilities would go into a funding pot and be pooled with other contributions to fund community open space/indoor facility projects in the parish. Whilst two potential projects were named there is insufficient evidence to demonstrate with certainty that the contributions from The Oaks would be used for them or to show there is not already 5 or more contributions towards those schemes.
51. In conclusion, the tariff-style contributions secured through the planning obligations comply with the development plan. However the contributions are not supported by national policy, a factor of substantial weight. Accordingly the obligations are not necessary to make the development acceptable in planning terms or fairly and reasonably related in scale and kind to the development. Not all the three tests in paragraph 204 of the Framework are met. Therefore I am not able to take the obligations into account in determining the appeal.
52. In the absence of contributions, the effect of this one pitch development on open space and indoor community facilities would not result in undue pressure on the local infrastructure.

Level of local provision and need for sites

53. PPTS states that a Government aim in respect of traveller sites is that local planning authorities should make their own assessment of need for the

- purposes of planning. A robust evidence base should be used to establish accommodation needs to inform the preparation of local plans and make planning decisions.
54. The Cambridge sub-Regional Gypsy and Traveller Accommodation Needs Assessment (GTANA) was published in October 2011. In South Cambridgeshire the assessed need for 2011-2016 was 67 pitches and an additional 5 pitches for 2016-2021. South Cambridgeshire had by far the highest assessed need of the nine local authority areas included in the study.
55. The robustness of the GTANA was challenged in appeals and in the 2013 appeal the Inspector concluded that as a consequence of its assumptions the GTANA seriously underestimated the need for additional pitches. In February 2014 as part of the East Cambridgeshire Local Plan examination the Inspector highlighted a number of shortcomings of the GTANA. At the inquiry (re the current appeal) Mr Fillmore⁶ accepted that the 2011 GTANA was not robust and was flawed. The Council accepted that there is an unmet need for sites in the district and that it could not demonstrate a 5 year supply.
56. The point of dispute was whether it was possible to go further than stated in the 2013 appeal decision that "there is a clear need for additional gypsy and traveller accommodation in South Cambridgeshire and this is a matter which carries significant weight".⁷ This was the position the Council felt able to adopt.
57. The appellant's case was that the level of need was substantial. Mr Hargreaves⁸ in his evidence stated that a figure of 233 pitches was indicative of the scale of need over a 15 year period (2006 to 2021)⁹. This figure was produced with reference back to the assessments for the Regional Spatial Strategy, the Council's current waiting list of 60 for the local authority's two authorised sites, findings of previous appeal decisions and the bi-annual caravan count. On a more cautious assessment he suggested a pitch need to accommodate in the order of some 150 to 220 households 2011 to 2031, with the need being front loaded. He explained that this figure was derived from his familiarity with the 2006 and 2011 needs assessments, the traveller community and knowledge of the caravan counts and Council waiting lists. Attention also was drawn to a 85 pitch need 2011 to 2026 identified in the emerging Local Plan, which did not correspond with the 2011 GTANA or the Regional Plan assessment. On the supply side he was aware of some 72 additional pitches being approved since 1 April 2006, of which 40 were in the period from 2011. Reference was also made to the Council's lack of progress in response to an allocation of funding for site development/improvement¹⁰.
58. I note that the Proposed Submission South Cambridgeshire Local Plan stated that between January 2011 and May 2013 the Council had granted or resolved to grant permission for 72 pitches, but no further details were provided by the Council for this appeal.

⁶ The Council's planning witness

⁷ Appeal decision paragraph 46.

⁸ The appellants' planning consultant

⁹ Document 5.1 (proof of evidence) paragraph 5.10

¹⁰ Document MH11 paragraph 37 refers to an allocation of £500,000 from the Homes and Communities Agency.

59. In conclusion, there is currently no robust GTANA to inform decision making on development proposals. In such circumstances and for the purposes of this appeal it is sufficient to form a view as to the probable order of need rather than identify a specific pitch requirement for the next 5, 10 and 15 years. Having taken account of the caveats identified by the Council, the indication from all the available information sources is that there is a need and the need is unlikely to be low. I agree with Inspector's Clegg's conclusion of "a clear need" and this consideration weighs strongly in favour of the proposal.
60. A new GTANA is in progress and was anticipated to be reported to the Council in June 2016¹¹. The examination into the new Local Plan was due to continue in June 2016, with adoption expected mid 2017. The Council has yet to decide on the approach to traveller site provision, possible options being either site allocations or reliance on development management policies. Mr Fillmore explained that a decision would be taken on how to progress provision once the results of the GTANA were known. Therefore he estimated site delivery through the local plan process would be a minimum period of 5 years.
61. I conclude that the Council does not have a good recent record on assessing the need for and delivering traveller sites. Supply of new sites has resulted from applications coming forward on unallocated land. The demonstration of a 5 year supply of deliverable sites, as required by national policy, is some way off. These factors add significant support for the proposal.

Alternative sites

62. Mrs Humphrey explained that she had stayed at The Oaks with Mr and Mrs Buckley before she was married due to family circumstances. She had spent all her married life at the site, relying on the valued help and support of Mr and Mrs Buckley and the safety of a settled base. She was scared of what would happen if the family had to leave the site because living on the roadside would be dangerous for the children and they would run out of places to stop around Cambridge. She was very worried that the children's education would fall apart, as hers had done. She acknowledged that they had made no positive efforts to find somewhere else to live and had made no approaches to the Council because they wanted to stay where they are and they could not afford to buy a plot of land. It was pointless to ask to be put on a waiting list for a Council caravan site. She did not want to think about living in bricks and mortar but if the worse came to the worse and there was no choice she would take up a house if offered.
63. The Council accepted that there are no suitable alternative caravan sites available for the Humphrey family. However, the Council also submitted that failure of the appeal would not necessarily result in the family becoming homeless, referring to a proportionate response when considering enforcement action and the possibility of housing assistance.
64. There is a positive obligation under Article 8 to facilitate a gypsy way of life because of their vulnerable position as a minority, different needs and lifestyle. A realistic alternative caravan site for the family has not been identified. This has been the position since the 2013 appeal decision and for a number of years

¹¹ The Council provided no information on this matter and therefore I have confined my consideration to the evidence presented at the inquiry.

before, as seen from the temporary planning permissions. There is little prospect of land being allocated and brought forward for occupation through the development plan process within the next five years at least. The probability is that the family would be unable to afford to buy land whether in South Cambridgeshire district or further afield. Waiting lists for a pitch on Council traveller sites are long.

65. The land is subject to an injunction served in 2007. Lack of success in this appeal would not lead to the immediate loss of the home but there would be great uncertainty for the family and a reasonable prospect of the family no longer having a settled base. In the event the Council pursued enforcement action the consequences could be unauthorised camping on the roadside or other land, or doubling up on pitches of family and friends, with the associated overcrowding of pitches. A possible alternative would be to accept any Council assistance in the form of a conventional dwelling. This would be an alien type of accommodation that too could cause distress and serious interference with home and family life.
66. In conclusion the lack of an alternative caravan site for the family is a factor in favour of the development that has significant weight.

Family circumstances

67. A very important advantage of having a settled base is that Mr and Mrs Humphrey's children are able to attend school and enjoy a stable family home. This is of particular relevance because of the disruption to Mrs Humphrey's own childhood and education as a result of the eviction of her parents from their caravan site. By all accounts the two children are happy and doing well, the Assistant Head of Willingham Primary School confirming that attendance is excellent and their parents are engaged with the school. The eldest child has benefitted from an Education Plan and additional support to help with reading and writing skills. In the Assistant Head's view the loss of their home would have a profound impact on the well being of the whole family but especially the children.
68. Based on the oral evidence of Mrs Humphrey and Mrs Buckley and the Assistant Head's representation, the ability to remain on site at The Oaks would be in the best interests of the children. This is a primary consideration, although not determinative of the planning balance.

Conclusions

69. The development would result in limited harm by reason of the small scale encroachment into the countryside. However, a gypsy caravan site is an acceptable form of development within an area of countryside which is not subject to any special designation and is close to a settlement. The site has been well planned and is accompanied by suitable landscaping proposals. The effects on the character and appearance of The Oaks as a whole and the surrounding rural area on the edge of Willingham are acceptable within the terms of the relevant development plan policies.
70. In addition the site has good accessibility to services and facilities in Willingham. There would be no adverse impacts from traffic generated or by

reason of flood risk. The site would respect the scale of the nearest settled community and avoid placing an undue pressure on local infrastructure.

71. The proposal would make a small contribution towards meeting the clear need for additional traveller pitches. Having due regard to eliminating discrimination, advancing equality of opportunity and fostering good relations, the site enables Mr and Mrs Humphrey, or another traveller family, to pursue their traditional lifestyle and benefit from the social advantages of having a settled base. More specifically the loss of their home would be a serious interference with their right to respect for home and family life.
72. The caravan site for occupation by gypsies and travellers would be a sustainable form of development taking account of the environmental, social and economic dimensions. The residential caravan site complies with the development plan as a whole and is in accordance with national policy in PPTS and the Framework. Essential features of the development and proposed landscaping are able to be secured by planning conditions.

Planning conditions

73. In accordance with paragraph 206 of the Framework planning conditions should only be imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects.
74. The acceptability of the caravan site is dependent on its small scale, its well screened position within the larger area known as The Oaks, the landscape mitigation and a single primary residential use. Therefore, in order to protect the countryside and local landscape character, conditions will be imposed to ensure the development is in accordance with the submitted plans, to limit the number and type of caravans, to secure implementation of the landscape scheme and any necessary replacement planting, to preclude commercial activities and the parking of larger vehicles and to control external lighting.
75. A condition restricting occupation of the site to gypsies and travellers is necessary in order that the development contributes to meeting the clear need for traveller sites. A personal condition limiting occupation to the Humphrey family is not required to ensure compliance with planning policies and therefore is not reasonable or necessary.
76. For the reasons given above, and having taken account of all other matters raised, I conclude that the appeal should be allowed.

APPEAL C

Proposal

77. The proposal has two elements:
- a. to enhance the equestrian facilities at The Oaks by refurbishment of the stables and the provision of an arena and horse exerciser;
 - b. to secure authorisation for use of a mobile home as a dwelling to enable a worker to be on site to care for the high value horses the business would attract.

78. The Council refused planning permission for two reasons, which in summary focused on inadequate business justification for the proposed dwelling and insufficient information on the site access and the highway impact. During the course of the appeal process the appellant submitted a transport statement that addressed the highway authority's concerns. The Council confirmed that it did not wish to defend the highways reason for refusal.
79. In addition, a more detailed business plan was submitted and the appellant confirmed that a temporary permission was sought for the mobile home. The Council's response was to accept that there is a need for a dwelling in the countryside to support the equestrian business, such that a temporary permission would be appropriate. Therefore at the inquiry the Council did not seek to defend the appeal subject to any permission for the mobile home being time limited to three years and occupation restricted to a person(s) working to provide care of horses.

Main issues

80. Within this context, and with reference to planning policies, the main issues are:
- whether the proposed equestrian facilities would be essential to support the expansion of a rural business, be sited to respect countryside character and have a safe means of access;
 - whether a mobile home to enable a worker to live on the equestrian unit is justified by functional and business needs.

Reasons

Equestrian facilities

81. The evidence shows that Ms Buckley has been successful in developing an equestrian career in that she has competed at the highest levels in three day eventing and she trains and rides out horses for stables in Newmarket. She also coaches individuals and small groups at stables and pony clubs. The proposed investment at The Oaks would enable Ms Buckley to expand her business working with horses and riders. More specifically she aims to look after, train and rejuvenate race horses; breed, develop and look after event horses for her own performance needs and on behalf of other owners; and thirdly to offer coaching to individuals and small numbers of riders. The proposed development is anticipated to create the equivalent of three full time jobs, so that in addition to supporting the appellant, employment would be provided for stable hands and to assist in site maintenance. There would be the potential for local businesses to benefit through the provision of services and supplies.
82. The horse exerciser would contribute towards horses' health and fitness, be important in the rehabilitation of injured animals and be used to warm up and cool down horses after riding. The arena would be used for practice routines, coaching and training individual horses. The refurbishment works to the existing buildings would provide stabling for 12 to 14 horses, barn accommodation for feed and hay stores, large stalls and washing facilities for the horses.

83. The new facilities would be sited within the existing equestrian site close to the stables and barn. None of the existing mature boundary vegetation would be required to be removed. New native species tree and hedgerow planting is proposed to enhance landscape character and biodiversity and to integrate the development into its rural surroundings. The development would conserve countryside character.
84. The transport statement and additional information demonstrated that the development would generate a low level of traffic that would be able to be accommodated without an adverse impact on the local road network. The site access was shown to have good visibility and be of adequate width. I accept these conclusions in the absence of any evidence to the contrary.
85. In conclusion, an equestrian establishment is a land based use appropriate to a countryside location and the proposed improvements are acceptable under policy DP/7 of the DPD. Relevant development criteria on design, landscaping and access in policies DP/2 and DP/3 would be met.

Mobile home

86. The business enterprise would involve the housing and care of high value horses. Twenty four hour supervision would be essential on horse welfare and business grounds. A functional need for a dwelling has been demonstrated.
87. Ms Buckley previously had experience in operating a similar business at a stable yard in Ely but seemingly it was not adequately profitable because of high rental levels. A business plan for the stables at The Oaks demonstrates the prospect of developing a viable enterprise, building on the good site location and marketing advantages. There is no doubt about the intention and ability to develop the business. However, the business is not established and proven. There is no certainty that the justification will exist for a dwelling on this site in the countryside in the longer term. Therefore to comply with policy HG/9 of the DPD a dwelling for a temporary period would be appropriate. The mobile home provided for in the proposal would satisfy this requirement. In effect the application is seeking authorisation for the existing mobile home on the site. The appellant confirmed at the inquiry that the home is proposed to be ancillary to the equestrian use.

Conclusion and planning conditions

88. The proposed development is in accordance with the development plan as a whole. The proposed development complies with policies in the Framework that encourage land based enterprises, rural diversification and sustainable economic growth. Therefore a grant of planning permission is supported by the Framework given that there are no adverse impacts to significantly and demonstrably outweigh the benefits.
89. The list of conditions put forward by the main parties has been assessed against the six tests set out in the Framework. The standard condition on commencement of development is not necessary as the application is part retrospective in that the mobile home is already on the site. A requirement that the development is in accordance with the approved plans is reasonable and necessary to ensure a good site layout. Conditions restricting occupancy and imposing a 3 year time limit on the mobile home are necessary and

reasonable to protect the countryside. Details of the installation of the manege are required to ensure a good standard of site planning and infrastructure provision, including surface water drainage. Securing the provision of the proposed landscape scheme and control over external lighting are in the interests of enhancing the character and appearance of the area. The site visit confirmed that the upgrade to the access track should be limited to requiring a minimum width of 4 m for a distance of 10 m from the highway. A wider track of 6 m width would be harmful to the appearance of Meadow Road and is not a reasonable or necessary improvement in view of local highway conditions. It was agreed at the inquiry that to safeguard amenity a scheme for the disposal of waste should be subject to approval.

90. For the reasons given above, and having taken account of all other matters raised, I conclude that the appeal should be allowed.

DECISIONS

Appeal A Ref: APP/W0530/X/14/3001710

91. The appeal is allowed in part and attached to this decision is a certificate of lawful use or development describing the existing building operation which is considered to be lawful.

Appeal B Ref: APP/W0530/W/14/3001030

92. The appeal is allowed and planning permission is granted for a material change in the use of the land to a residential caravan site for occupation by a gypsy family at The Oaks, Meadow Road, Willingham, Cambridgeshire CB24 5JL in accordance with the terms of the application, Ref S/1451/14/FL, dated 16 June 2014, and the plans submitted with it, subject to the following conditions:

- 1) The site layout of the development hereby permitted, including the siting of the caravans, shall at all times be in accordance with the following approved plans: The Oaks Application 1 location plan (1:2500), proposed site plan, proposed screen planting plan number 14 TO 04 01.
- 2) The site shall not be occupied by any persons other than gypsies and travellers as defined in Annex 1: Glossary to the Planning policy for traveller sites August 2015.
- 3) No more than two caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 as amended (of which no more than one shall be a static caravan) shall be stationed on the site at any time.
- 4) No vehicle over 3.5 tonnes shall be stationed, parked or stored on the site.
- 5) No commercial activities shall take place on the land (comprising the area shaded red on the plan The Oaks: Application 1 Location Plan), including the storage of materials.
- 6) All soft landscape works shall be carried out in accordance with the approved details shown on plan 14 TO 04 01. The works shall be carried out within the first planting season after the date of this permission.
- 7) Any trees or plants which within a period of 3 years from the completion of the soft landscaping works die, are removed or become seriously

damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the local planning authority gives written approval to any variation.

- 8) No external lighting shall be provided or installed within the site other than in accordance with a scheme which first has been submitted to and approved in writing by the local planning authority.

Appeal C Ref: APP/W0530/W/15/3004411

93. The appeal is allowed and planning permission is granted for upgrading the existing equestrian development by the installation of a horse exerciser and a riding arena, together with the siting of a residential mobile home as a dwelling to support the rural based enterprise on land at The Oaks, Meadow Road, Willingham, Cambridgeshire CB24 5JL in accordance with the terms of the application, Ref S/1514/14/FL, dated 26 June 2014, subject to the following conditions:

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans: location plan The Oaks, Application 2 (1:2500); proposed site plan The Oaks, Application 2 (1:500); plan number 14 TO 04 02 proposed screen planting; plans of horse exerciser – new Stoneleigh 47ft with hexagonal base elevation showing Claydon mesh fences; and plan view of concrete walkway for a Claydon Stoneleigh 5, 6 & 7 Horse exerciser 47ft diameter.
- 2) The mobile home hereby permitted, which shall be ancillary to the equestrian use, shall be for a limited period being the period of 3 years from the date of this decision. At the end of this period the mobile home, materials and equipment brought on to the land or works undertaken in connection with the mobile home shall be removed and the land restored to its condition before the development took place.
- 3) The occupation of the mobile home shall be limited to a person solely or mainly employed or last employed in the locality in the care of horses, or a widow or widower of such a person, and to any resident dependants.
- 4) No work shall commence on the installation of the manege until full details of the installation, including the provision to be made for surface water disposal, have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
- 5) All soft landscape works shall be carried out in accordance with the approved details as shown on plan number 14 TO 04 02. The works shall be carried out in the first planting season after the commencement of development of the equestrian facilities hereby permitted or in accordance with a programme agreed in writing with the local planning authority.
- 6) Any trees or plants which within a period of 3 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the local planning authority gives written approval to any variation.

- 7) The equestrian facilities hereby approved shall not be used until the vehicular access to the site at the junction with Meadow Road has been upgraded to a minimum width of 4 metres and constructed from a bound material for a distance of 10 metres from the near edge of the highway boundary.
- 8) No external lighting shall be provided or installed within the site other than in accordance with a scheme which first has been submitted to and approved in writing by the local planning authority.
- 9) No development shall commence on the installation of the equestrian facilities hereby permitted until a scheme for the disposal of waste from the site has been submitted to and approved in writing by the local planning authority. Disposal of waste shall be carried out in accordance with the approved details.

Diane Lewis
Inspector

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Robin Green of Counsel He called Andrew Fillmore MA MRTPI	Instructed by the Solicitor to the Council Principal Planning Officer, South Cambridgeshire District Council
James Fisher	Section 106 Officer, South Cambridgeshire District Council

FOR THE APPELLANT:

Justine Compton of Counsel She called Michael Hargreaves Thomas Buckley Rose Humphrey Susan Buckley	Instructed by Michael Hargreaves Planning Planning consultant, Michael Hargreaves Planning The appellant Occupant of the Appeal B site The appellant
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INTERESTED PERSONS:

Philip King Ray Manning	Chair of Willingham Parish Council Councillor, South Cambridgeshire District Council
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DOCUMENTS submitted at the inquiry

- 1 Plans for application ref S/0310/89/F
- 2 Enforcement notice dated 25 March 2003
- 3 Plan for application ref S/1243/08/F
- 4 Plan for application ref S/1692/11
- 5 Plan for application ref S/2065/10
- 6 South Cambridgeshire Local Plan 2004 Inset No.100 Willingham
- 7 South Cambridgeshire Proposed Submission Policies Map 2013 Inset No.111 Willingham
- 8 Open Spaces in New Developments Supplementary Planning Document 2009
- 9 Calculators for Contributions: open space and community facilities
- 10 Statement on behalf of Willingham Parish Council
- 11 Signed statement of common ground
- 12 Land Registry details
- 13 Extract from Proposed Submission South Cambridgeshire Local Plan July 2013
- 14 Appeal decision dated 30 October 2012 ref APP/W0530/A/12/2174826 and site plan
- 15 Willingham – planning permission details for traveller sites
- 16 Draft unilateral undertaking
- 17 Closing submissions on behalf of South Cambridgeshire District Council
- 18 Closing submissions on behalf of the Appellants
- 19 South Cambridgeshire District Council’s response to costs application

PLANS

Appeal A

- A.1 Location plan
- A.2 Site plan
- A.3 Plan attached to the decision notice

Appeal B

- B.1 Location Plan
- B.2 Proposed site plan
- B.3 Proposed screen planting ref 14 TO 04 01

Appeal C

- C.1 Location plan
- C.2 Existing site plan
- C.3 Proposed site plan
- C.4 Proposed screen planting ref 14 TO 04 02
- C.5 Horse exerciser – new Stoneleigh 47ft with hexagonal base, elevation showing Claydon mesh fences
- C.6 Plan view of concrete walkway for a Claydon Stoneleigh 5, 6 & 7 Horse exerciser 47ft diameter

Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 4 July 2013 the operation described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged and hatched in black on the plan attached to this certificate, was lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reasons:

The timber chalet in question is a building, having regard to its size, permanence and physical attachment to the ground. The erection of the timber chalet constituted development in the form of a building operation. On the balance of probability the building was substantially completed before 4 July 2009 and therefore the time for taking enforcement action has expired.

Signed

Diane Lewis
Inspector

Date **11 August 2016**

Reference: APP/W0530/X/14/3001710

First Schedule

The carrying out of development by the erection of a building.

Second Schedule

Land occupied by a building at The Oaks, Meadow Road, Willingham,
Cambridgeshire CB24 5JL

NOTES

This certificate is issued solely for the purpose of Section 191 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use /operations described in the First Schedule taking place on the land specified in the Second Schedule was /were lawful, on the certified date and, thus, was /were not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the use /operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use /operation which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.



Plan

This is the plan referred to in the Lawful Development Certificate dated: **11 August 2016**

by **Diane Lewis BA(Hons) MCD MA LLM MRTPI**

Land at: **The Oaks, Meadow Road, Willingham, Cambridgeshire CB24 5JL**

Reference: **APP/W0530/X/14/3001710**



