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## Appeal Decisions

Inquiry opened on 18 June 2019

Site visits made on 1 November 2019

**by Richard Clegg BA(Hons) DMS MRTPI**

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

**Decision date: 13<sup>th</sup> January 2020**

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### **Appeal A: APP/Q3115/W/16/3156409**

#### **Land south-west of London Road, Tetsworth, Oxfordshire**

- 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 L Wells against the decision of South Oxfordshire District Council.
  - The application Ref P15/S3936/FUL, dated 22 October 2015, was refused by notice dated 29 February 2016.
  - The development proposed is described as 'change of use from agricultural land to provide proposed traveller site with provision for twelve individual plots with individual parking, individual amenity, shared paddock/ amenity space and bin storage areas'.
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### **Appeal B: APP/Q3115/W/18/3205628**

#### **Land south-west of London Road, Tetsworth, Oxfordshire**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
  - The appeal is made by Mr L Wells against South Oxfordshire District Council.
  - The application Ref P18/S0973/FUL, is dated 19 March 2018.
  - The development proposed is described as 'change of use from agriculture to gypsy and traveller site providing twelve individual plots'.
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### **Decisions**

1. Appeal A is dismissed.
2. Appeal is B dismissed and planning permission for the change of use from agricultural land to provide a traveller site with 12 pitches on land south-west of London Road, Tetsworth, Oxfordshire is refused.

### **Applications for costs**

3. At the Inquiry applications for costs were made by South Oxfordshire District Council (the Local Planning Authority – LPA) and Tetsworth Parish Council (PC) against the Appellant. These applications are the subject of separate Decisions.

### **Procedural matters**

4. The inquiry sat for eight days: 18-21, 25 & 26 June, 31 October, and 1 November 2019.
5. Tetsworth Parish Council had served a statement of case in accordance with Rule 6(6) of The Town and Country Planning Appeals (Determination by Inspectors)

(Inquiries Procedure) (England) Rules 2000 in respect of each appeal, and it took a full part in the proceedings of the inquiry.

6. On the application forms for both appeals, the location of the site is referred to as land adjacent London Road. The main parties agreed that the site should be referred to as land south-west of London Road, and I have identified it accordingly in the appeal details above.
7. Individual units of accommodation on traveller sites are usually referred to as pitches rather than plots<sup>1</sup>. Accordingly the main parties agreed with the suggestion in my first pre-inquiry note that appeal proposal A should be described as *change of use from agricultural land to provide a traveller site with 12 pitches, amenity space, and a bin storage area*, and that appeal proposal B should be described as *change of use from agricultural land to provide a traveller site with 12 pitches*. I have considered the appeals on this basis.
8. The planning application for proposal A included a site/ landscape section (ref 15-009/F/001). That site plan shows access taken from the existing position at the eastern end of the site frontage and an acoustic barrier in the form of a bund parallel to the south-west (rear) boundary. The planning application for proposal B included an amended site layout and site/ landscape section (ref 15-009/F/001 revision C). This revised scheme shows a new access formed further to the north-west and an acoustic fence instead of a bund parallel to the rear boundary.
9. At appeal stage, the Appellant submitted a revised site plan for proposal A (ref 15-009/F/001 revision B), which included the access arrangements put forward as part of proposal B. These access arrangements had been the subject of consultation as part of the consideration of the planning application for the second scheme, and the parties had had the opportunity to prepare updated evidence for this inquiry into both appeals. Consequently, I took the view that no prejudice would be caused to any party by taking this revised plan into account in respect of appeal A. I did not, however, agree to the Appellant's suggestion that the two access arrangements proposed could be considered as alternatives in each appeal, since it was important that these details were specified in the interest of certainty, and the Appellant reverted to the original site plan for appeal A.
10. Subsequently, and after the LPA's landscape witness had given much of her evidence, the Appellant submitted a further revised site plan for appeal A (ref 15-009/F/001 Rev E – Document A15), which showed a narrower bund between a swale and a maintenance pathway. At this stage in the inquiry, it was inappropriate to alter the details of a key element of the scheme, and I ruled that the revised plan should not form part of the appeal proposal. Accordingly the site plan considered for appeal A is the original site plan submitted with the planning application.
11. An inquiry into appeal A alone had previously been arranged for November 2017, and subsequently August 2018, but did not take place, the appeal being linked with appeal B which had been submitted in June 2018. I heard that the planning and drainage proofs of evidence prepared for these occasions were no longer part of the Appellant's case; similarly the LPA advised that the drainage, landscape,

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<sup>1</sup> PPTS, Annex 1, para 5.

planning and traveller need proofs of evidence prepared for the intended appeal A inquiry were not part of its case<sup>2</sup>.

12. A proof of evidence dealing with highway matters in relation to appeal A was submitted on behalf of the Appellant for the 2019 inquiry by Mr Hurlstone (Documents A10 & A11). In view of the agreement reached in the statement of common ground that satisfactory visibility could be achieved at both proposed accesses<sup>3</sup>, Mr Hurlstone did not appear at the inquiry, and his proof of evidence was treated as a written statement.
13. A unilateral undertaking was submitted by the Appellant (Document A24). It contains a planning obligation concerning a waste service contribution.
14. On 9 October 2019, the Secretary of State issued a direction under section 21A of the Planning & Compulsory Purchase Act 2004 (Document O4). The effect of this holding direction is to prevent the LPA taking any step in connection with the adoption of the emerging South Oxfordshire Local Plan whilst the Secretary of State considers whether to give a direction under section 21 of the Act. Parties had the opportunity to address the implications of the holding direction at the inquiry.
15. Proofs of evidence relating to the inquiry arranged into both appeals and documents submitted after the inquiry opened are detailed in the lists appended to this decision.

### **Main Issues**

16. The LPA refused planning permission for scheme A for reasons concerning the sustainability of the site's location, visibility at the site access, the effect of the proposal on the local landscape, funding for on-site waste management and school transport, and failure to demonstrate that the development would be appropriate having regard to flooding, drainage and its ecological effect. The sustainability of the site's location, the effect on the local landscape, and funding for on-site waste management were also the subject of putative reasons put forward by the LPA in respect of scheme B. Other objections to scheme B concerned failure to demonstrate the suitability of the acoustic fence, the appropriateness of the development with regard to surface water drainage, and the safety of the proposed access.
17. In the statement of common ground the Appellant and the LPA reached agreement that adequate visibility could be achieved at both proposed accesses, that the measures proposed would be adequate to prevent surface water flooding on the site, and that the ecological concern could be addressed by a condition. In its representations in response to appeal A, Oxfordshire County Council withdrew its request for a contribution towards the cost of school transport, and the planning obligation would make provision for the contribution sought towards on-site waste management. At the inquiry, the LPA did not maintain its objection to scheme B in respect of the acoustic fence, but the PC continued to pursue an objection about the effect of noise in relation to appeals A and B.
18. Having regard to the positions reached by the Appellant and the LPA on the above matters, together with the representations from other parties, including the PC, I consider that the main issues in this appeal are:

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<sup>2</sup> Details of the proofs of evidence submitted by the main parties for the two appeals are given in paragraph 4 of my second pre-inquiry note.

<sup>3</sup> Document O1, paras 11-20.

- (i) Whether the land at London Road is a sustainable location for a traveller site.
- (ii) The effect of the proposed developments on the character and appearance of the area.
- (iii) The effect of noise on the living conditions of future occupiers of the appeal site.
- (iv) Whether the land at London Road is a suitable location for a traveller site, having regard to flood risk and surface water drainage.
- (v) The effect of other considerations, including the need for gypsy and traveller accommodation, on the overall planning balance.

## **Reasons**

### ***Whether the land at London Road is a sustainable location***

19. The appeal site lies alongside the A40 (London Road) in the countryside between the settlements of Milton Common and Tetsworth. The statement of common ground gives the distance between the site and Tetsworth as 850m: that distance, however, is only to the north-west edge of the village, and it is about at least 1km to the centre. Milton Common is a smaller settlement than Tetsworth, and, at about 2.4km to the north-west, is further from the site.
20. Policy CSS1 of the South Oxfordshire Core Strategy provides an overall strategy for development in South Oxfordshire. Beyond the towns, villages and major developed sites, any change should relate to very specific needs. Whilst a general need for traveller accommodation in the District is acknowledged by the LPA, no prospective occupants of the site have been identified and hence no specific personal needs are before me. However, the overall strategy must be read with the policies concerning traveller sites in the Development Plan, which do not preclude development outside settlements. Policy CSH5 of the Core Strategy gives priority to sites located near to settlements, and to sites which are located within walking distance of essential services or high frequency public transport. Policy H17 of the South Oxfordshire Local Plan 2011 includes being within a reasonable distance of a primary school, shops and other services, as one of the criteria with which new traveller sites should comply.
21. From the appeal site the A40 leads directly into Tetsworth: the distance of about 1km to the centre of the village is not great, and from the higher land to the north of the A40 the proximity of the position of the Appellant's land to the settlement can be appreciated. I consider that the proposed traveller site would be located close to an existing settlement, in accordance with Policy CSH5. This policy anticipates that traveller sites are likely to come forward in the open countryside, as does national policy in *Planning policy for traveller sites* (PPTS). Policy H of PPTS makes clear that sites should be very strictly limited in open countryside that is away from existing settlements or outside areas allocated in the development plan. As yet there are no allocations for traveller sites in the Development Plan. For the reasons given above, and having regard to the location of the site on the short and direct route between Milton Common and Tetsworth, I am satisfied that this part of the open countryside is not away from existing settlements, and that in this respect there is no conflict with paragraph 25 of PPTS.

22. Tetsworth is a fourth tier settlement<sup>4</sup>, with a limited range of facilities and services. These include a primary school, a public house, a convenience store (situated in a room within the public house), and a playing field. There are bus stops in the village, which is on the route of the 275 service between Oxford and High Wycombe. Policy CSH5 and its supporting text do not define essential services, but these are likely to include a convenience store and a primary school, both of which are present in Tetsworth. However, I heard that Tetsworth Primary School is full at present and over-subscribed for the foreseeable future<sup>5</sup>. The intention to increase the number in each year group from 8 to 10 pupils is associated with development at Mount Hill, which will provide land for an early years and foundation stage unit. Whilst there would be a requirement to provide education for children living on the appeal site, the information before me indicates that this would not be at Tetsworth.
23. The village could be reached on foot from the site, although facilities there are towards the limit of a convenient walking distance: in *Providing for Journeys on Foot*, the Institution of Highways & Transportation suggests 1km as an acceptable walking distance to school and 0.8km as a preferred maximum distance for shopping trips<sup>6</sup>. More significantly the footway is narrow, unlit and close to a road carrying fast-moving traffic. Although services in Tetsworth could be reached on foot from the site, the nature of the route is unlikely to encourage its use, particularly outside the hours of daylight and during inclement weather. The bus service provides a link to the higher order centres of Oxford and High Wycombe, but, for the reasons already given, walking to Tetsworth for this purpose is unlikely to be a convenient option. Moreover the service is limited to four journeys in each direction from Monday to Friday<sup>7</sup>, and it does not amount to high frequency public transport, as referred to in the second part of Policy CSH5.
24. Policy H17 is also concerned with access to services, but it does not refer to walking. I am satisfied that the proposed traveller site would be within a reasonable distance of local services in Tetsworth, in accordance with Policy H17, although, as mentioned above, the primary school would not have the capacity to accommodate children from the appeal site.
25. The opportunities to use sustainable modes of transport are restricted, and I consider that most journeys to and from the appeal site would be made by car, whether to Tetsworth, or to the larger centres of Wheatley and Thame (third and second tier settlements respectively), which are both about 8km away. These journeys to reach facilities and services would not be unduly long, and I am mindful that paragraph 103 of the National Planning Policy Framework (NPPF) explains that opportunities to maximise sustainable transport solutions will vary between urban and rural areas. In any event, the provision of a settled base for twelve gypsy households (in an area of acknowledged need, below para 57) would facilitate access to health services and schooling, and reduce the likely extent of long-distance travelling, in line with paragraph 13 of PPTS.
26. The appeal site is in the open countryside, but it is near to Tetsworth. In this respect the proposals are consistent with Policy CSH5 of the Core Strategy, and the site is not in a location away from settlements where traveller sites should be very strictly limited in accordance with PPTS. Although the availability of local facilities

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<sup>4</sup> See Policy CSS1.

<sup>5</sup> Document T7.

<sup>6</sup> Document T4, para 5.32.

<sup>7</sup> Document T4, paras 5.27 & 5.28.

in Tetsworth is limited, and the opportunities to use alternative modes of transport to the car would be restricted, the proposed traveller site would ensure a reasonable level of access to facilities and services. I conclude that the land at London Road is a sustainable location for a traveller site.

### ***Character and appearance***

27. The appeal site lies within national character area 108 – Upper Thames Clay Vales and the Clay Vale Landscape Character Type of the Oxfordshire Wildlife & Landscape Study<sup>8</sup>. Of more relevance to this proposal involving development of a single field is the South Oxfordshire Landscape Character Assessment (SOLCA), referred to by both the Appellant and the LPA<sup>9</sup>, in which the appeal site lies within Landscape Character Area 3 – The Clay Vale (LCA3). This revision of the earlier South Oxfordshire Landscape Assessment was prepared as part of the evidence base for the emerging Local Plan: although the emerging Local Plan is currently the subject of a holding direction (above, para 14), that circumstance does not affect the relevance of the SOLCA in the consideration of development proposals, and no such suggestion was made by parties to these appeals.
28. LCA3 is an extensive character area in the northern part of the District. The key characteristics for this area identified in the SOLCA include a predominantly agricultural landscape, a network of small watercourses, and busy transport corridors with mention made of the A40 and the M40. More particularly, the site is part of the Undulating Semi-Enclosed Vale Landscape Character Type (LCT), which extends along the northern side of the motorway in this part of the LCA. Here the SOLCA refers to localised intrusion of main roads, power lines and built development into the rural character, a stronger structure of hedgerows and trees than in the nearby undulating open vale LCT, and moderate intervisibility. The characteristic features of the LCA and LCT are apparent in the area around London Road.
29. The appeal site lies in a relatively narrow band of the Undulating Semi-Enclosed Vale LCT, which abuts the M40. I do not share the view of the Appellant's landscape witness that the motorway is an urbanising feature on the local landscape: many motorways, and other roads, run through rural areas where they comprise part of the local landscape. That said, the M40, which carries high levels of traffic, and is in part elevated above the surrounding land, is clearly an intrusive influence, as referred to in the SOLCA. However that effect has not degraded the intrinsic quality of the landscape in the LCT, which, taking into account the presence of some existing development on the north side of London Road, is a pleasant stretch of countryside, in good condition, with the field pattern generally well defined by established hedgerows and trees. The Appellant's landscape witness argues that the local landscape has a low-medium sensitivity to the appeal proposals. Notwithstanding the presence of the M40 and other development, their influence does not materially detract from the continuity of the landscape on this side of Tetsworth, and I consider that the sensitivity of the landscape and the site is more appropriately judged as medium, as assessed by the LPA.
30. The appeal site comprises a narrow triangular field, with a long frontage of about 530m to the A40. Development would not alter the pattern of field boundaries, but

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<sup>8</sup> The national character area profile is at Document L2, Appendix 3, and extracts from the Oxfordshire Wildlife & Landscape Study are at Document L2, Appendix 4.

<sup>9</sup> Extracts from the SOLCA are at Document L2, Appendix 6, and it is addressed in section 3 of Document A1 and section 2 of Document L1.



it would represent a clear encroachment into the countryside. It would damagingly consolidate the existing loose-knit development which is currently on the north side of this stretch of the A40, resulting in a distinct interruption to the predominantly open fields in this band of the Undulating Semi-Enclosed Vale LCT. I am particularly concerned about the acoustic barrier proposed along the rear of the site. Both the bund and the fence would be 4m in height and extend for virtually the whole of the length of the rear boundary. They would be substantial structures, and the 7m depth of the bund (at ground level) would emphasise its presence. The freestanding bund is not a comparable feature to the motorway embankment, and neither alternative for the barrier reflects or would be sympathetically related to features in the local landscape. Landscaping is proposed alongside the barrier, although the extent to which this can be provided is uncertain given the intention to provide a maintenance pathway on the south side. In any event, whilst planting may soften the southern edge of the site over time, I do not consider that it would mask the uncompromising form of the tall and solid barriers, either of which would be an incongruous feature in this rural landscape with its gently undulating landform. The appeal proposals would represent localised but serious damage to the Undulating Semi-Enclosed Vale LCT, contrary to Policy CSEN1 of the Core Strategy and to Policy G4 of the Local Plan.

31. Inevitably the appeal proposals would represent a major change to the appeal site itself. The greater part of the site would be occupied by the 12 pitches, each of which would be expected to accommodate a mobile home and a touring caravan, in addition to a small store and space for parking. An area at the western end of the site would remain open. The site plans state that this area would be retained as a paddock to provide a shared amenity and recreation area, and, given this purpose, I anticipate that there would also be a marked change to this part of the site. I have already expressed my concern about the effect of the acoustic barrier on the surrounding landscape, and for the same reasons it would have a damaging effect on the site itself, whether in the form of a bund or fence. It is proposed that planting would take place to strengthen the existing boundary cover, and conditions could be imposed to secure a landscaping scheme. Overall, however, either scheme would represent a high and adverse change to the appeal site.
32. I turn now to consider the visual effects of the appeal proposals, as opposed to the effects on the landscape. From the higher land to the north of the A40, the intervening hedgerows and the narrow form of the site restrict visibility, and I share the views of the Appellant and the LPA that there are no clear views of the appeal site from the footpaths in this direction (Document A2, viewpoints 6-8 & 10-12 (VPs 6-8 & 10-12)). From the south, however, where footpath No 30 crosses the motorway on a bridge, the position of the appeal site is evident. The hedgerow on the northern side of the adjacent land screens the surface of the Appellant's land, but I consider it likely that the 4m acoustic barrier would be apparent, and, even with planting on the southern side (and painting in the case of the fence), the form of this feature would appear intrusive and detract from the view towards Lobbersdown Hill.
33. The M40 is elevated above the fields to the north in the vicinity of the site, and transient views of the barrier would be available from the motorway. The inappropriate form of the barrier would be noticed by passengers, but as these views would be of short duration from vehicles moving at speed, the harm merits minor weight. There would be a greater impact on receptors using the A40, which passes alongside the site. I accept that these persons will be predominantly travelling in vehicles and that traffic moves freely along this road. Nevertheless,

the site has a long frontage, prolonging filtered views of the row of caravans, with the barrier behind. Reinforcing the frontage hedgerow would soften these views. In scheme A, the point of access would face east: whilst, in consequence, it would be largely screened from the west, this part of the traveller site would be evident on the approach from the east. Formation of the access for scheme B would necessitate the removal of a section of hedgerow: even if the access were to be gated, that would simply contribute to the extent of development apparent from the A40. The size and arrangement of the site, with 12 pitches extending in line alongside the road, would represent a discordant feature in the countryside between Milton Common and Tetsworth, and it would cause harm to the visual amenity of the users of that route, although I acknowledge that the frontage cover would lessen the impact of the developments.

34. I conclude that the proposed developments would adversely affect the character and appearance of the area, and they would thereby conflict with Policy CSEN1 of the Core Strategy and Policy G4 of the Local Plan. There would be a serious adverse effect on the landscape of the site and the surrounding area which merits significant weight, and I attach moderate weight to the harm which the proposals would cause to visual amenity in the vicinity of the appeal site.

### ***Living conditions – noise***

35. The appeal site lies about 170m to the north-east of the M40 motorway, and is separated from this busy road by agricultural land. As the sections on the submitted drawings show, the motorway is elevated in the vicinity of the site, and the Appellant's noise consultant records a difference in height above the garden floor datum of 4m<sup>10</sup>. The main source of noise at the appeal site is that of traffic on the M40, a circumstance acknowledged in the noise exposure assessments submitted with the planning applications<sup>11</sup>, and by the inclusion of an acoustic barrier along the south-west side of the site.
36. Noise surveys have been undertaken on behalf of the Appellant and the PC. In 2015, the survey undertaken for the Appellant's noise exposure assessments recorded background noise levels of 64dB<sub>L<sub>aeq,T</sub></sub> during daytime hours (0700-2300) and 60 & 61dB<sub>L<sub>aeq,T</sub></sub> at night (2300-0700). A subsequent survey in March and April 2019 recorded levels of 61dB<sub>L<sub>aeq,T</sub></sub> for both daytime and night-time<sup>12</sup>. The survey carried out on behalf of the PC took place in April 2019, and recorded background noise levels of 67.9 & 68.1dB<sub>L<sub>aeq</sub></sub> during the daytime and 63.2 & 61.2dB<sub>L<sub>aeq</sub></sub> at night<sup>13</sup>. The night-time differences between the parties are not great; moreover the PC's concern about noise relates to the use of external amenity areas, and at the inquiry it's noise consultant agreed that noise in these areas would not be a concern at this time.
37. The differences in the daytime figures are more significant. The PC's measurement positions were within the adjacent field to the south-west, and hence closer to the M40. These positions were pointed out on the site visit: both were close to the boundary with the appeal site. Although the Appellant's consultant suggested that some allowance should be made for the PC's measurement positions, he acknowledged that this would not be the main reason for the differences in recorded noise levels. The Appellant's 2015 survey occurred on a single day and

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<sup>10</sup> Document A4, paragraph 6.1.

<sup>11</sup> Noise Exposure Assessments by Energy Rating Services, refs 10490-NEA-01 & 10490-NEA-RevB, section 2.

<sup>12</sup> The 2015 noise levels are in table 4.1 of the Noise Exposure Assessments; the 2019 levels are in table 5.1 of Document A4.

<sup>13</sup> The PC's figures are given in paragraph 5.2.1 of Document T1.



recordings from four days were relied on from the 2019 survey<sup>14</sup>: two of these days are at the weekend. There were also two weekend days in the PC's survey, but this extended over a somewhat longer period of eight days. Although it was suggested that use of a maximum figure by the PC does not properly reflect the characteristics of the noise environment, I note that Professional Practice Guidance on Planning and Noise – New Residential Development (ProPG – Document A18) advises that noise risk assessments should aim to describe noise levels over a typical worst case 24 hours day. Insofar as the proportion of weekend days is concerned, the Appellant's noise consultant suggested that there may be more noise from less traffic moving at higher speed on these days: however he also accepted that Friday was the noisiest day in his survey. The whole of the PC's survey was carried out recently and over a longer period: I consider that it is more likely to reflect the noise environment of the locality. For these reasons, I place greater weight on the higher background noise levels produced on behalf of the PC.

38. Paragraph 30-005 of Planning Practice Guidance (PPG) sets out a noise exposure hierarchy. Where the boundary to a significant observed adverse effect level would be crossed, the planning process should be used to avoid such an effect occurring. In similar vein, ProPG advises that an acoustic design statement should clearly demonstrate that a significant adverse effect will be avoided in the finished development.
39. *British Standard 8233:2014 Guidance on sound insulation and noise reduction for buildings* (BS8233) gives recommended internal and external noise levels for dwellings. Upper guideline values for internal noise are 35dB<sub>L<sub>Aeq,16hour</sub></sub> within living rooms and bedrooms and 40dB<sub>L<sub>Aeq,16</sub></sub> within dining rooms during the daytime and 30dB<sub>L<sub>Aeq,8hour</sub></sub> in bedrooms at night<sup>15</sup>. In external areas which are used as amenity space, BS8233 states that it is desirable that the external noise level does not exceed 50dB<sub>L<sub>Aeq,T</sub></sub>, with an upper guideline value of 55dB<sub>L<sub>Aeq,T</sub></sub> which would be acceptable in noisier environments.
40. Pitches on traveller sites generally accommodate a mobile home and a touring caravan, and the proposed layouts are consistent with this arrangement. It is agreed by the main parties that there would be no adverse effect due to noise on living conditions inside mobile homes on the site, and I have no reason to take a different view. The Appellant explained that some young adults may use touring caravans as living accommodation. Touring caravans would not attenuate noise to the same extent as mobile homes. Whilst the Appellant's noise consultant considered that they would be capable of achieving BS8233 levels with the acoustic screen in place, the PC took the view that they would be unsuitable to use a sleeping accommodation. This position is supported by an acoustic assessment of a standard caravan<sup>16</sup>, but the Appellant had no objection to a condition preventing use of touring caravans for habitation. That safeguard would address concern about the effect of noise in these caravans.
41. Insofar as the external amenity areas are concerned, the modelling undertaken on behalf of the Appellant and the PC indicates different outcomes. The two-dimensional model employed for the Appellant predicts that the acoustic screen would reduce ambient noise levels by 9.5dB to 51.8dB(A)<sup>17</sup>. Although this level

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<sup>14</sup> The Appellant's equipment was in place for five days during 2019, but at the inquiry it was acknowledged that figures from 2 April were for a part day and had not been included in the assessment.

<sup>15</sup> BS 8233:2014, table 4.

<sup>16</sup> Document T1, Appendix 2.

<sup>17</sup> Document A4, table 7.2.

exceeds that of 50dB<sub>LAeq,T</sub> referred to as desirable in BS8233, it is below the upper guideline value of 55dB<sub>LAeq,T</sub> for noisier environments. In contrast, a three-dimensional modelling exercise was undertaken for the PC which predicted noise levels of 61.6-65.1dB in external amenity areas<sup>18</sup>.

42. Criticisms were made of the two-dimensional model concerning use of both a static source and a static receiver point, and relating to treatment of the screen. The PC pointed out that noise from the M40 is not static and is not confined to a particular point; similarly a single receiver point is not representative of all the external amenity areas. Insofar as the screen is concerned, the PC explained that the two-dimensional model assumed an indefinite length and failed to take account of sound energy travelling around each end of the proposed barrier. These criticisms of the Appellant's modelling were not directly disputed at the inquiry. Reductions had been applied to the calculated attenuation levels to increase robustness<sup>19</sup>, the Appellant's noise witness commenting that barriers are less effective in reality than in theory, but there is no detailed explanation for this approach, which I heard was based on the company's experience. From what I have heard and read, I consider that the modelling exercise undertaken on behalf of the PC provides a more realistic indication of noise levels in external amenity areas.
43. Most of the receptor points in the PC's modelling are on the north side of the pitches, whereas more protection would be provided to those parts of the pitches closer to the barrier. However the plan produced by the model shows that the greater part of the open area on all of the pitches and on the general amenity area at the western end of the site is predicted to receive noise levels in excess of 60dB in the daytime, markedly in excess of the upper guideline value of 55dB in BS 8233. A narrow strip adjacent to the barrier would fall within the range from above 55dB to 60dB, but these are levels which BS8233 does not regard as desirable in the first instance.
44. The PC's model was also run using the Appellant's data from the 2015 survey (the measurements from the 2019 survey contained in Document A4 were not available when this exercise was undertaken). Although the area within the range from above 55dB to 60dB has increased, the greater part of the areas which would be available for use as amenity space are shown to remain above the 60dB threshold<sup>20</sup>.
45. The PC has also suggested that the Appellant has failed to take account of noise from the A40, a criticism which is disputed. The A40 is a main road, but traffic flows are not constant past the site. Whilst traffic noise from this road contributes to the overall noise environment, it is clear from the representations, and my own observations that the main source of noise at the appeal site is that of traffic on the motorway.
46. The evidence before me indicates that noise levels within the greater part of the external amenity space would be markedly above those that BS8233 advises are acceptable in noisier environments. Whilst this would not prevent necessary trips outside, for example to dispose of household refuse, I do consider that it would prevent the enjoyment of that outdoor space, which should be an integral part of a satisfactory living environment. It would be impractical for outdoor living to be restricted to the narrow strip alongside the barrier where noise levels are predicted

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<sup>18</sup> Document T1, para 6.1.

<sup>19</sup> Document A4, table 7.1.

<sup>20</sup> Document T2, page 9.

not to exceed 60dB, but even here they would be at a level not considered desirable in BS8233. I have, therefore, reached the view that the proposed development would result in a significant observed adverse effect level of noise experienced by occupants of the traveller site. It was suggested that future occupants are likely to be used to stopping on the roadside where they would be exposed to adverse noise levels. No intended occupants have been identified in these cases, but, even accepting that general proposition, does not justify acceptance of a poorer quality living environment for travellers compared to other members of the community.

47. I am mindful that BS8233 advises that in higher noise areas the guideline values for external amenity space may not be achievable in all circumstances where development may be desirable, and that, in such a situation development should be designed to achieve the lowest practicable noise levels in external amenity space but should not be prohibited. Element 3(iii) of ProPG contains similar advice concerning achieving the lowest practicable noise levels. I shall address the balance between noise and other considerations in my overall conclusions. As to the design of the appeal proposals, the PC pointed to alternatives including extending the acoustic barrier around the site and increasing its height to 6m, 8m and 10m. I do not regard these suggestions as realistic, given their impact on the landscape and that they would result in the deliberate isolation of the site from the local community contrary to paragraph 26(d) of PPTS. The layout of the site is constrained by its narrow shape, which necessitates a linear arrangement of pitches between London Road and the acoustic barrier. However even if the site has been designed as well as possible in terms of noise reduction, that does not justify development where the consequence would be to produce unacceptable living conditions. In this regard, one of the aims of the Noise Policy Statement for England is to avoid significant adverse impacts on health and quality of life, and paragraph 30-005 of PPG makes it clear that a significant observed adverse effect should be avoided. In these cases my assessment is that that level of harm would occur with the proposed mitigation in place: whilst the mitigation could be secured by condition, it would not provide a means for avoiding significant harm to living conditions.
48. ProPG advises that a significant adverse impact may be partially offset if residents have access to a relatively quiet, protected, nearby (reference is made to 5 minutes walking distance) amenity space. There is an area of public open space in Tetsworth, but this is well over 5 minutes walking distance from the appeal site, and is immediately adjacent to the A40. Moreover, this relatively large grassed area would not be well-suited to the variety and spontaneity of outdoor living experiences, including just sitting outside, which occur close to living accommodation. The presence of open space in Tetsworth would not compensate for the absence of quiet amenity space on the appeal site.
49. The Appellant's noise consultant advised that the acoustic barrier should be imperforate, with no gaps at its foot<sup>21</sup>, and the Appellant has agreed to pre-commencement conditions which include this requirement as part of a detailed scheme for the acoustic barrier (Documents O7 & A29). However there is uncertainty arising from drainage evidence as to whether an imperforate barrier could be achieved for the two schemes before me. In both schemes, the amenity area at the western end of the site would also serve to store flood water. The Appellant's drainage consultant made it clear in his evidence to the inquiry that

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<sup>21</sup> Document A4, para 7.3.

gaps would need to be provided at the base of the barriers to allow the passage of water from this part of the site<sup>22</sup>. Subsequently, the Appellant himself gave evidence and, based on his experience as a civil engineering contractor, suggested that drainage past the barriers could be provided below ground level. This view directly contradicted his own professional witness, and was not supported by any technical assessment. I give more weight to the evidence of the professional witness, who is a qualified and experienced drainage engineer, and who has prepared initial drainage strategies for each appeal proposal. This circumstance reinforces my concern about the ability to achieve a satisfactory environment in the external amenity areas.

50. I conclude that noise would have a significant observed adverse effect on external amenity space on the proposed traveller site, resulting in unacceptable living conditions for the occupants. The proposal would thereby conflict with Policy EP2 of the Local Plan and paragraph 180(a) of the NPPF.

### ***Flood risk and drainage***

51. The appeal site is in flood zone 1, which is land assessed as having a less than 1 in 1000 annual probability of flooding, the lowest level of flood risk. However, the LPA has pointed out that due to the small size of the upstream catchment (2.9km<sup>2</sup>), the watercourses in the vicinity of the site have not been modelled. Surface water flood maps from the Environment Agency do indicate a risk of flooding on the western part of the appeal site. Most of the area proposed as a paddock for amenity use and most of pitches 11 & 12 are identified as having a high risk of flooding (1 in 100 or greater annual probability, as in flood zone 3), and most of pitch 10 is identified as having a medium risk of flooding (between 1 in 100 and 1 in 1000 annual probability, as in flood zone 2)<sup>23</sup>. Flood risk arises from overland flows from the north of the site.
52. Paragraph 158 of the NPPF makes it clear that a sequential approach, steering development to areas with the lowest risk of flooding, should be used in areas at risk from any form of flooding. No sequential tests have been undertaken for the appeal proposals, although neither the LPA nor the PC identified any specific alternative sites. In addressing need, the PC made reference to provision included in Policy H15 of the emerging Local Plan, but there are no site specific allocations for these 10 pitches which are put forward as part of larger development proposals, and in any event, I share the view of the Appellant and the LPA that, as a consequence of the holding direction (above, para 14), no weight can be given to the emerging Local Plan at the present time.
53. Table 2 in chapter 7 of PPG identifies caravans, including mobile homes, as highly vulnerable development in respect of flood risk. Table 3 indicates that such development should not be permitted in flood zone 3 and that the exception test should be applied in flood zone 2. Paragraph 160 of the NPPF specifies that for the exception test to be passed, the development should provide wider sustainability benefits which outweigh the flood risk (a matter which I consider as part of my overall conclusions), and that the development should be safe for its lifetime, without increasing flood risk elsewhere.

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<sup>22</sup> Document A5, Appendix A, and oral evidence.

<sup>23</sup> The Environment Agency surface water flood map is on page 19 of Document L7. The flood risk areas within the appeal site are also shown on the drainage strategy plans, Appendices A to Documents A5 & A6.

54. The surface water drainage strategies involve a series of measures to address flood risk<sup>24</sup>. The highway ditch alongside London Road would be cleaned out and reprofiled to improve its hydraulic capacity: the ditch carries water to the watercourse adjacent to the western boundary of the site and away from the proposed pitches. In addition, a bund, 750mm in height, would be constructed around the western end of the pitches, directing overland flows towards the paddock and the watercourse at the end of the site. The paddock itself would be lowered to provide additional storage capacity of about 815m<sup>3</sup>. In scheme B, the new access would be constructed in the area identified as high flood risk, and a high capacity channel is proposed across the carriageway to intercept surface flows and divert them into the ditch. Although it retains a concern about flooding on the A40, the LPA has accepted that the drainage measures would be adequate to manage prevent surface water flooding on the site itself (above, para 17). Whilst the PC has not aligned itself with this view, neither does it present any detailed technical evidence to the contrary. On the evidence before me, I consider that floodwater would not cause a hazard to occupiers of the traveller site proposed in schemes A and B.
55. I turn now to consider the implications of the developments for flooding on the A40. The road falls to a point by the western end of the site, and the surface water flood map shows this section of highway within the high risk category. The LPA is concerned that if the ditch does not have sufficient capacity to carry water away, it could back up onto the road, presenting a hazard to users of the highway. The bund around the western end of the pitches would extend for some distance (further in scheme A than scheme B) along the frontage, and its presence behind the highway ditch would ensure that any excess water would be diverted towards the western end of the site. No modelling has been undertaken of the capacity of the ditch to accommodate flood water, and, bearing in mind the surface water flood maps and anecdotal information about flooding from a local resident (Document O2), I cannot discount the possibility that there would be occasions when there would be excess water, which would be directed down the slope by the bund and could potentially encroach onto the carriageway. On the other hand, the proposed paddock/ amenity area within the site would be lowered to provide additional storage, which I anticipate would assist the flow of water off the highway. In itself the provision of additional storage capacity in the paddock/ amenity area would be a benefit, but this is offset by the prospect of increased surface water flows along London Road.
56. I conclude that, on the information before me, the proposed traveller pitches would not be at risk of flooding, and that, considering the schemes as a whole, there would be no increased risk of flooding on the A40. Accordingly the proposal would not conflict with Policy EP6 of the Local Plan and paragraph 160(b) of the NPPF, and the land at London Road would be a suitable location for a traveller site, having regard to flood risk and surface water drainage.

### ***Other considerations***

#### *The need for traveller accommodation*

57. It is common ground between the main parties that there is not a five years' supply of sites for traveller accommodation in South Oxfordshire. The Appellant also drew attention to need at a national and regional level, but it is the situation at the

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<sup>24</sup> Sections 4 & 5 and Appendices A of Documents A5 & A6.



District level, where detailed assessments are undertaken and local policies for provision are prepared, which is of most relevance.

58. The Gypsy, Traveller & Travelling Showpeople Accommodation Assessment (GTTSAA) of 2017 identifies a need for 9 pitches over the period 2017-2033 for households meeting the definition in PPTS<sup>25</sup>. The status of 15 households who were not included in the survey work is unknown, and, assuming that a proportion of these would also meet the planning definition, the GTTSAA suggests that need could increase by up to five additional pitches, although this figure does not allow for any concealed adult households or need arising from older teenagers<sup>26</sup>. At the inquiry, the LPA was unable to provide a figure for the five year's requirement. The assessments in the GTTSAA indicate a requirement for six pitches in the next five years for households meeting the planning definition, plus an additional number from the households of unknown status.
59. There was detailed discussion at the inquiry about the methodology employed in the GTTSAA, and particular criticisms were made of the lack of transparency in determining whether households met the PPTS definition of travellers, the proportion of unknown households likely to have traveller status, and the household formation rate applied to this group. At the inquiry, the Appellant suggested that the five years' requirement is 22 pitches, although the derivation of this figure was not clearly set out.
60. I note that the methodology employed by ORS, which undertook the GTTSAA, has been accepted in several local plan examinations. The full details of consideration of the methodology in those examinations are not before me and the relevance of certain factors may vary from one district to another. Nevertheless, I have reservations about the application of a lower household formation rate to unknown households (compared to households meeting the planning definition) and the absence of any allowance for need arising in this group from concealed adult households and older teenagers. Accordingly, it seems to me that whilst the five years requirement for pitches in South Oxfordshire may not be as high as 22, it is likely to be markedly above the six indicated for households meeting the planning definition in the GTTSAA. Planning permission has been granted for a single pitch in 2019 (Document L18), but no other components of supply have been identified as available to meet need in the short-term. Indeed, the LPA was unaware whether two existing pitches which the GTTSAA had expected to contribute to meeting need had in fact become available. Looking further ahead, additional pitches would be required for the period up to 2033 covered by the GTTSAA. Policy H14 of the emerging Local Plan refers to the provision of ten pitches as part of three larger developments, but no weight can be given to this policy due to the holding direction currently in force. I give significant weight to the unmet need for traveller accommodation in South Oxfordshire.

#### *Alternative sites*

61. I have already explained that the Policy H15 of the emerging Local Plan, which refers to the provision of ten pitches as part of strategic allocations, carries no weight at present. The LPA explained that no sites are currently being put forward for traveller accommodation, and that it is not aware of any alternative opportunities to the Appellant's land to meet the general need for pitches. The single pitch which received planning permission last year is subject to a personal

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<sup>25</sup> Cherwell, Oxford City, South Oxfordshire & Vale of White Horse GTTSAA, Final Report, June 2017, figure 32.

<sup>26</sup> GTTSAA, para 7.61.

occupancy condition, and, as such, it is not available to meet the general need. This lack of available alternative sites provides further important weight in support of the appeal proposals.

#### *Policies for traveller sites*

62. There is no policy in the Development Plan which allocates sites for gypsy and traveller pitches. Policy CSH5 in the Core Strategy refers to the safeguarding and extension of existing sites and states the intention for new sites to be identified through a site allocations development plan document and an area action plan. Identification of future provision is now the role of the emerging Local Plan, which is subject to the holding direction. Otherwise this policy and Policy H17 of the Local Plan do set out matters to take into account in assessing proposals for traveller accommodation. However, bearing in mind the general need for accommodation, the lack of any policy designed to bring forward new sites adds some further weight in support of the appeal proposals.

#### *Highway safety*

63. The PC is concerned about highway safety due to the access arrangement which forms part of scheme A. The proposal has been assessed by the Highway Authority and the Appellant in relation to the visibility standards in the Design Manual for Roads and Bridges (DMRB), which seek splays of 2.4m by 215m at the access onto the A40. The access road would be constructed at the position of the existing field access at the eastern end of the site. To the north-west of this point, the road describes a sweeping bend which foreshortens visibility in this direction. At application stage, visibility was considered to be sub-standard, and the PC maintains an objection for this reason. The Highway Authority, however, indicated that the extent of the splay could be reduced if a survey indicated that the 85<sup>th</sup> percentile wet weather speed was below the limit of 60mph.
64. The Appellant's highway consultant subsequently measured visibility at the access point, and a traffic survey was undertaken. Splays of 284m and 182m were recorded to the south-east and north-west respectively. The 85<sup>th</sup> percentile speed of eastbound traffic was 56.9mph: applying a reduction of 1.25mph to allow for weather conditions, which included some periods of rain, reduces the visibility requirement to the north-west to 175.924m<sup>27</sup>. Moreover the Highway Authority accepted a 10% reduction in the DMRB visibility requirement at the position of the alternative access in scheme B. Taking account of the measured speed alone indicates that visibility would be adequate to the north-west, and to the south-east measurement on site indicates that the DMRB standard is met. Following consideration of the on-site measurements and survey data on traffic speed, the Highway Authority withdrew its objection to scheme A, and agreed that splays of 2.4m by 182m to the north-west and 2.4m by 215m to the south-east would be appropriate, and this matter is covered in the statement of common ground<sup>28</sup>. A condition could be imposed to ensure that the splays are retained free of obstruction. There is no detailed technical evidence to substantiate concern about the visibility available for drivers emerging from the access.
65. The PC has also expressed concern about the geometry of the access road in scheme A, which would turn through 90° to run parallel to the site frontage soon after the junction. I would expect vehicles negotiating a priority junction to do so

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<sup>27</sup> Document A10, paras 3.3, 3.13 & 3.19.

<sup>28</sup> Document O1, paras 11-20.

at reduced speed in any event, particularly when towing caravans. Results from the traffic survey give average peak hour flows of 158 and 180 during the morning and afternoon peak periods respectively<sup>29</sup>. The Appellant's evidence that traffic flows on the A40 are relatively low was not disputed, and I do not consider that the slower speed of vehicles negotiating the site access in scheme A would materially interfere with the free flow of traffic or reduce highway safety.

66. Scheme B involves the formation of a new access towards the western end of the site frontage. The site plan shows visibility splays of 2.4m by 193.5m in accordance with the 10% relaxation of the DMRB standard agreed by the Highway Authority (above, para 64). There is no detailed evidence before me to demonstrate that the vehicular access proposed at this point would be unsafe.
67. I find that neither proposal A nor B would adversely affect highway safety or traffic movement on the A40. Consequently, the proposed developments would not conflict with Policies T1(i) and H17(vi) (insofar as the latter policy refers to highways) of the Local Plan, nor with paragraph 109 of the NPPF.

#### *Waste management*

68. A planning obligation provides for a waste service contribution of £2,040 in respect of either scheme. Policy D10 of the Local Plan requires new development to make adequate provision for the management of waste, and the contribution would fund the cost of providing waste and recycling bins for each pitch. I am satisfied that the statutory tests in Regulation 122 of the Community Infrastructure Levy Regulations are met, and the planning obligation is a material consideration in these appeals.

#### **Conclusions**

69. The Development Plan includes the Core Strategy and the saved policies of the Local Plan. Both the Core Strategy and the Local Plan contain policies concerning traveller sites, namely Policies CSH5 and H17. The second part of Policy CSH5 applies to proposals for new sites, and the appeal proposals would comply with the relevant criteria concerning proximity to existing settlements and being within walking distance of essential services, albeit that the nature of the route to Tetsworth would not encourage journeys on foot and that there is currently no spare capacity at the primary school. Policy H17 sets out six criteria. I have found that it is within a reasonable distance of certain services (v), and there is an established need that cannot be met by existing sites (i). The appeal site is not within any of the designated areas specified in criterion (ii,) and its development as a traveller site would not adversely affect the amenities of existing residents or users of the countryside (as distinct from the its effect on visual amenity) (iv). However there would be a detrimental effect on the landscape (iii), and there is an overriding objection on amenity grounds (vi) due to the effect of noise on the living conditions of occupants of the site.
70. Due to their adverse effect on the character and appearance of the area, the proposals would conflict with Policy CSEN1 of the Core Strategy and Policy G4 of the Local Plan, and because of the effect of noise they would also fail to comply with Policy EP2 of the Local Plan. On the other hand, the appeal proposals are consistent with Policies EP6 and T1 of the Local Plan in respect of flood risk and highway safety. Other policies of relevance include those concerning biodiversity

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<sup>29</sup> Document A10, paras 3.11 & 3.12.

(C6), species protection C8), waste management (D10) in the Local Plan, and those concerning biodiversity (CSB1) and infrastructure (CSI1) in the Core Strategy: there is nothing before me to indicate conflict with these policies.

71. The appeal proposals would comply with several policies in the Core Strategy and the Local Plan. However, due to harm to the character and appearance of the area and the adverse effect of noise, I find that both proposals would conflict with the Development Plan considered as a whole.
72. In considering these proposals the exception test relating to flood risk is relevant (above, para 53). The first part of the test requires that the development should provide wider sustainability benefits which outweigh the flood risk. I am satisfied that the measures proposed in the surface water drainage strategies would minimise flood risk, and that this risk is outweighed by the provision of 12 pitches towards meeting the general need for traveller accommodation in South Oxfordshire. The exception test is passed, and flood risk does not count against the proposals. The Appellant pointed to the benefit of creating additional floodwater storage capacity in the paddock/ amenity area. Whilst I acknowledge that this part of the schemes would offer an improvement, the potential for the schemes to cause additional surface water flows along London Road is a corresponding disbenefit.
73. BS8233 advises that in higher noise areas where development may be desirable but the guideline values for external amenity space may not be achievable in all circumstances, proposals should be designed to achieve the lowest practicable noise levels. Although there is a general need for traveller accommodation, this is not a location where development is desirable, having regard to the adverse effect on the character and appearance of the area. Furthermore, bearing in mind that paragraph 180(a) of the NPPF says that planning decisions should avoid noise giving rise to significant adverse effects on the quality of life, even if a site has been designed as well as possible in terms of noise reduction, that does not justify development where the consequence would be to produce unacceptable living conditions.
74. The NPPF is a material consideration in these appeals. Paragraph 11(d) explains that where there are no relevant development plan policies, or the policies which are most important for determining the proposal are out-of-date, permission should be granted unless policies in the NPPF that protect areas or assets of particular importance provide a clear reason for refusal, or any adverse impacts would significantly and demonstrably outweigh the benefits when assessed against the policies in the NPPF taken as a whole. There are relevant development plan policies in these cases, against which I have already assessed the proposals, and I turn next to consider whether those policies which are most important are out-of-date.
75. Referring to the judgement in *Mark Wenman v SSCLG & Waverley BC*<sup>30</sup>, the Appellant argued that the lack of a five years supply pointed to the application of the tilted balance. Whilst paragraph 41 of *Wenman* held that the words *housing applications* in the 2012 version of the NPPF (para 49) should not be interpreted narrowly so as to be restricted to bricks and mortar houses, the judgement continues to say (at para 42) that under the PPTS there is specific provision for local planning authorities to assess the need for gypsy pitches and to provide sites to meet that need, and (at para 45) that paragraph 49 (which provided a route to

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<sup>30</sup> [2015] EWHC 925 (Admin)

the tilted balance) was only triggered by a failure to demonstrate the supply of housing on sites other than pitches on traveller sites.

76. In the current version of the NPPF, footnote 7 indicates that policies are out-of-date where a five years' supply of deliverable housing sites cannot be demonstrated, and refers to paragraph 73. Footnote 36 to that paragraph makes it clear that a five years' supply of sites for travellers should be assessed separately, in line with PPTS, and footnote 25 makes the same point. Accordingly, I do not agree that the absence of a five years' supply of traveller sites leads to the tilted balance in these cases.
77. The most important policies for determining these appeals are those relating to traveller sites, the character and appearance of the area, living conditions and flood risk, since these are associated with the main issues.
78. Insofar as the traveller policies are concerned, Policy CSH5 is part of the Core Strategy, which was adopted following the publication of the first version of PPTS. The relevant criteria give priority to proposals which are near to settlements and walking distance to essential services or high frequency public transport. Those criteria do not specify a distance from settlements nor preclude development in the countryside, and they are broadly consistent with PPTS.
79. In Policy H17 there is an important difference in the reference to distance. This policy seeks to resist traveller sites which are not within a reasonable distance of certain services (criterion (v)). That does not reflect the flexibility inherent in paragraph 25 of PPTS which seeks to very strictly limit, but not preclude, sites which are away from settlements. Similarly, criterion (ii) places a prohibition on traveller sites in the Green Belt, conservation areas, and on open land in areas of outstanding natural beauty (AONBs), whereas Policy E of PPTS enables sites in the Green Belt to come forward in very special circumstances, and paragraphs 172 and 193-196 of the NPPF indicate that there should be a balance of harm against benefits in AONBs and conservation areas respectively. Moreover, Policy H17 only permits traveller sites if there is an established need which cannot be met by existing sites. That is in marked contrast to the Government's aim to promote more private traveller sites, set out at paragraph 4e of PPTS, and to paragraph 11 which refers to proposals coming forward where there is no identified need.
80. The Development Plan policies to which I have referred concerning the character and appearance of the area (CSEN1 & G4), noise (EP2) and flood risk (EP6) are not out of date having regard to paragraphs 170(b), 180(a) and 163 of the NPPF.
81. The judgement in *Wavendon Properties Ltd v SSHCLG & Milton Keynes Council*<sup>31</sup> establishes that an overall view should be reached as to whether the most important policies taken as a whole are to be regarded as out-of-date. In Policy H17, which is directly concerned with proposals for traveller sites, several criteria are at odds with national policy, setting out a more restrictive approach to the development of traveller sites. I consider that that is sufficient to lead to a view that the most important policies taken as a whole are out-of-date, and consequently the tilted balance applies in this case.
82. Paragraph 10 of PPTS makes clear that local planning authorities should identify a five years' supply of sites for traveller accommodation. There is no five years' supply of pitches in South Oxfordshire, and the general need for traveller

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<sup>31</sup> [2019] EWHC 1524 (Admin)



accommodation carries significant weight in support of the two appeal proposals. This is augmented by the lack of alternative available accommodation and the policy position concerning the provision of traveller sites in the District. Providing additional floodwater storage in the proposed paddock/ amenity area is consistent with paragraph 160 of the NPPF, and is a matter to which I accord moderate weight. The Appellant argues that any traveller site will be in the countryside, and that any site is likely to be a similar further distance from services. It is likely that traveller sites will be in the countryside, but the distance to services of other sites which may be proposed is a matter of speculation. The countryside location of the site does not count against the appeal proposals, but it is not a benefit.

83. I have also considered the public sector equality duty. The Appellant argued that this is a material consideration in support of the proposals, having regard to the disparity in the supply of housing sites. Whereas the LPA had advised that there is over nine years' supply of housing for the settled community in the District, there is no supply of available sites to meet the general need for traveller accommodation. The public sector equality duty relates to protected characteristics, one of which concerns race (including ethnic origins). The Appellant had no objection to a condition restricting occupancy to gypsies and travellers as defined in PPTS. That definition is not based on ethnicity. No prospective occupants of the appeal site have been identified, and whilst many travellers fall within recognised ethnic groups such as Romany Gypsies or Irish Travellers, that need not be the case. I do not consider that the public sector equality duty lends further weight to the appeal proposals, and I have already taken the general need for traveller accommodation into account.
84. Both of the appeal proposals would cause harm to the character and appearance of the area. Paragraph 170(b) of the NPPF recognises the intrinsic character and beauty of the countryside, yet the proposals would result in a serious adverse effect on the landscape which merits significant weight, and in addition I attach moderate weight to the harm which the proposals would cause to visual amenity in the vicinity of the site. I have found that there would be unacceptable living conditions on the site due to noise: paragraph 180(a) of the NPPF makes it clear that noises should not give rise to adverse impacts on the quality of life, and the significant observed adverse effect on external amenity space that I have identified carries significant weight. Insofar as flooding is concerned, there is the prospect that there would be occasions when, because of the developments, excess surface water would be directed down the slope of the A40, encroaching onto the carriageway. Paragraph 160(b) of the NPPF, in explaining the exception test, says that development of the site should be safe for its lifetime, without increasing flood risk elsewhere. The potential risk from surface water on the A40 carries moderate weight.
85. I conclude that the adverse impacts of both proposals would significantly and demonstrably outweigh the benefits. Accordingly, the outcome of the tilted balance in paragraph 11(d)(ii) of the NPPF does not indicate that decisions should be taken other than in accordance with the Development Plan.
86. I have considered the possibility of temporary permissions. The Appellant suggested a period of five years in this circumstance, and the LPA concurred, expressing the view that, even if work had to re-start on the emerging Local Plan, following the holding direction, a new Plan should be in place by 2024. The PC suggested that a shorter period of time would be more appropriate. The harm resulting from use of the land would be less over a temporary period; nevertheless

I consider that it would still significantly and demonstrably outweigh the benefits of the appeal proposals.

87. Representations were made to the effect that there would be an interference with the human rights of those travellers in need of accommodation in South Oxfordshire. Articles 8 and 14 of the European Convention on Human Rights, as incorporated by the Human Rights Act 1998, do not impose an obligation to provide an adequate number of traveller pitches, and it is not possible to infer a breach of unidentified travellers' right to a home because there is an accepted need for traveller sites. Specific reference was made by the Appellant to Article 6, which concerns the right to a fair trial. The specific circumstances of future occupants could not be addressed in the appeal proceedings as no occupants were identified. The general need for traveller accommodation was considered in detail, and I am satisfied that at the inquiry the Appellant had a reasonable opportunity of presenting his case for both schemes under conditions which did not place him at any disadvantage compared to other parties.
88. For the reasons given above, and having regard to all other matters raised, including the suggested conditions, I conclude that the appeals should be dismissed.

*Richard Clegg*

INSPECTOR

## APPEARANCES

### FOR THE LOCAL PLANNING AUTHORITY:

Ms A Graham Paul of Counsel	Instructed by the Head of Planning, South Oxfordshire DC
She called	
Ms M Bolger CMLI DipLA BA PGCE BA	Director, Michelle Bolger Expert Landscape Consultancy
Mr S Jarman BSc DipTP PGCSL	Senior Research Executive, Opinion Research Services
Mr T Dean	Environmental Health Officer, South Oxfordshire DC
Mr W Piotrowski BSc(Hons)	Senior Flood Risk Engineer, South Oxfordshire DC & Vale of White Horse DC
Mr M Pullen BSc	Planning Officer, South Oxfordshire DC

### FOR THE APPELLANT:

Mr A Masters of Counsel	Instructed by WS Planning & Architecture
He called	
Ms S Boland BA(Hons) DipLA CMLI	Director, Influence Environmental Ltd
Mr D Martin BSc(Hons) MIOA	Director, Clement Acoustics Ltd
Mr D Jeffery I.Eng FIHE	Infrastruct CS Ltd
Mr L Wells	Appellant
Mr B Woods BA MRTPI	Managing Director, WS Planning & Architecture

### FOR TETSWORTH PARISH COUNCIL:

Mr E Grant of Counsel	Instructed by PHD Chartered Town Planners
He called	
Mr B J Scrivener MIOA	Impact Acoustics Ltd
Mr P E Hughes BA(Hons) DipMan MRTPI MCIM FRGS	Principal, PHD Chartered Town Planners

### INTERESTED PERSONS:

Councillor A Sheppard	Chair, Great Haseley Parish Council
Mr D Rose	Local resident

## THE LPA'S DOCUMENTS

- L1 Ms Bolger's proof of evidence.
- L2 Appendices to Document L2.
- L3 Mr Jarman's proof of evidence.
- L4 Appendices to Document L3.
- L5 Mr Dean's proof of evidence.
- L6 Mr Dean's rebuttal statement.
- L7 Mr Piotrowski's proof of evidence.
- L8 Appendix to Document L7.

- L9 Mr Pullen's proof of evidence.
- L10 Appendices to Document L9.
- L11 Ms Graham Paul's opening statement.
- L12 Emails dated June 2019 from Oxfordshire Gypsy & Traveller Services to Mr Pullen concerning the waiting list for County Council sites, and note on unauthorised encampments.
- L13 Land Registry plan of the appeal site.
- L14 Supplementary note on flood hazard ratings and thresholds for development planning and control purpose, Environment Agency and HR Wallingford, 2008.
- L15 CIL Regulations Statement relating to Document A24.
- L16 Costs application against the Appellant.
- L17 The LPA's response to Document O4.
- L18 The LPA's update note of October 2019.
- L19 List of possible conditions.
- L20 Ms Graham Paul's closing submissions.
- L21 Final comments in relation to the LPA's costs application.

### **THE APPELLANT'S DOCUMENTS**

- A1 Ms Boland's proof of evidence.
- A2 Appendices to Document A1.
- A3 Mr Martin's proof of evidence.
- A4 Additional Environmental Noise Survey, Report by Clement Acoustics Ltd.
- A5 Mr Jeffery's proof of evidence and appendix in respect of Appeal A.
- A6 Mr Jeffery's proof of evidence and appendix in respect of Appeal B.
- A7 Mr Wells's statement and appendices.
- A8 Mr Woods's proof of evidence.
- A9 Appendices to Document A8.
- A10 Mr Hurlstone's proof of evidence.
- A11 Appendices to Document A10.
- A12 Extracts from South Oxfordshire District Council – Landscape Sensitivity Assessment – Potential Strategic Allocations, Report by Kirkham Landscape Planning Ltd/ Terra Firma Consultancy, January 2018.
- A13 Extracts from landscape sensitivity report by HDA, October 2018.
- A14 Appendix D to LVIA for proposal B (A3 masterplan).
- A15 Revised site plan for proposal A, ref 15-009/F/001 Rev E (A3 & A1).
- A16 Rootlok Vegetated Wall System brochure.
- A17 Site plan for proposal B, ref 15-009/F/001 Rev C (A1).
- A18 Professional Practice Guidance on Planning and Noise – New Residential Development; Association of Noise Consultants, Institute of Acoustics & Chartered Institute of environmental Health; 2017.
- A19 Noise Policy Statement for England; Department for Environment, Food & Rural Affairs; 2010.
- A20 Acoustic fencing and barriers brochure, Jacksons Fencing.
- A21 Draft guidance to local housing authorities on the periodical review of housing needs – caravans and houseboats, Department for Communities & Local Government, 2016.

- A22 Statement by Mr Chenery concerning site layout, and site plans a-d and sections.
- A23 Site plan for proposal A, ref 15-009/F/001 (A1).
- A24 Unilateral undertaking relating to the appeal proposals.
- A25 Note and email dated 25 June 2019 from GeoGrow to the Appellant's agent concerning the proposed bund.
- A26 Mr Martin's technical statement on mobile home facades.
- A27 Mr Masters's closing submissions.
- A28 Response to the LPA's and the PC's costs applications.
- A29 Email dated 5 December 2019 from WS Planning & Architecture in response to Document O7.

#### **TETSWORTH PC'S DOCUMENTS**

- T1 Mr Scrivener's environmental noise impact assessment.
- T2 Rebuttal statement by Impact Acoustics Ltd.
- T3 Mr Hughes's proof of evidence in respect of Appeal A.
- T4 Appendices to Document T3.
- T5 Mr Hughes's proof of evidence in respect of Appeal B.
- T6 Appendices to Document T5.
- T7 Costs application against the Appellant.
- T8 Letter dated 17 June 2019 from the Head of Teaching & Learning, Tetsworth Primary School to Mr Hughes.
- T9 Mr Grant's opening statement.
- T10 PPG, paragraph 7-033.
- T11 Mr Grant's closing submissions.
- T12 Final comments in relation to the PC's costs application.

#### **OTHER DOCUMENTS**

- O1 Statement of common ground between the Appellant and the LPA.
- O2 Mr Rose's statement.
- O3 Documents relating to the planning history of land to the north of the appeal site.
- O4 Holding direction in respect of the emerging Local Plan.
- O5 Councillor Sheppard's statement.
- O6 Letter dated 10 October 2019 from the MHCLG to the LPA in response to Document L17.
- O7 Regulation 2(4) notice concerning possible pre-commencement conditions.