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## Appeal Decision

Hearing held on 22 May 2019

Site visit made on 22 May 2019

**by Rachel Walmsley BSc MSc MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 19 July 2019

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**Appeal Ref: APP/Q3115/W/18/3209624**

**Plot 9, Kiln Lane, Garsington, Oxfordshire OX44 9AR**

- 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 James McDonagh against the decision of South Oxfordshire District Council.
  - The application Ref P17/S4216/FUL, dated 27 November 2017, was refused by notice dated 25 May 2018.
  - The development proposed is the change of use of land as a private gypsy and traveller caravan site consisting of 1no. mobile home; 1no. touring caravan; 1no. amenity block and associated development.
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**This decision is issued in accordance with Section 56 (2) (b) of the Planning and Compulsory Purchase Act 2004 as amended and supersedes that issued on 1<sup>st</sup> July 2019.**

### Decision

1. The appeal is allowed and planning permission is granted for a limited period of four years for the change of use of land as a private one pitch gypsy and traveller caravan site consisting of 1no. mobile home; 1no. touring caravan; 1no. amenity block and associated development at Plot 9, Kiln Lane, Garsington, Oxfordshire OX44 9AR in accordance with the terms of application Ref: P17/S4216/FUL, dated 27 November 2017 and subject to the conditions set out in the attached schedule.

### Procedural matter

2. The proposed development would be occupied by the appellant and his wife, Lena and their children. It is common ground between the main parties that the appellant and his family are gypsies and travellers within the meaning of Annex 1 of the Planning Policy for Traveller Sites (PPTS)<sup>1</sup> in that they are persons of nomadic habit, travelling for the purposes of employment. Mr James McDonagh and his brother, Arthur McDonagh, carry out manual work, including gardening and property maintenance, and travel widely from the appeal site to seek and carry out this work. Having regard to this and the definition in Annex 1 of the PPTS, I am satisfied that the appellant and his family are travellers for the purpose of planning policy. I have determined the appeal on that basis.

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<sup>1</sup> Department for Communities and Local Government, Planning policy for traveller sites (August 2015)

## **Main Issues**

3. Having regard to the material before me, including the representations made at the hearing, I consider that the main issues in this appeal are:
  - (i) whether the proposal would be inappropriate development in the Green Belt; and,
  - (ii) if the development is inappropriate, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations, so as to amount to the very special circumstances necessary to justify the development.

## **Reasons**

### *Inappropriate development*

4. The National Planning Policy Framework (the Framework) at paragraph 133 indicates that openness is an essential characteristic of the Green Belt with a fundamental aim of Green Belt policy being to prevent urban sprawl and keep land permanently open.
5. The openness of the Green Belt has a spatial as well as a visual aspect. I heard how visually the development would be largely obscured from views from the highway and surrounding properties. Boundary fencing along three sides of the site would also help screen the development from local views, and landscaping, secured by a condition on any permission, could help soften the visual impact of the development on the landscape. However, the caravans, amenity block and boundary fencing would have a notable presence on the site and would limit views across it, resulting in a significant loss of openness. No amount of screening or landscaping works would obscure or minimise the presence of the development in a way that the openness of the Green Belt could be said to be preserved.
6. Notwithstanding this, policy E of the PPTS says that traveller sites in the Green Belt are inappropriate development. The main parties agree that the development would be inappropriate development in the Green Belt and I have not seen or heard anything in the evidence to suggest that I should take a different view.
7. Policy CSEN2 of the Core Strategy<sup>2</sup> seeks to protect the special character of the Oxford Green Belt and does not permit development within the Green Belt that is not in accordance with the Framework and the purposes of including land within it. I have found that the proposal would have a harmful impact on the openness of the Green Belt. As such the development would be contrary to policy CSEN2. In accordance with the Framework substantial weight must be given to this harm.
8. There is a general presumption against inappropriate development in the Green Belt unless very special circumstances exist. Policy E of the PPTS states that subject to the best interests of the child, personal circumstances and unmet need are unlikely to clearly outweigh harm to the Green Belt and any other harm so as to establish very special circumstances. I now turn to this matter.

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<sup>2</sup> South Oxfordshire Core Strategy, December 2012

### *Other considerations*

#### *Need for and supply of sites*

9. Policy B of the PPTS indicates that Councils should be able to demonstrate a five-year supply of deliverable sites to meet the identified need for gypsy and traveller accommodation. The Council accepts that it cannot demonstrate an adequate five-year supply.
10. The Council's most recent Gypsy and Traveller Accommodation Assessment 2017 (GTAA 2017) indicates that there is an established need for 10 sites to meet the Council's requirement to 2033. However, the appellant raises several concerns for the GTAA 2017, not least its methodology. The Council also acknowledge that limited weight can be afforded to this GTAA because it has not been adopted by the Council. Together with the absence of any specific or substantive evidence to suggest otherwise, I agree with the main parties that limited weight can be afforded to the GTAA 2017.
11. I concur with the main parties that the Gypsy and Traveller Accommodation Assessment 2015 (GTAA 2015) which has been adopted by the Council carries greater weight. This GTAA identifies a higher requirement for sites than the GTAA 2017. Together with the time that has elapsed since the GTAA 2015 was adopted and the national pressure for gypsy and traveller accommodation, it is likely that the need for sites is higher than identified within this GTAA.
12. The emerging South Oxfordshire Local Plan 2034 (eSOLP) proposes to allocate some 10 pitches although in light of my findings above, there are expectations for this figure to be higher. Nonetheless, the adoption of the plan has been put on hold. Alongside this is the Council's lack of a five-year supply of gypsy and traveller sites and a large percentage of the district's land being in the Green Belt which restricts the opportunities for site allocations. In all, a supply of sites to meet need is not immediately forthcoming.
13. The PPTS makes it clear that where a proposal is on land designated as Green Belt, the lack of an up-to-date five-year supply of deliverable sites is not a significant material consideration when considering proposals for the grant of temporary planning permission. As the appeal proposal is for a permanent development, it would have a greater impact on the Green Belt than a temporary site.
14. Nonetheless, it is clear that there is a pressing need within the district for sites for Gypsies and Travellers. There is also a consistent underperformance by the Council to meet this need. This carries important weight in favour of the appeal. However, the PPTS makes it clear that, subject to the best interests of the child, unmet need is unlikely to clearly outweigh the harm to the GB.

#### *Alternative sites*

15. With no vacant pitches on publicly available sites and private sites being full, I am satisfied that there are no suitable alternative sites available for the appellant and his family.
16. The large percentage of the borough designated as Green Belt restricts the likelihood of finding a suitable site. Furthermore, the limited provision of sites

within the local plan<sup>3</sup> means that there are limited means for the appellant and his family to secure an authorised site in the short term. The matter of alternative sites, therefore, carries important weight in support of the appeal proposal.

*Personal need and circumstances*

17. At the date of the hearing the appellant, Mr James McDonagh and his wife Lena Lawrence and their children Lena McDonagh (age 6), James-Lee McDonagh (Jnr) (age 3) and Maryella McDonagh (age 2) were living in a caravan on a site adjoining the appeal site. The family comprises one household with close connections to extended family, including Mr James McDonagh's brother Arthur McDonagh who lives with his family in mobile accommodation on an unauthorised site within the immediate vicinity of the appeal site. The appellant owns the appeal site which makes it a logical and convenient place to reside.
18. The family have moved from site to site for many years, stopping at the side of the road for varying periods of time. Following a serious medical incident experienced by James-Lee McDonagh (Jnr) in 2017, the family moved to the site adjoining the appeal site to be close to Arthur McDonagh and his family for support and to establish a base from which the family could access medical services.
19. At the time of the hearing James-Lee McDonagh (Jnr) was requiring follow up appointments because it was possible that the medical incident in 2017 could recur. At the time of the Hearing follow up appointments were arranged for May and August 2019 at Great Ormond Street Hospital in London. It is clear from the evidence before me that James-Lee McDonagh (Jnr) requires access to both the John Radcliffe Hospital in Oxford and to the Great Ormond Street Hospital. It is also evident that a stable and long-term property is required with access to both hospitals to help manage James' illness.
20. The Council provided evidence to confirm that James-Lee McDonagh (Jnr) no longer requires the services of the Community Children's Nurse in Oxford. The appellant agrees. However, the appellant did not agree that this implied that James no longer needs medical attention. From all that I heard at the hearing I am satisfied that, James still requires medical attention, albeit not the services of the Community Children's Nurse.
21. Lena Lawrence is expecting her fourth child and for medical reasons requires the support of family and the medical services as the pregnancy advances. In light of the evidence before me and all that I heard at the hearing I do not doubt this. Bury Knowle Health Centre is within five miles of the appeal site and therefore serves as a convenient centre for Lena to visit.
22. It is also held by the appellant that a stable base for the family is important. Indeed, a permanent site would enable the family to receive support from Mr McDonagh's brother and provide access to medical and educational services on a regular basis. Lena McDonagh attends the St John Fisher Catholic Primary School and James-Lee McDonagh attends the Foundation Nursery at this school. They are making good progress and a permanent place to live would support their progress. The family would continue to benefit from living close to

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<sup>3</sup> South Oxfordshire Local Plan 2011, adopted January 2006

Arthur McDonagh and his wife (Winifred McDonagh) as Winifred assists with drop-offs and pick-ups to and from school. A permanent place to live would also provide the children with somewhere safe and clean to grow up, the latter being a particularly important requirement for James-Lee McDonagh's (Jnr) health.

23. Mr Arthur McDonagh currently lives on an unauthorised site with enforcement action in abeyance. It is therefore possible that Arthur would have to move from his site which brings into question the length of time the appellant and his family could benefit from Arthur's support if they were to reside on the appeal site.
24. The appellant suggests that the personal circumstances of the appellant and his family are similar to those in a re-determined appeal<sup>4</sup>. The personal circumstances in this case related to notable psychiatric, psychological and medical matters. I have not found this to be the case for the appeal proposal. I do not concur with the appellant, therefore, that this evidence carries substantial weight in favour of the appeal. Notwithstanding this, for the reasons given above, I find that the personal need and circumstances of the appellant and his family attracts significant weight.

#### *Sustainable location*

25. The Framework, together with the PPTS, seeks development that contributes to and helps achieve sustainable development. The development would provide a settled base that would reduce the need for illegal encampment and the adverse environmental impacts this can have. Whilst access to services and facilities is not the only indicator of sustainable development, the site would be within a reasonable distance of services and facilities including a nursery school and a shop. However, having observed the lack of pavement and the unmade road immediately adjoining the appeal site, access to these services and facilities by means other than the car is questionable. Nonetheless, given the proximity of the services and facilities to meet daily needs, journeys by car would be relatively short with, therefore, minimal impact on the environment.
26. Third parties raised concerns relating to traffic and the local environment. No in-principle objections were raised by the Council regarding any such implications. I have little reason to disagree with this position. Nonetheless, if I was to allow the appeal, conditions attached to the permission could address concerns in these regards.
27. The PPTS recognises that traveller sites are likely to be located in rural areas. Policy C of the PPTS states that where this is the case, the scale of the site concerned should not dominate the nearest settled community. The nearest settled community is Garsington. The area of the appeal site compared to the size of Garsington is small. Together with the modest height and scale of the development proposed, the development would not rival that of the dwellings nearby. Therefore, notwithstanding my findings for the impact of the development on openness, the development would not dominate the nearest settled community.

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<sup>4</sup> Ref APP/P0119/A/10/2130078.

28. Overall, when considering the modest size of the development proposed and its position in relation to Garsington, the site's sustainable location attracts some weight in favour of the appeal.

*Whether the harm is clearly outweighed by other considerations*

29. The Framework advises that inappropriate development should not be approved except in very special circumstances. These will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations.
30. The substantial harm caused by reason of inappropriateness and the significant impact on openness and Green Belt purposes carries substantial weight against the proposal.
31. In favour of the appeal is the unmet need for sites within the district and the failure of the Council to meet that need. This carries important weight in favour of the development, as does the lack of alternative sites for the appellant and his family. The proposed development would enable the family to access education and health services justified by their personal circumstances. This carries significant weight in favour of the proposal. However, whilst general need and personal need are important factors, in accordance with the PPTS and subject to the best interests of the child, they do not justify permanent harm to the Green Belt.
32. Although the application is for a permanent permission, I have considered the option of a temporary permission. Granting a temporary permission would not reduce the amount of harm the development would cause but would limit it to a fixed period. Furthermore, any harm to the Green Belt would be reversible and therefore limited. Given the difficulty the appellant currently faces in finding an alternative site, and the undesirability of roadside camping, it would be appropriate to grant a temporary and personal permission. This would give the appellant time to find a suitable site and for his family to establish themselves taking into account James' medical condition and the anticipated birth of a new baby. As such, the avoidance of permanent harm is sufficient to alter the balance of considerations in favour of granting a temporary permission.
33. I have considered the human rights of the intended occupiers. Whilst there would be some interference with Article 8 rights, in preventing the use of the site as a permanent settled base, this would not be severe and is necessary and proportionate in the circumstances. Moreover, the public interest cannot be protected by a means that is less interfering with the family's rights.
34. The main parties were unable to agree a reasonable timescale for a temporary permission should this be considered reasonable; three and five years were suggested. A period of four years is reasonable, taking into account the time needed to bring sites forward through the local plan process. Furthermore, it would provide sufficient time for the appellant and his family to realise the benefits of the educational and medical services nearby and make long term plans based on the outcome of enforcement action pertaining to Arthur McDonagh.

35. I therefore conclude that over a temporary period the harm identified would be clearly outweighed by other considerations including the personal circumstances of the appellant and the needs of the children.
36. Accordingly, conditions restricting occupancy on a personal basis and to persons meeting the PPTS definition and for a limited period are necessary. To protect the Green Belt from continuing harm a condition is required to ensure that the use of the caravans ceases and that they are removed together with associated equipment and works at the end of the temporary period.
37. In light of the harm identified and the need to limit any harm to the character and appearance of the area, it is necessary to restrict the number and size of caravans and vehicles on the site and prevent commercial activities and require the appellant to obtain the Council's approval for the size and design of the amenity block.
38. To provide a satisfactory standard of development and prevent pollution of the watercourses a scheme for foul and surface water drainage needs to be agreed. To improve the highway conditions, it is necessary to require the provision of appropriate visibility splays.
39. Notwithstanding that the permission would be temporary, landscaping (to include bin storage) and contamination conditions that respect the temporary nature of the site would not be unduly onerous or unreasonable.

### **Conclusion**

40. For the reasons given above, and taking into account all other matters raised, I conclude that the appeal should be allowed and planning permission granted on a temporary basis

*R Walmsley*

INSPECTOR

### **APPEARANCES**

#### **FOR THE APPELLANT:**

Lena Lawrence	Appellant's wife
Arthur McDonagh	Appellant's brother
James McDonagh	Appellant
Dr Angus Murdoch MRTPI	Agent for the appellant, Murdoch Planning Limited

#### **FOR THE LOCAL PLANNING AUTHORITY:**

Tracy Smith	South Oxfordshire District Council
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**INTERESTED PERSONS:**

Richard Betteridge	Local Resident
Carol Clarke	Local Resident
David Clarke	Local Resident
Elizabeth Dain	Local Resident
Anne Eastwood	Local Resident
B Engstrom	Local Resident
Roy Mathias	Local Resident
Malcolm Roberts	Local Resident
Gordon Roper	Local Resident
Chris Wright	Parish Council

**DOCUMENTS SUBMITTED DURING THE HEARING:**

**Document 1** – Aerial photograph of site taken in 2016 and provided by a local resident.

**Document 2** – Letter dated 20 May 2019 from Oxford University Hospitals.

**Document 3** – Email dated 16 May 2019 from Sophie Neligan.  
Subject: Housing Letter.

**Document 4** – Letter dated 14 May 2019 from St John Fisher Catholic Primary School.

**Document 5** – Letter dated 17 May 2019 from Bury Knowle Health Centre.

**Document 6** – High Court Judgment, Guildford Borough Council V Cooper & ORS dated 5 February 2019.

**Document 7** – Signed and dated Statement of Common Ground.

**Document 8** – Photograph of plot 9 and vehicle movements from local resident.

**Document 9** – Email dated 21 May 2019 from Elizabeth Gillespie.  
Subject: Fwd:9 Kiln Lane.

**Document 10** – Statement by Chris Wright on Behalf of Garsington Parish Council.



## **SCHEDULE OF CONDITIONS**

- 1) The occupation of the site hereby permitted shall be carried on only by Mr James McDonagh and his wife Lena Lawrence and their resident dependants, and shall be for a limited period being the period of 4 years from the date of this decision.
- 2) The site shall not be occupied by any persons other than gypsies and travellers as defined in Annex 1: Glossary of Planning Policy for Traveller Sites (or its equivalent in replacement national policy).
- 3) The development hereby permitted shall be carried out in accordance with the Site Location Plan, Drg No 01743/10 Rev 2 and Site Development Scheme, Drg No 01473/2 Rev 3.
- 4) When the land ceases to be occupied by those named in condition 1) above, the use hereby permitted shall cease and all caravans, buildings, structures, materials and equipment brought onto the land or works undertaken to it in connection with that use shall be removed and the land restored to a condition agreed in writing by the local planning authority and detailed in condition 5).
- 5) The development shall not be brought into use until details of a scheme to restore the land at the end of the period for which planning permission is granted for the use shall have been submitted to and approved in writing by the local planning authority. These details shall include an implementation programme. The restoration works shall be carried out in accordance with the approved details and condition 4).
- 6) There shall be no more than one pitch on the site and on this pitch 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)), and one amenity block.
- 7) No vehicle over 3.5 tonnes shall be stationed, parked or stored on the site.
- 8) No commercial activities shall take place on the land, including the storage of materials.
- 9) Prior to the construction of the amenity block, details of it (to include size and external materials) and including plans, floorplans and elevational drawings at a scale of 1:500 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.
- 10) The development shall not be brought into use until surface and foul water drainage works have been completed in accordance with details that have first been submitted to and approved in writing by the local planning authority. From its completion, the approved details shall be maintained throughout the life of the development.

- 11) The development shall not be brought into use until vehicular visibility splays of 2.4m x 2m in either direction have been provided from the new access. There shall be no obstruction to visibility within these splays exceeding 0.9m in height above the adjacent carriageway channel. Such visibility splays shall thereafter be retained.
- 12) Within 2 months of the date of this decision a landscaping scheme shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall include, but is not limited to boundary details and means of enclosure, hard surfaced areas and materials and bin storage details. The approved details shall be implemented within 6 months of the date of this permission, unless otherwise agreed by the local planning authority in writing. From its completion, the approved details shall be maintained throughout the life of the development.
- 13) No development shall commence until an assessment of the risks posed by any contamination, carried out in accordance with British Standard BS 10175: Investigation of potentially contaminated sites - Code of Practice and the Environment Agency's Model Procedures for the Management of Land Contamination (CLR 11) (or equivalent British Standard and Model Procedures if replaced), shall have been submitted to and approved in writing by the local planning authority. If any contamination is found, a report specifying the measures to be taken, including the timescale, to remediate the site to render it suitable for the approved development shall be submitted to and approved in writing by the local planning authority. The site shall be remediated in accordance with the approved measures and timescale and a verification report shall be submitted to and approved in writing by the local planning authority. If, during the course of development, any contamination is found which has not been previously identified, work shall be suspended and additional measures for its remediation shall be submitted to and approved in writing by the local planning authority. The remediation of the site shall incorporate the approved additional measures and a verification report for all the remediation works shall be submitted to the local planning authority within 14 days of the report being completed and approved in writing by the local planning authority.