



## Appeal Decision

Hearing Held on 24 October 2017

Site visit made on 24 October 2017

**by Andrew Hammond MSc MA CEng MIET MRTPI**

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

**Decision date: 17 January 2018**

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**Appeal Ref: APP/H1705/C/17/3166670**

**Land to the north of Pelican Road, Pamber Heath**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
  - The appeal is made by Michael Wall against an enforcement notice issued by Basingstoke & Deane Borough Council.
  - The enforcement notice, numbered EC/16/00355/UMCU2, was issued on 14 December 2016.
  - The breach of planning control as alleged in the notice is without planning permission the change of use of the land from agricultural use to residential use including the stationing of mobile homes, dayroom, shed, concrete hard standing and paving, wooden decking, ornamental brick walls, hard-core, lighting columns, septic tank and associated pipework.
  - The requirements of the notice are
    1. Cease the residential occupation and residential use of the site edged red on the plan and return the land to agricultural use in accordance with the time for compliance set out below;
    2. Remove the mobile homes marked A on the plan;
    3. Remove the dayroom marked B on the plan and the shed marked E on the plan;
    4. Remove the touring caravan marked F on the plan;
    5. Remove the Ornamental brick walls marked G on the plan;
    6. Remove the wooden decking marked C on the Plan;
    7. Remove the septic tank from the area of land marked I on the plan;
    8. Remove all concrete hard standing and paving marked D on the plan;
    9. Remove the lighting columns marked H on the plan together with any associated cables and electricity spurs.
  - The period for compliance with requirement 8 is 9 months from the date the notice takes effect and for the remaining requirements is 8 months from the date the notice takes effect.
  - The appeal was made on the grounds set out in section 174(2)(a), (f) & (g) of the Town and Country Planning Act 1990 as amended. At the Hearing the appellant added grounds (b), (c) and (d).
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### Decision

1. It is directed that the enforcement notice be varied by the deletion of the words "concrete hard standing and" in the allegation and requirement 8. Subject to this variation the appeal is allowed and the enforcement notice is quashed. Planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended, for the development already carried out, namely the residential use including the stationing of mobile homes

and day room on the land shown on the plan annexed to this decision, subject to the conditions in Annex A.

## **Background**

2. The appeal site is located to the north of Pelican Road on a broadly triangular site on the northern edge of Pamber Heath. The site is accessed via a shared track which forms a public right of way and also serves as the primary access to a number of dwellings in Pelican Road. Approximately 0.7km to the north west of the appeal site is the south eastern boundary of the Atomic Weapons Establishment (AWE) Aldermaston. The site is currently being used for residential use by two families.
3. Following the initial occupation of the site the Council refused planning permission 15/02627/FUL for change of use of land to use of site by Gypsy/Traveller families including construction of hardstanding, siting of 2 no. mobile homes and 2 no. touring caravans and erection of 2 no. utility rooms (retrospective).

4. The reason for refusal was:-

The application site is situated within the (0-3) km Detailed Emergency Planning Zone (DEPZ) surrounding the Aldermaston Atomic Weapons Establishment. The use of the DEPZ in this context provides an area for development control consistent with the zone defined originally for emergency planning purposes. Off-site emergency arrangements are a requirement of the Radiation (Emergency Preparedness and Public Information) Regulations 2001 and are outlined within the AWE Off-Site Emergency Plan issue: April 2016. The purpose of the plan is to provide a detailed framework for all responding agencies to work to in order to facilitate the protection of the public and/or environment following an event involving an on-site accident at AWE Aldermaston. The proposed development includes the siting of two mobile homes, which as a result of their use, scale and increase in population, proximity to the centre of the DEPZ and location within one of the most densely populated sectors of the DEPZ, would have an adverse health risk to occupants of the site and impact on the AWE Off-Site Emergency Plan due to the increased potential for evacuation as opposed to shelter as a result of proximity, in the short term and a longer term potential for significant recovery. As such the proposal would be contrary to the requirements of Policies SS7 and EM10 of the Basingstoke and Deane Local Plan 2011 - 2029 and the National Planning Policy Framework. There are no other material considerations that would outweigh the harm identified.

5. The reasons given for the issue of the enforcement notice are that "The Council considers that the alleged breaches of planning control need planning permission and that planning permission should not be given because planning conditions could not overcome the objections, in planning terms, to the development.

## **Status of the Appellant**

6. Although the Council originally questioned whether the appellant meets the definition of 'gypsies and travellers' in Annex 1 of Planning Policy for Traveller Sites (2015) (PPTS), this line was not pursued by the Council at the Hearing. I

am content, having reviewed all the information available to me, that the appellant does meet the definition of a gypsy in PPTS.

### **The Need for Additional Pitches**

7. An updated Gypsy and Traveller Accommodation needs Assessment (GTAA), taking account of the change in definition in PPTS, was commissioned by the Council in September 2016 and published in April 2017. The GTAA identified that there is still an unmet need for pitches within the Borough and that there is a lack of alternative accommodation available.

### **Reasons Ground (b)**

8. Under ground (b) the appellant pleaded that the appeal site was a former transport depot and that the hard standing over the entire site had been in situ for well in excess of 10 years and that, therefore a certificate of lawful use should be issued for that part of the development enforced against.
9. The appeal is against the enforcement notice and not against a refusal to issue a certificate of lawful use. However, it is clear and not disputed that the hard standing had been in situ for a considerable period of time prior to the appellant's occupation of the site. The laying of the hard standing should not form part of the alleged breach and the enforcement notice should not, therefore, include the hard standing in the allegation or the requirements. The appeal on ground (b) succeeds in that the laying of the hardstanding should not be included in the breach of planning control and the requirements of the notice are corrected to that extent.

### **Reasons Ground (c)**

10. Under the added ground (c) appeal, the appellant followed a similar line to that under ground (b) in asserting that the laying of hardstanding was not a breach of planning control. Given the findings on the ground (b) appeal above and ground (d) appeal below, it is not necessary to specifically conclude on the ground (c) appeal.

### **Reasons Ground (d)**

11. A similar argument was pursued under ground (d), that is that it was too late to take enforcement action in relation to the hard standing. The ground (d) appeal succeeds insofar as it relates to the hard standing and the enforcement notice is corrected as above under ground (b).

### **Reasons Ground (a)**

#### ***Main Issue***

12. The site is situated within the Detailed Emergency Planning Inner Zone (DEPZ) of the AWE. As such the main issue in this appeal is whether the Off Site Nuclear Emergency Plan can accommodate the needs of the population in the event of an emergency.

#### ***Reasons***

13. Government policy in respect of gypsy and traveller sites is set out in PPTS and Policy SS7 of the Basingstoke and Deane Local Plan 2011-2029 (LP) explains that all development proposals within all consultation zones that trigger

consultation with the Office for Nuclear Regulation's (ONR) Directorate will be considered in conjunction with the ONR, who will have regard to:

- a) The proposed use;
  - b) The scale of development proposed;
  - c) The location of the development; and
  - d) The impact of the development on the functioning of the emergency plan through appropriate consultation with the multi agencies who have duties under The Radiation Emergency Preparedness and Public Information Regulations (REPPIR).'
14. The Council, via the Civil Contingencies Manager of West Berkshire Council explained that the AWE Off-Site Emergency Planning Group is a multi-agency group of responders who would have a role in the response to any radiation event at AWE Aldermaston or AWE Burghfield.
  15. The aim of the AWE Off-Site Emergency Plan is to provide a detailed framework for all responding agencies to work to in order to facilitate the protection of the public and/or environment following an event involving an on-site accident at either of the Atomic Weapons Establishments which has an impact offsite with the strategic intentions being to protect life and health; stabilise the incident; and prevent further harm to the public and the environment.
  16. In developing the plan the focus is based on the area immediately surrounding the site known as the Detailed Emergency Planning Zone (DEPZ) the extent of which is based on a an evaluation undertaken every 3 years or sooner. The regulators, the Office for Nuclear Regulation ONR, determine the final shape of the DEPZ.
  17. There are 2 measures which could be undertaken to protect the community should an event occur; shelter and/or evacuation. The Council suggested that although the default countermeasure is shelter "go in, stay in and tune in", the closer that properties are to the site the greater the risk of subsequent evacuation.
  18. Additionally, a caravan or similar structure, would offer a lower level of protection against the ingress of alpha radiation due to air leakage rates from the external environment being greater for mobile homes; the shielding provided by mobile homes being less; and the average distance between sheltering individuals and radioactive material deposited on the ground and on the roof of the structure. ONR advise against the grant of planning permission for the siting of mobile homes within DEPZs and that, further from the site but within an Outer Consultation Zone, potential sites that are further away should be preferred to those that are closer.
  19. Notwithstanding the emergency planning considerations, the Secretary of State granted planning permission on appeal for a development of 115 dwellings on a site close to one of the entrance gates to AWE Aldermaston (Appeal Ref APP/H1705/V/10/2124548) and the Council granted planning permission for one gypsy pitch at land adjoining Forest Farm, Sandy Lane, Pamber Heath, subject to conditions requiring the completion of a brick built day room and the provision of a land line telephone. The Case Officer Report included the following:-

"The AWE Off-site Group initially expressed concerns about the level of protection from caravans/mobile homes in the event of a radiation emergency. This is attributed to the type (Alpha) of particle released from radiation clouds which have the ability to infiltrate through the walls of caravans. Following discussions with Public Health for England, the AWE Off-Site Planning Group have confirmed that the principle of using the proposed day room, as emergency cover for up to 72 hours, is however acceptable. This would satisfy the AWE Off-site Group about the need for a more solid building on site. The applicant's agent has therefore suggested a condition that requires the day room to be constructed within a certain time period, to ensure that adequate protection is provided on site.

In addition, the AWE Off-site Group confirmed that all mobile phones would be blocked in an emergency, but land lines would be available as a means of communicating information. The applicant's agent has sought to address the concerns of the Emergency Planning Team suggesting that a condition could reasonably be imposed that requires the installation of a landline in the mobile home."

20. More recently the Council again granted planning permission for an additional mobile home and utility room at a site at Tadley where the Off-site Planning Group were satisfied provided a brick or block construction utility room were provided and that telephone land lines were installed.
21. At the Hearing, following consideration of the above, the representative of the ONR confirmed that he would have no objection to the appeal proposal provided that a suitable day room, adequate and appropriate for shelter in the event of an emergency be provided in accordance with approved details and that a telephone land line be installed.
22. The Council had also raised concerns as to additional strain on responders in the event of an emergency, due to additional population. However, particularly given the grant of permission for other substantial development the significance of the additional population on the appeal site would not be crucial.
23. Therefore, subject to the imposition of appropriate conditions, the development would not unacceptably impact on the off-site emergency plan.

### ***Other matters***

24. Third parties raised a number of other issues in objection to the grant of planning permission, primarily significant visual harm.
25. Planning Policy for Traveller Sites does state that local planning authorities should very strictly limit new traveller site development in open countryside that is away from existing settlements or outside areas allocated in the development plan. Local planning authorities should ensure that sites in rural areas respect the scale of, and do not dominate, the nearest settled community, and avoid placing an undue pressure on the local infrastructure. Whilst the appeal site is on the edge of Pamber Heath it is neither remote nor does the development dominate the settlement. Although adjacent to fields the site is not in the open countryside.
26. Furthermore PPTS states that sites should not be enclosed with so much hard landscaping high walls or fences that the impression is given that the site and its occupants are deliberately isolated from the rest of the community.

However, any visual impact of the site could be mitigated by appropriate landscaping which could be required by condition.

27. The occupiers of the site have several children attending local schools. Clearly their education would suffer if they were to leave the site and it is in their best interests that their education continues uninterrupted.

### **Conclusions on Ground (a)**

28. Whilst allowing the appeal would have some effect on emergency planning at AWE Aldermaston, that effect is not considerable and would be outweighed by the contribution that the provision of additional pitches would make towards the unmet need for gypsy sites in the District. Furthermore, the best interests of the children are a consideration of primary importance. Therefore, the benefits of the scheme outweigh any identified conflict with development plan policy and the ground (a) appeal should be allowed.
29. For the reasons given above I conclude that the appeal should succeed on ground (a) and planning permission will be granted. The appeal on grounds (f) and (g) does not therefore need to be considered.

### **Conditions**

30. A condition restricting the occupation of the site to persons meeting the definition of gypsies and travellers in Annex 1 of PPTS is necessary to ensure that the site remains available as a gypsy site.
31. A condition requiring the approval of a suitable design of day room and its completion and retention is necessary in the interests of the safety and well-being of the occupiers of the site as is a condition requiring the provision and retention of a telephone land line.
32. Conditions precluding the carrying out of business activities and the stationing of vehicles over 3.5 tonnes are necessary in the interests of visual amenity as is a condition limiting the number of caravans on the site.
33. A condition requiring the approval and implementation of a site development scheme to include foul and surface drainage, parking and turning provision, hard and soft landscaping, external lighting and refuse storage provision is necessary in the interests of satisfactory development of the site.

*Andrew Hammond*

Inspector



### **ANNEX A Schedule of Conditions**

- 1) 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).
- 2) No more than 4 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 2 shall be static caravans) shall be stationed on the site at any time.
- 3) No vehicle over 3.5 tonnes shall be stationed, parked or stored on this site.
- 4) No commercial activities shall take place on the land, including the storage of materials.
- 5) The use hereby permitted shall cease and all caravans, structures, equipment and materials brought onto the land for the purposes of such use shall be removed within 90 days of the date of failure to meet any one of the requirements set out in i) to v) below:
  - i) A telephone landline shall be installed to the site and connected to both mobile homes/static caravans within three months of the date of this decision.
  - ii) Within 3 months of the date of this decision a scheme of details of the design and construction of the day room shall be submitted for the written approval of the local planning authority and the scheme shall include a timetable for its implementation.
  - iii) If within 9 months of the date of this decision the local planning authority refuse to approve the scheme or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
  - iv) If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.
  - v) The approved scheme shall have been carried out and completed in accordance with the approved timetable.

Upon completion of the approved day room specified in this condition, that day room shall thereafter be maintained and remain in use.

Following installation the telephone landline shall be maintained and remain in use.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

- 6) The use hereby permitted shall cease and all caravans, structures, equipment and materials brought onto the land for the purposes of such use shall be removed within 90 days of the date of failure to meet any one of the requirements set out in i) to iv) below:
  - i) Within 3 months of the date of this decision a scheme the means of foul and surface water drainage of the site; refuse storage; proposed and existing external lighting on the boundary of and within the site;

the internal layout of the site, including the siting of caravans, plots, hard standing, access roads, parking and amenity areas; tree, hedge and shrub planting including details of species, plant sizes and proposed numbers and densities; the restoration of the site to its condition before the development took place, (or as otherwise agreed in writing by the local planning authority) at the end of the period the site is occupied by those permitted to do so (hereafter referred to as the site development scheme) shall have been submitted for the written approval of the local planning authority and the scheme shall include a timetable for its implementation.

- ii) If within 11 months of the date of this decision the local planning authority refuse to approve the scheme or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
- iii) If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.
- iv) The approved scheme shall have been carried out and completed in accordance with the approved timetable.

Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter be retained.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

### **End of Schedule of Conditions**



**APPEARANCES**

FOR THE APPELLANT:

Alan Masters	of Counsel
Brian Woods	WS Planning and Architecture

FOR THE LOCAL PLANNING AUTHORITY:

Rob Sims	Basingstoke & Deane Borough Council
Mark Fletcher	Basingstoke & Deane Borough Council
Carolyn Richardson	West Berkshire Council
Tim Randles	Office for Nuclear Regulation

INTERESTED PERSONS:

Aaron Smith	Fowler Architecture and Planning (representing local residents)
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DOCUMENTS

- 1 Details of school attendance by children of site residents, provided by the appellant.

