

APPEALS IN RELATION TO AN ENFORCEMENT NOTICE (APPEAL B) AND A REFUSAL OF PLANNING PERMISSION (APPEAL A) CONCERNING LAND APPROXIMATELY 150M METRES SOUTH OF BRIMPTON LANE , BRIMPTON COMMON, READING.

PINS REF:- APP/W0340/W/24/3346878 (Appeal B) & APP/W0340/C/24/3351139 (Appeal A)

SLATER v WEST BERKSHIRE BC

OPENING STATEMENT ON THE ENFORCEMENT NOTICE APPEAL

1. If the allegation is changed to include day room, the Appellant only has ground G and the allegation should not be changed because the lesser scheme enforced against (as opposed to the larger proposal in the s78 appeal,) is not before the inspector. Such an amendment would therefore be unfair as the planning case for it cannot be argued.
2. It also follows that the requirements to remove the former field shelter which has been converted into a day room is not possible without causing injustice.
3. Requirement E is prejudicial as it will place the appellant worse off than had he not appealed the Notice in the first place. What the land is restored in any event depends on whether the Inspector agrees with the Appellant that the day room was underenforced against and survives.

OPENING STATEMENT FOR APPEAL B ON BEHALF OF THE APPELLANT

4. Case law establishes that "...the vulnerable position of Gypsies as a minority means that some special consideration should be given to their needs and their different lifestyle both in the relevant regulatory planning framework and in reaching decisions in particular cases... To this extent, there is thus a positive obligation imposed on the Contracting States by virtue of Article 8 to facilitate the Gypsy way of life..."¹

¹ Taken from various decisions of the ECt HR cited in the Wychavon case [2008] EWCA Civ 692, copies available.

5. Therefore, it should be taken as read that Romany Gypsies are members of an ethnic minority who are in a different position to the settled population. The Appellant and his family have a protected characteristic under the Equality Act 2010, this means that special consideration and appropriate weight must also be given by public authorities in planning decisions, that means here, to facilitating the Gypsy way of life. Respect for the Gypsy way of life and adopting a human rights approach it is submitted means asking if there is a pressing social need to dismiss the appeals. That test derives from the duty in section 6 of the HRA 1998 not to act incompatibly with the rights that Parliament set out under schedule 1 of that Act.
6. SUSTAINABLE LOCATION - When considering sustainability considerations “in the round”, it is recognized that a settled base has various social benefits as well as reducing both the need for long-distance travelling and possible environmental damage caused by unauthorized encampments. The local services are within a reasonable travelling distance, see paras 6.8 to 6.22 of Mr Woods’ proof, and are by no means not easily accessible. The policy also, as it is written, states “a bus route” it does not specify that such a route has to be highly efficient nor that there has to be multiple bus routes. As such, on the basis that there is a bus route within reasonable proximity, this part of the criteria is met.
7. APPEARANCE AND CHARACTER OF THE COUNTRYSIDE AND THE EFFECT ON GREEN INFRASTRUCTURE – Ms Allen at para 4.1 accepts the point made on behalf of the Appellant that the site does not form part of a designated landscape of value for the purposes of the framework. Green Infrastructure Impacts are in effect a concern over the effect of allowing the appeals on the character and appearance of the land it occupies. With respect to the wording of the relevant local plan, a requirement to conserve and enhance derives from National Landscape, former AONB policy. The appraisal should be relative and contextual asking whether any harm that is deemed important cannot be made acceptable with additional landscaping. The wider area is semi-rural in nature but has a residential character which prevails. What matters here is whether a single storey one pitch caravan site given time for the conditions to take effect, would blend in with its surroundings without damaging interests of acknowledged importance. You will be invited to conclude that it plainly could and therefore to allow the appeals. There is nothing repugnant about a caravan site adjacent to or within sight of housing and research has shown that once regularized and conditioned small sites are accepted by the settled community. When deciding whether or not to

allow these appeals, what is at stake is whether or not the appellant's family can live on the site and measures which control where they can station their caravan affect their way of life and so engage Article 8. When deciding if it is necessary to interfere with those rights you are invited to judge the site as it would be after the landscaping and if necessary, land management conditions have been implemented and taken effect, that is in three to five years' time. The fact that the effect of the site will be felt locally until that landscaping is established does not justify dismissing the appeals. Once conditioned, see a suggested one under para 6.50 of Mr Woods' proof, the use of the land for residential purposes, by Gypsies and Travellers, would not cause issue with surrounding land uses and the general character of the area. Whilst there is some resultant harm, it is not significantly harmful. The site is well situated, see Mr Woods' proof at para 6.23 to 6.32, within sporadic residential development outside of the defined settlement boundary, but not isolated such that integrated co-existence could not be achieved. The site is also not too closely located such that significant issues between the two communities could arise. In short, there would be no resultant harm from loss of privacy, and the site is considered to be capable of delivering an integrated coexistence with the settled community.

8. EMERGENCY PLANNING – though within the boundary of the DEPZ as drawn by the LPA in order not to bisect any property, the appeal site is in fact outside of the 3 kilometer radius of the inner zone from Aldermaston. A further contextual point is that the Council's public site (Four Houses Corner) is located inside AWE Burghfield's DEPZ and furthermore the planning authority considers it appropriate to allocate new permanent pitches next to AWE Aldermaston at Paices Hill. A Dayroom subject to specific design detail of the dayroom, can be a fully sealed brick-built structure, such that it could provide refuge in the unlikely event and this would provide a suitable refuge in an emergency, being a brick-built structure proposed. There can be a condition requiring a landline in the dayroom which can also be triple glazed (windows and doors) and designed to be hermetically sealed.
9. ECOLOGY –The site was simply a field grazed by horses prior to the application. The public interest and statutory requirements in the protection of Greater Crested Newts can be properly addressed by allowing the appeal subject to a pre-condition along the lines imposed by the inspector in the Lawn Hill, Edgecote decision letter at Appendix 7 to Mr Wood's proof. Another pond could be provided.

10. PRECEDENT - there has been one neighboring application for such a use, which was refused in May, and has not been appealed and is out of time to do so. There has also been a refused application for the formation of an access and change of use of land for equestrian purposes (i.e. not a development which would be seen as a gateway), and the refusal of an application for a house. Your decision can say that fear of precedent is outweighed by the factors relied on in support of the appeal and that the outcome in this case is specifically confined only to the individual facts of this case because every application must be assessed on its own merits

11. TEMPORARY - In the alternative and if a permanent permission is not warranted, whether the matters set out below are of sufficient strength to outweigh the identified harms over the length of time that would be sufficient for the purposes of a temporary permission to enable planned provision to be put in place allowing time for a seamless move to an available alternative pitch.

12. TILTED BALANCE – your attention is invited to para 28 of the new PPTS and it is submitted that in the light of the policy failings and inability to demonstrate a five year supply that the tilted balance in para 11(d) of the NPPF applies. This is early days for consideration of the titled balance in Traveller appeals but the Government has made it clear which foot the boot has been placed on. A major objective of the changes is to facilitate accommodation needs being met. Here is an opportunity to do that without causing unacceptable harm to the locality.

13. MATERIAL CONSIDERATIONS RELIED BY THE APPELLANT- These include the following
 - i. The need for fresh assessments based on the wider definition and because the unmet need for more pitches has evolved since the plan was adopted and since the last review of accommodation needs was carried out.
 - ii. The council cannot demonstrate an up to date five-year supply.
 - iii. The associated point is that now, that existing policy and the present allocations do not cater for all those now within the new definition.
 - iv. Sub regional need.
 - v. Personal homelessness.
 - vi. The likely location of sites which would be brought forward within the district to meet the unmet need- see paras 6.89 to 6.91 in Mr Woods’ proof.

- vii. The importance of achieving the outcome that represents the children's best interest. No less weight can be given to this matter because of development before planning permission carried out by their parents.
- viii. Public interest in avoiding roadside encampments.
- ix. Equality issues derived from protected characteristics of race
- x. Interference with Human Rights which attracts substantial weight given the lack of alternative sites to go to.
- xi. Allowing the appeal would contribute to the Government's objectives of social well-being and contribute towards ensuring healthy outcomes

14. The weight to be attributed to each of the above is in dispute but once aggregated their combined weight, it is respectfully submitted, justifies you allowing the appeals. Further submissions are reserved to closing.

STEPHEN COTTLE
GARDEN COURT CHAMBERS
14.01.2025

Index to A's Authorities- three bundles available.

1. Extract from a CRE report about a vicious circle
2. ZH v SoSHD [2011] 2 AC 166 @46
3. Zoumbas v SoSHD [2013] 1 WLR 3690 @ 10
4. AZ decision letter @ 37-43 & 48-49 see para 6.99 of Mr Woods' proof.
5. Section 24 of the Caravan Sites and Control of Development Act 1960
6. S.149 EqA & December 2023 Technical Guidance on the Public Sector Equality Duty
7. Wychavon DC v SofSC&LG & Another [2009] PTSR 19; [2008] EWCA Civ 692

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