
Appeal Decision

Inquiry held on 19, 20 and 21 April 2017

Site visit made on 19 April 2017

by S J Papworth DipArch(Glos) RIBA

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

Decision date: 19 June 2017

Appeal Ref: APP/B9506/W/16/3161232

Brambley Hedge, Latchmore Drove, Landford SP5 2BJ

- 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 Robbie Witcher against the decision of New Forest National Park Authority.
 - The application Ref 16/00670, dated 1 August 2016, was refused by the Authority by notice dated 16 October 2016.
 - The development proposed is change of use of land to single pitch gypsy caravan site – temporary permission sought.
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Decision

1. I allow the appeal and grant planning permission for change of use of land to single pitch gypsy caravan site at Brambley Hedge, Latchmore Drove, Landford SP5 2BJ in accordance with the terms of the application, Ref 16/00670, dated 1 August 2016, and the plans submitted with it, subject to conditions 1) to 8) on the attached schedule.

Procedural Matters

2. The Inquiry sat for three days as originally provided for, but to avoid undue delay in arranging a mutually acceptable fourth day to hear final submissions, it was agreed that these would be sent in writing after the close of the Inquiry, with the appellant having the final word.
 3. The original application was made in the form stated in the bullet points above, with no reference to the length of temporary permission being sought. This was clarified in an exchange of e-mails, resulting in the description of development that appears on the appellant's Appeal Form and the Authority's reason for refusal, of a 5 year temporary permission being sought. The planning and High Court history provides the reasons and agreements by which a temporary permission would be sought and the anticipated timescale.
 4. It is clear from the reason for refusal that the Authority considered also the merits of granting permission for a lesser period. In the event the appellant put to the Inquiry the possibility of a longer temporary permission and a personal non-time limited permission. These matters will be considered as part of the Reasoning to this Decision.
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Main Issues

5. These are:

- Is there a need for the site to be located within the National Park in the terms of Policy CP13.
- The effect of the development on the landscape character and appearance of the National Park.
- The effect of the development on the living conditions of nearby residential occupiers.
- Whether there are other considerations, including the need for pitches, the supply of alternative sites, and the personal circumstances of the appellant and his family, which outweigh any harm identified.

Reasons

Policy

6. Core Strategy Policy DP1 on general development principles states that all new development and uses of land within the New Forest National Park must uphold and promote the principles of sustainable development. This is stated to include, but not be restricted to, ensuring development is appropriate and sympathetic in scale, appearance, form, siting and layout; respects the natural and built environment, landscape character and biodiversity with provision where appropriate for new tree planting; the use of appropriate materials; amenity not being adversely affected; with no adverse impacts from pollution.
7. Policy CP13 is specific to gypsy and traveller provision and the first paragraph is quoted in full; '*Proposals for the provision of permanent and/or transit accommodation to meet an established need of gypsies, travellers and travelling showpeople will be supported within the National Park where it can be demonstrated that there is a need for the site to be located within the National Park.*' The Authority has referred also to part a) which states that the impact of the site on the landscape character of the National Park is to be acceptable. It is agreed that criteria b) to d) are met, and criterion e) on neighbour amenity is the subject of a main issue in this Decision, notwithstanding that the Authority raised no objection.
8. Planning Policy for Traveller Sites of August 2015 is the most recent statement of Government policy with regard to such site provision and the introduction states the Government's overarching aim to ensure fair and equal treatment for travellers, in a way that facilitates the traditional and nomadic way of life of travellers, while respecting the interests of the settled community.
9. Decisions on traveller sites should also have regard to the policies in the National Planning Policy Framework so far as relevant, and this document states the presumption in favour of sustainable development setting out the three dimensions of such development. The core planning principles include conserving and enhancing the natural environment, and paragraph 115 states that great weight should be given to conserving landscape and scenic beauty in National Parks, which have the highest status of protection in those respects.

The conservation of wildlife and cultural heritage should be given great weight in National Parks.

10. The two National Park purposes are; to conserve and enhance the natural beauty, wildlife and cultural heritage of the National Park; and to promote opportunities for the understanding and enjoyment of the special qualities of the area by the public.
11. The Travellers Accommodation Assessment for Hampshire 2013 identified a 'modest need' for 2 additional pitches in the National Park up to 2017, and with no further requirement to 2027. An updated needs assessment is in the process of being compiled following the revisions to the definition of a traveller introduced to Planning Policy for Traveller Sites in 2015, but no information is yet forthcoming.

Initial Findings

12. *The Validation of the Application and the Appeal:* Evidence has been produced as to the Authority's acceptance of what amounted to a second application within 2 years of an Inspector's Decision. Section 70A of the 1990 Act provides a discretionary power for an Authority to decline to determine such an application. However, firstly the idea of making an application for a temporary period was referred to by a Judge in a hearing into the appellant's section 288 challenge of the 2015 Decision, and secondly, nothing should be read into the Authority's stance in not using this discretionary power, whereas conversely, using the power would have been a positive statement. The Planning Inspectorate's acceptance of the appeal follows the decision of the Authority to refuse permission.
13. *Gypsy Status:* Whilst the Authority does not challenge the status of the appellant as a gypsy for planning purposes, this has been questioned by local residents. The Glossary in Annex 1 to Planning Policy for Traveller Sites sets out the definition, and includes a change made in the 2015 revision regarding permanent cessation of travelling. The evidence is that the appellant continued to travel from a base in conventional housing during his children's early years, and that is permissible. That travelling has ceased at present due to his own health and the health needs of a member of his close family; this again is permissible under the definition provided it can be termed as 'temporary' only. Paragraph 2 of the Glossary sets out issues that may be considered when determining status and issue a) on the previous travelling history is strongly supported, as is issue b) on the reason for cessation. With regard to issue c) on future intentions, Mr Witcher has stated such an intention, and as a person in his mid-forties, that appears entirely feasible. The timescale and circumstances were explored at the Inquiry and on the evidence resulting, it is concluded that Mr Witcher should be considered to be a gypsy for planning purposes.
14. *The Application of Policy CP13:* The Authority had refused permission for 'change of use of land to a single pitch gypsy site for one mobile home and one touring caravan' on 15 August 2012¹ and this was appealed by way of a Hearing held in mid-2013 with permission granted on 24 July of that year².

¹ Authority Ref 12/97573

² Appeal Ref APP/B9506/A/12/2187158

That Decision was however quashed by order of the High Court over the Inspector's interpretation of Policy CP13. The re-determination appeal proceeded by way of an Inquiry held in October 2014 with a Decision dismissing the appeal issued on 23 March 2015, the appellant explaining the reasons for this delay. This latter Decision explored the interpretation of the first paragraph of Policy CP13, and evidence presented to the current appeal confirms that the Authority operates it on the basis of a first limb to the paragraph considering the overall need for sites, and the second limb; '*there is a need for the site to be located within the National Park*' by considering the personal circumstances of the intended occupier of a site. As stated in the 2015 Decision, this part of the Policy is not prescriptive as to what might constitute these circumstances. The appellant expressed the opinion that the policy could therefore only ever result in a personal permission and that does appear to be the only reasonable interpretation given the Court's judgement and the Council's limited operation of the Policy.

Main Issue 1, the need to be in the National Park under Policy CP13

15. Considering the first limb of the policy, there is an established need for further pitches, particularly considering the 2017 date by which 2 pitches should have been identified.
16. Turning to the second limb and having in mind that the need requirement is not prescriptive, it is pertinent to note that the Policy has been used to grant 2 permissions only in the National Park, referred to as that for Mr Webb and for Mr Willet, and that neither is far from the appeal site. Neither were for entirely new proposals, both benefitting from temporary permissions granted prior to the National Park designation and hence under a significantly different policy background.
17. It is clear from the Committee Report for the Willet site³ that consideration was had to the effect on the supply of sites, so that if the temporary permission was not extended the need for pitches would be raised to 3 by 2017. Other considerations concerned education, the security that a permanent personal permission would provide, links with local community and businesses, and the specific continuing needs of a dependent adult son. The Report referred to the site being found acceptable in its effect on the character and appearance of the area when originally granted permission on appeal in 2006. A personal non-time limited condition was granted.
18. Similar considerations appear to have applied to the Webb site which the 2015 Appeal Decision makes reference to as 'Forest View'. As precedents as to how Policy CP13 is applied, the finding now is similar to that of the previous Inspector, that these two decisions are of limited direct relevance to the present case.
19. Mr Witcher clearly has a family and working history in the New Forest National Park area, although the plan supplied showing locations does not indicate what percentage of his total travelling and working it represents, and to be classed as a nomadic lifestyle, some longer trips in search of work would be expected, such as to the horse fairs that he referred to in evidence. He is not a 'commoner' but exercises his father's rights. Nevertheless, it is not unusual for

³ Authority Ref 16/00394/VAR

'commoners' to reside outside the National Park and the boundary is close to the site, being the A34 road where it passes the end of the B3079 Lyndhurst Road to the north. The appellant speaks of being able to walk out onto the commons, but the site and its surroundings would still be available to him, were he to reside outside the National Park.

20. The appellant's health has suffered, apparently as a result of the various actions to require him to stop living on the land, but as a consideration in the Policy CP13 issue, only very limited weight can be attached to this matter. In the case of the Willet decision, security did play a part, but that was for an otherwise acceptable proposal, where the matter was a further consideration in favour of the continuity of Mr Willet's occupation of the site. As stated by the Authority and residents, there is a definite element of the appellant's poor health being a result of his actions. To the extent that he was in poor health when living on an unauthorised roadside encampment and chose to occupy the site, that decision is explained, but does not carry the weight of an extant permission.
21. The Inspector writing in 2015 was of the view that the appellant could return to conventional housing, although he had a cultural preference not to live in that type of accommodation. The evidence now is of more than just a preference, but a cultural aversion to bricks and mortar accommodation, he having chosen to live in a caravan on the drive or even a tent in the garden. In any event, the relationship that allowed that access has since broken down. Nevertheless, the conclusion now is similar to that reached previously, that the fact of the appellant's ownership of the appeal site, given his past history of living outside the National Park area, albeit much of that time prior to designation, does not indicate a strong enough cultural or other attachment such that the requirement of the second limb of the policy is met.
22. The position relating to his son Adam however is new evidence that was not put, certainly in the same terms, to the previous Inspector, who referred only to him staying with his father at weekends, whilst another child was referred to in more detailed terms. The health situation with regard to Adam was set out in significant written detail in representation to the present appeal and the author of the report was available for cross-examination and questions. Whilst Adam's present situation is clearly of a vulnerable child just approaching his teenage years, there is potential for far more serious outcomes depending on how his environment, relationships and treatment are handled now and into early adulthood. The expert evidence referred to the risk of a particularly debilitating condition developing within the window of late-teens to mid-twenties.
23. It seems indisputable that Adam gains significantly from his weekend visits to his father at the appeal site, and the breakdown of the previous relationship means that their contact time is mainly limited to those occasions. It can be concluded that his mental wellbeing relies greatly on the visits, and this in turn assists Mr Witcher's wellbeing.
24. However, the fact appears to be that provided the contact time was available somewhere, and that this included the continuity of a weekend of staying overnight, and involved the regularity and predictability that Adam's condition requires, it need not happen within the New Forest National Park. This finding

accepts the premise that whilst the land could always be available for day-trip meetings, there is benefit in the overnight stays. It is the case that the land that provides these valuable opportunities is within the National Park, but that is due to Mr Witcher's occupation of the site since 2012 in defiance of injunctions, a dismissed planning appeal and other court actions, together with the impending committal proceedings, direct action to clear the site, and associated recovery of costs. It is acknowledged that the actions of his father are not under Adam's control, but they weigh heavily in the consideration of compliance with Policy CP13.

25. Serious as these considerations are, and the risks for Adam's future are real and potentially far-reaching with regard to his health in adult life, it is concluded that the link with the New Forest is not sufficiently great as to satisfy the intentionally high requirements of the second limb of Policy CP13, taking account of the Authority's operation of the policy, the judgement of the High Court and the subsequent findings of an Inspector writing in 2015 regarding this site.

Main Issue 2, the effect of the development on the landscape character and appearance of the National Park

26. The Authority refers to Policies CP13 and DP1, and although the former has been found not to be met in one of its initial requirements, it remains necessary to conclude on the effect on the National Park in order to quantify any harm for the planning balance in the fourth main issue.
27. Although the Decision was quashed with regard to the conclusions on the operation of Policy CP13, it is noted that the Inspector writing in 2013 found some limited harm to the rural character and appearance of the area, and having in mind the protection for National Parks recognised in paragraph 115 of the Framework, concluded that there would be conflict with Policies DP1 and CP13. The later Inspector, whose re-determined Decision stands, visited the site some 16 months later and found limited visual impact, and that landscaping proposals would, over time, help to reduce the impact further. He made clear that he did however attach greater weight than his predecessor to the harm to the landscape character of the area, concluding that it should attract significant weight.
28. The current appeal site inspection was carried out a further 30 months on, and attention was drawn to new buildings and a replacement, larger house to the north, a raised height of barn to the south and some reduction in the visibility of the site from Lyndhurst Road. However, the Authority were unable to confirm the matter of the barn, and the agreed additional or enlarged buildings carry limited weight in the consideration due to their location.
29. Public views are available from the byway and footpath of Latchmore Drove, although the close view is from the private track serving the site. A gap in the intervening vegetation does afford a direct view. It is agreed from observations that there is a section of about 100m along Latchmore Drove where the site or its boundary is apparent, and that includes the existing vegetation, which has clearly grown since 2014. Other public views are as limited as previously concluded by Inspectors and having regard to the screening and the potential for more landscaping, it is concluded that the visual

- effect of the internal area of the site, the structures and activity would be more limited still.
30. Such screening is not however a characteristic of the area between the rear of gardens on Lyndhurst Road and the plantation to the immediate west of the site, and that to the north boundary is seen in addition to the vegetation that may historically have delineated the Drove, rather than as part of it. Whilst field boundaries tend to be low post and rail fences or similar, the uncharacteristic high vegetation used here risks signalling a use or physical items that are being deliberately screened from view.
31. The site lies within the 'West Wellow Heaths and Commons' character area, as set out in the New Forest National Park Landscape Character Assessment, and more particularly the 'Heath Associated Estates' component landscape type, but the Drove is the boundary with the 'Landford Forest Farmlands' character area, and the 'Ancient Forest Farmlands' component. As found by the Inspector writing in 2014, the strip of predominantly open land between the rear gardens and the plantation makes a positive landscape contribution as appreciated by the casual observer and is important evidence in the history of the village and the wider cultural landscape. The site and its vegetation impinge on this space as disruptive intrusions, causing harm to the landscape character of the area.
32. The appeal proposal would be contrary to the principles in Policy DP1 of respecting the natural environment and landscape character of the area. With regard to criterion a) of Policy CP13 and whether the effect on the landscape character is acceptable, clearly this requires judgement, but as set out above, the conclusion is that the effect is not acceptable and had this Decision needed to consider Policy CP13 further, this part of the policy would have been failed. Having mind to the requirements of paragraph 115 of the Framework, the harm identified attracts significant weight.

Main Issue 3, The effect of the development on the living conditions of nearby residential occupiers

33. The Authority make no case in this respect, and the previous Inspectors found no undue effect due to the separation distance and the availability of other legislation and controls to address the concerns over burning of material, noise and disturbance, and the like. Local residents did however raise their concerns at the Inquiry and in writing previously and it is right that these should be addressed now.
34. The nearest dwellings are in the order of 68m away with an intervening hedge, albeit one that harms the character of the area, and open paddock land which whilst used by the appellant, could be used for the same purposes by him or anyone else regardless of the use of the appeal site. It is the case, as argued by the Authority, that if the appellant vacated the land as a residential use, he would still be able to make use of the land for substantially the same activities with regard to his and his son Adam's wellbeing, stopping short of stationing a caravan.
35. There remains some doubt over the burning of materials, the appellant claiming that the fumes referred to come from a wood-burning stove in the caravan. This does not appear to be anything unusual if that is the sole

source, but as with the previous Decision, controls exist to prevent undue adverse effects. The alleged noise and disturbance could result from a recreational use of the land as advocated by the Authority to cater for Adam's needs, and may well occur due to other nearby uses in addition.

36. It is acknowledged that one former neighbour referred to health problems stated to have occurred or been made worse by the stress and physical experiences of the use of the appeal site. However, it is difficult to make a substantive finding on this matter, particularly as the person concerned has moved away. The separation distance would generally be considered enough to avoid planning harm, and that was the finding of the previous Inspectors.
37. Notwithstanding the previous reason for refusal on highway safety grounds not being pursued in the 2014/15 appeal and not being a reason for refusal in this case, there remains concern from some residents. The Inspector writing in 2013 considered the evidence at length, and this may well have influenced the Authority's case to the re-determined appeal. On the evidence available and with the benefit of time spent at the junction and along Lyndhurst Road, it is concluded now that the junction would be likely to operate safely for the limited use proposed to be continued, with adequate visibility available.
38. The conclusion is that the use of the site for the stationing of one mobile home and the residential activity associated with that, where more than the recreational use that the Authority appear able to let continue, would be most unlikely to cause harm to amenity, neighbouring living conditions, pollution and highway safety in the terms set out in Policy DP1d) and e) and Policy CP13e), and the Policy requirements would be accorded with.

Main Issue 4, other considerations and planning balance

39. The proposal is contrary to national policies on the protection of National Parks and does not accord with policies of the Development Plan. Section 38(6) of the Planning and Compulsory Purchase Act 2004 states that if regard is to be had to the Development Plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise. The other considerations put forward by the appellant will now be considered.
40. *The need for sites generally:* As previously stated, the Travellers Accommodation Assessment for Hampshire 2013 identified a need for 2 additional pitches in the National Park up to 2017, and an updated assessment is not yet available. That 'modest need' as it was described has not been met and there is unmet need in the other authority areas covered by the assessment. The date of 'up to 2017' has strictly been exceeded, or is close to being. One Authority witness expressed the view that as National Parks are protected from the effect of not having a 5 year supply in paragraph 27 of Planning Policy for Traveller Sites, there is no need to abide by paragraph 10 in identifying a supply. No exception is stated in paragraph 10 and the Authority has not identified a supply nor updated it annually. There will be some continuing delay in this matter and the other Authority witness spoke of a possible reliance on the 'duty to co-operate' with neighbouring authorities to this end. On the evidence there is presently a lack of supply in the National Park and no evidence of that lack being made-good in the other areas covered

- by the assessment. This position can be characterised as a failure of policy with slow progress being made.
41. *The availability of sites for the appellant outside the National Park:* There is conflicting, or at the least confused, evidence over the steps taken by the appellant to seek an alternative site. The original premise of the five-year temporary permission sought was to provide time for a site outside the National Park to be found, and such a site need only be a matter of a few miles away to the north or east. It appears clear that sites for even recreational use can attract a premium in the National Park, and the analysis of the landscape character of the area places the appeal site within an attractive and desirable location. No attempt has been made to value the site, nor to compare that with the prices sought outside the designated area. On that basis it is not possible to conclude that there are no suitable, available, acceptable and affordable sites elsewhere within a reasonable distance. The Council sites in Wiltshire are unlikely to be suitable given that there is animosity between the residents and Mr Witcher.
42. *The locational and wider sustainability considerations of the site:* The site is not away from the existing settlement of Landford and has ready access to a shop and Post Office, education, a recreation ground and a bus route. In the terms of paragraph 25 of Planning Policy for Traveller Sites, whilst the site is in the open countryside, there is no stated requirement for the settlement to be a designated one, and in fact within the New Forest National Park, there are only 4 defined villages under housing Policy CP11, Landford not being one. Policy CP13 is the mechanism by which the Authority 'very strictly limits new traveller sites' in the whole of the National Park. Although it has been found that the appellant and his family do not satisfy this strict limitation, the fact remains that the site is accessible with the ability to avoid the use of a private vehicle for many day-to-day journeys.
43. *Personal circumstances:* These have been considered in some detail as part of the test for a need to be in the National Park under Policy CP13. Nevertheless, there is strong evidence of a need not only for land somewhere that Mr Witcher can stay on and thus maintain the contact with Adam that is so beneficial to them both, but of a particular need at this time for continuity and certainty in Adam's access to his father. Whilst that land does not need to be in the National Park, it is needed now and for a reasonably foreseeable future. The expert evidence from Dr Robinson is that a lack of continuity now could be extremely damaging to Adam's long term health, which it seems reasonable to infer could have serious implications on public funds and the health service's ability to treat him. The Authority do not bring opposing expert healthcare evidence, but express doubt over the weight to be attached to the evidence and the uncertainties that Dr Robinson, fairly in view of the subject matter, expressed over timing and outcomes. Nevertheless, whilst Mr Witcher's health has an effect on that of Adam, it is the best interests of this child that is the primary consideration in the following scenarios which test various outcomes. This means that no other consideration can be inherently more important than the best interest of Adam and in view of the high level of weight attaching to the protection of the landscape character of the National Park, the best interests of Adam attract a similar high level of weight.

44. *Scenario 1, dismiss the appeal:* The committal proceedings, direct action and recovery of costs action would take place, with the aim being the clearance of the land back to its original state. The appellant surmises that recovery of costs would reduce the funds available on the sale of the land. Substantial weight attaches to the expert evidence that this would be extremely damaging to Adam and his future mental health prospects.
45. *Scenario 2, dismiss the appeal but assume that Mr Witcher remains able to continue to entertain Adam on day-trips to the same land:* There would be some beneficial continuity, but the evidence of both the expert witness and Adam's mother is that the change to the routine of not having weekend access could be harmful, and it pre-supposes that Mr Witcher himself is able to fulfil his part of the process. Again, the recovery of costs could render the land unavailable. The alternative then of roadside living and the stress that this may impose on Mr Witcher would be to the detriment of his son; it appears certain that Adam would not be permitted by his mother to visit a roadside encampment in order to maintain the contact.
46. *Scenario 3, dismiss the appeal and assume that the value of the land does allow Mr Witcher to find a suitable, available, acceptable and affordable alternative site.* This premise is untested, but is likely to result in some delay and lack of continuity, while the move takes place and the new site is made ready. It is far from clear that the value of what is essentially agricultural land, albeit fully serviced and in a desirable location in a National Park, would be sufficient to secure a fully serviced lawful gypsy pitch outside the Park boundary within the timescale that Adam's condition requires. Any delays through a need to secure permissions would only add to the risks.
47. *Scenario 4, allow the appeal and grant permanent permission:* A conclusion on this matter was requested by the appellant, notwithstanding the description of development. Any such permission would have to be on a personal basis in view of the considerations, and that in fact is the result of the Authority's application of Policy CP13. Whilst it would likely overcome the cause of Mr Witcher's anxiety, it is concluded that the determining factor is Adam's wellbeing, and the expert evidence is that the serious concerns diminish over time. That does not justify a permanent permission linked to either Mr Witcher or Adam personally in view of the harm identified.
48. *Scenario 5, allow the appeal and grant a temporary personal permission:* That is what is sought, the original premise being that 5 years would allow time to find a site outside the National Park, but Dr Robinson's report results from an examination of Adam in January 2017 and the appellant asserts that his findings and prognosis have clearly overtaken that earlier view. As a solution there is much to commend some length of temporary permission; it limits the time over which the harm persists, and when seen against the long history of the New Forest (as opposed to the National Park), that carries significant weight; it allows Mr Witcher to regain full health and to earn a living which would itself assist Adam; it would lift the threat of court action and the adverse effects that could bring about. However the doubts expressed by the Council and residents as to whether a move off the land would result are acknowledged. Most importantly, it would allow the certainty and continuity that is stated so compellingly to be an important part of Adam's healthcare

needs, whilst clearly signalling the need to take seriously the search for a replacement site.

49. *The length of any temporary permission:* Questions were asked about the merits of a relatively short period in allowing Adam to be prepared for a move, but as discussed above in scenario 3, this untested hypothesis has the potential for delay and uncertainty, two factors that could be damaging to Adam in any event. The period of 5 years as sought, would take Adam to adult age although not past the high risk period for a 'second hit' as referred to by Dr Robinson. It appears that whilst this risk would be expected to diminish at a time between late teens to mid-twenties, it would be extremely difficult to predict when it would pass, only to be more confident after the upper age that the risk is reducing significantly.

A longer period of 10 to 13 years was requested by the appellant on the evidence at the Inquiry, and the Authority expressed the view that this would be contrary to the description of development and would prejudice those who had commented on a 5 year period only. On the former, the case of *I'm Your Man Ltd*⁴ determined that the reference to a temporary period in the description of development did not imply a condition to that effect, and in the absence of such a restricting condition, a permanent permission had been granted. On that basis, the description of development would not prevent a longer period being dictated by condition. On the second point, it is the case that local people expressed a 'root and branch' opposition to the principle of the proposal and the 'Wheatcroft principles'⁵ could apply. But, to extend the time period from the 5 years commented upon by residents would not only be an increase in the scope of the proposal, where Wheatcroft involved a decrease, but a significant one too. To consider a period longer than the original 5 years would be unfair to those who had been consulted.

Planning Balance

50. Harm has been found to the landscape character of the area and hence the National Park, a consideration of significant weight. Of the considerations put forward, the best interest of the child Adam is the primary one, as set out in Article 3(1) of the United Nations Convention on the Rights of the Child and hence that attracts at least significant weight also. Added to this is the failure of policy in providing sites, and whilst this does not attract the significant weight referred to in paragraph 27 of Planning Policy for Traveller Sites due to the stated exception, moderate weight should be afforded this failure to abide by paragraph 10 where there is no such exception to the requirement to identify sites and up-date the situation annually. The lack of supply elsewhere in the assessment area results in there not being readily available sites for Mr Witcher in particular.
51. Many of these considerations were before the Inspector in 2014/15 although the harm may have reduced, but only slightly for the reasons explained in the second main issue, and the supply situation has become more pressing due to the 2017 target date having been reached. The exception for National Parks in paragraph 27 (previously paragraph 25) of the Government policy was only introduced after the previous Appeal Decision.

⁴ *I'm Your Man Ltd v Secretary of State for the Environment & North Somerset DC* [1999] 4 PLR 107

⁵ *Bernard Wheatcroft Ltd v Secretary of State for the Environment and Harborough District Council* [1982] JPL 37

52. Mr Witcher's health was a factor in the deliberations of the previous Inspector, but it is Adam's health and wellbeing that is the major difference between the present appeal and that in 2014. It would be unjust to penalise a child for the actions of his father, over which he had no control, and the outcomes for the child must be a significant consideration.
53. Dr Robinson's evidence was compelling, clearly written and presented and was not substantially rebutted nor successfully challenged by the Authority. As previously set out, whilst there are doubts as to timescales and outcomes, the risks associated with dismissal of the appeal and any subsequent action against Mr Witcher are real and serious in their possible effect on Adam's future wellbeing. These risks and the possible public costs outweigh the harm identified and in view of the timescales, the case for a temporary permission linked to Adam's visits to the site has been proved (scenario 5).
54. The 5 years requested would place Adam into adult life, where the best interests of the child do not apply, but would fall short of the earliest of the possible periods where the risk of long term irreversible harm could diminish. However in view of the representation from local residents, a longer period than 5 years would be unreasonable and risks being unfair. The legitimate aim of Mr Witcher seeking and finding a site outside the National Park should remain in place and a 5 year period would allow a manageable transition for Adam. Notwithstanding that this takes Adam beyond being a child, it is his best interests as a child now that are the primary consideration. It would also justify the use of a condition requiring a landscaping scheme to control the visual effect.
55. This outcome would be a reasonable balance between the interests of the landscape character of the National Park, the interests of local residents, including their Human Rights to respect for their family life and homes, and those of the appellant who is at imminent risk of losing his home, but particularly Adam and his future life. In all this it is emphasised that the expectation is the planned removal of residential uses from the site. A personal, temporary permission for 5 years should therefore be granted with suitable conditions to provide the control that has been absent in the past.

Conditions

56. The Authority had put forward suggested conditions, but not based on this being either a personal or temporary permission, which appears an oversight since the agreed nature of the application was for a temporary permission and the operation of Policy CP13 appears to be on the basis of personal circumstances. These matters were discussed at the Inquiry and for the reasons set out above conditions should be attached limiting the occupation of the site to Mr Witcher and Adam, and for 5 years only, or any lesser period if they vacate the site earlier. This condition would be reasonable and necessary in the circumstances of the case as set out in the reasoning to this Decision, and precise having regard to any traveller occupancy condition not requiring constant occupation or precluding breaks in that occupation, such as would be expected with a period of absence whilst travelling in search of work. Any greater degree of control would risk being unenforceable. With that provision there is no need for the gypsy and traveller condition that would be attached to a permanent, non-personal permission.

57. It is reasonable and necessary in the interests of the character and appearance of the area to limit the static caravan to a single unit as is presently on the site, but also to make clear that a touring caravan may be sited, since the appellant intends to resume a nomadic lifestyle during the week at some stage, returning to the site at weekends.
58. The Authority had suggested a condition requiring a scheme of landscaping to be submitted and approved within 28 days. This is not reasonable as the appellant would have no control over the approval. In addition, more controls would be required in view of the retrospective nature of the use. Suitable wording requiring a Site Development Scheme and setting out the process in default at any stage is required. It is reasonable to request a scheme in view of the 5 years duration, to protect the environment, and a period of maintenance and replacement of vegetation that dies within 2 years would be reasonable as well, providing for replacement of vegetation that does not establish in that initial period.
59. Further conditions are required controlling the size of vehicles and preventing commercial activities in this sensitive location, and permitted development rights for means of enclosure should be removed to ensure the control that the Site Development Scheme allows.

Conclusions

60. Whilst there remains a need for sites generally, the proposal is contrary to the requirement of Policy CP13 to demonstrate that there is a need for the site to be located within the National Park, and furthermore, the effect on the landscape character of the area is unacceptable, contrary to one of the criteria of that Policy and a requirement of Policy DP1. The proposal does not accord with the aims of paragraph 115 of the Framework. However, the best interests of the child Adam are a primary consideration and in the balance and for the reasons set out above, they are served by the grant of a temporary permission of 5 years linked to his continued visits to the site.

S J Papworth

INSPECTOR

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

S Stemp he called;	of Counsel
D Illsley	Policy Manager New Forest National Park Authority
P Hocking	Enforcement and Trees Manager New Forest National Park Authority

FOR THE APPELLANT:

S Cottle he called;	of Counsel
K Eske R Crandon	Appellant's ex-partner and mother of Adam Director TDA Landscape Consultancy
Dr B Robinson	Consultant Psychiatrist South London and Maudsley NHS Foundation Trust
R Witcher Dr A Murdoch	Appellant Planning Consultant

INTERESTED PERSONS:

Cllr L Randall	Wiltshire Council and New Forest National Park Authority
P Hayward	Ex-resident and owner local property
S Billet	Resident
W Sherred	Gypsy Council Representative

DOCUMENTS

Document	1	Opening Statement submitted by appellant
Document	2	Speaking Notes submitted by S Billet
Document	3	Map of National Park with locations marked submitted by appellant
Document	4	List of items to be seen at site inspection submitted by appellant
Document	5	Core Strategy Housing policies submitted by appellant
Document	6	Ordnance Survey extract submitted by appellant
Document	7	Response to points raised regarding new housing development submitted by National Park Authority
Document	8	List of suggested planning conditions submitted by National Park Authority
Document	9	e-mail trail regarding PIN's acceptance of Appeal
Document	10	Closing submissions from National Park Authority
Document	11	Closing submissions from appellant
Document	12	Authorities referred to in closing submissions from appellant

SCHEDULE OF CONDITIONS

- 1) The use hereby permitted shall be carried on only by Mr Robbie Witcher and Adam Witcher and shall be for a limited period being the period of 5 years from the date of this decision, or the period during which the premises are occupied by those named above, whichever is the shorter.
- 2) When the premises cease to be occupied by both of the persons named in condition 1) above, or at the end of 5 years, whichever shall first occur, the use hereby permitted shall cease and all caravans, buildings, structures, materials and equipment brought on to the land, or works undertaken to it in connection with the use including boundary vegetation, shall be removed and the land restored to its condition before the development took place.
- 3) No more than 2 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 1 shall be a single unit static caravan) shall be stationed on the site at any time.
- 4) 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 28 days of the date of failure to meet any one of the requirements set out in i) to iv) below:
 - i) Within 28 days of the date of this decision a scheme of landscaping of the site shall be submitted to the National Park Authority and shall include:
 - a) the existing trees and shrubs which have been agreed to be retained;
 - b) a specification for new planting (species, size, spacing and location);
 - c) areas for hard surfacing and the materials to be used;
 - d) other means of enclosure;
 - e) a method and programme for its implementation and the means to provide for its future maintenance.Hereafter referred to as the Site Development Scheme.
 - ii) If within 3 months of the date of this decision the National Park 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 Site Development Scheme specified in this condition, that Site Development Scheme shall thereafter be maintained/retained/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.

- 5) All hard and soft landscape works shall be carried out in accordance with the approved details pursuant to condition 4) in accordance with the approved timetable. Any trees or plants which within a period of 2 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size or species, unless the National Park Authority gives written consent to any variation.
- 6) No vehicle over 3.5t shall be stationed, parked or stored on the site.
- 7) No commercial activities shall take place on the land, including the storage of materials.
- 8) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order) (with or without modification) no means of enclosure other than expressly permitted pursuant to Condition 5) shall be erected without the benefit of express planning permission having first been granted.