

## Appeal Decision

Hearing held on 22 November 2016

Site visit made on 22 November 2016

**by Elaine Worthington BA (Hons) MTP MUED MRTPI**

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

**Decision date: 27<sup>th</sup> February 2017**

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**Appeal Ref: APP/H1840/W/16/3154453**

**Land south of Ox Orchard, Dough Bank, Ombersley, Droitwich, Worcestershire, WR9 0HN**

- 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 Patrick Doran against the decision of Wychavon District Council.
  - The application Ref W/15/02125/CU, dated 10 August 2015, was refused by notice dated 14 January 2016.
  - The development proposed is the material change of use of land to use as a residential caravan site for one gypsy family, including laying of hardstanding, erection of amenity building and improvement of access.
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### Decision

1. The appeal is allowed and planning permission is granted for the material change of use of land to use as a residential caravan site for one gypsy family, including laying of hardstanding, erection of amenity building and improvement of access at land south of Ox Orchard, Dough Bank, Ombersley, Droitwich, Worcestershire, WR9 0HN in accordance with the terms of the application Ref W/15/02125/CU, dated 10 August 2015, and the plans numbered PBA/02 Block Plan, PBA/03, Location Plan, and Proposed Amenity Block Floor Plan, Rear Elevation, End Elevation and Front Elevation, subject to the conditions in Annex A.

### Procedural Matters

2. The decision notice refers to policies in the Wychavon District Local Plan (Local Plan) which has been superseded by the adoption of the South Worcestershire Development Plan (Development Plan) in February 2016.
  3. The application seeks permission for the change of use of the land for the siting of two caravans along with the erection of an amenity building and the laying of hardstanding. These are shown on the submitted plans which indicate an area of porous hardstanding to be laid mainly on the southern part of the site (and separated from the bank of mature oak trees on the northern boundary which are protected by a Tree Preservation Order). At the time of my visit the use had commenced and the appellant and his family were living on the site where two touring caravans were stationed. Additionally the site has been divided into three sections by fencing. The eastern part has gates to the access track and has been entirely covered in hardstanding. The middle section has been cleared of vegetation and is intended to be the garden area,
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whilst the western part remains in an overgrown state. The fence between the western and middle sections of the site appears to be roughly in the position of the proposed utility block.

4. At the hearing the appellant requested that the appeal be considered on the basis of the works already undertaken rather than on the proposed plans. It was suggested that this could be achieved by the submission to the Council of amended details of the areas of hardstanding and siting of the amenity block and caravans (which could be secured via a planning condition should the appeal be successful). However, I am mindful that the appeal process should not be used to evolve a scheme and it is important that what I consider is essentially what was considered by the local planning authority, and on which interested people's views were sought<sup>1</sup>. It seems to me that such an amendment would mean that the development would be so changed that to grant it would be to deprive those who should have been consulted on the changed development the opportunity of such consultation. This would be directly at odds with the Wheatcroft Principles<sup>2</sup>.
5. Therefore, in line with this advice and to ensure the suggested changes to the development do not prejudice interested parties, I confirm that I have decided the appeal on the basis of the proposal as set out in the submitted planning application and the drawings accompanying it. Thus, whilst appreciating that the use as has commenced, I will continue to refer to the scheme overall as a proposal. I am satisfied that my determination of the appeal on this basis does not affect the Council's own consideration of any other works undertaken at the appeal site, up until now or in the future, including their impact on the protected trees. I am also aware that a High Court Injunction has been served on the site by the Council with the aim of preventing any further development as well as its residential use and the siting of caravans.

## **Background**

6. The appeal site is a formerly open plot of land which sits within a cluster of existing dwellings at Dough Bank. It is accessed via a private drive off Power Lane, which itself is a narrow track leading from Holt Fleet Road (A4133). The appellant is an Irish traveller and the parties are agreed that he has gypsy status as defined by Annex 1 of the Planning Policy for Traveller Sites 2015 (PPTS). I see no reason to come to a different view on this matter. This background has led to my identification of the main issues as below.

## **Main Issues**

7. The main issues in this case are:
  - Whether the site would be in a sustainable location where occupiers of the development would have acceptable access to local services and facilities; and
  - The effect of the development on protected species; and
  - Whether any harm would be outweighed by other material considerations, including the general need for the supply of gypsy sites and the

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<sup>1</sup> Annex M of the Planning Inspectorate's Procedural Guide, Planning Appeals, England.

<sup>2</sup> As set out in the High Court case of *Bernard Wheatcroft Ltd v SSE* [JPL, 1982,P37]

accommodation needs and personal circumstances of the appellant, to justify the development.

## **Reasons**

### *Sustainable location and access to local services and facilities*

8. Paragraph 14 of the PPTS does not rule out gypsy and traveller sites in rural or semi-rural settings (dependant on their scale). However, paragraph 25 of the PPTS indicates that local planning authorities should very strictly limit new traveller site development in open countryside that is away from existing settlements.
9. Development Plan Policy SWDP1 identifies the Council's overarching sustainable development principles. Development Plan Policy SWDP2 sets out its development strategy and settlement hierarchy and aims to drive development to sustainable locations. The appeal site is not within a defined settlement and is therefore in the countryside in policy terms where Part C of Development Plan Policy SWDP2 seeks to strictly control development. It advises that development will be limited to a number of examples, including development specifically permitted by other SWDP Policies, amongst which Policy SWDP17 is listed in footnote (3).
10. Development Plan Policy SWDP17 sets out requirements for traveller pitches for each local planning authority in South Worcestershire and includes a set of criteria at Part C against which gypsy applications should be judged. Criterion (i) concerns whether the site is within or on the edge of a town or Category 1, 2 or 3 settlement.
11. The appeal site is around 1250 metres from the edge of the nearest designated development boundary of Ombersley to the east. This is a Category 1 settlement with a number of local facilities including a first school, doctor's surgery, daily bus services and a shop. Although the parties agree that the site is not within Ombersley, a definition of what could be considered to be 'on the edge' of a settlement is not included in Development Plan Policy SWDP17. However, the Council's Site Assessment Background Report to the emerging South Worcestershire Traveller and Travelling Showpeople Site Allocations Development Plan Document (DPD) uses a distance of 1000 metres from Category 1, 2 or 3 settlements as a benchmark.
12. The DPD is at an early stage of production, remains subject to consultation and has not yet been examined. This limits the weight that can be attributed to its assessment methodology. Even so, at 1250 metres from the edge of Ombersley, the appeal site is not much further away from the settlement than the 1000 metres used by the Council in its site assessment process. Nevertheless, I saw at my visit that the appeal site is physically separated from Ombersley by a considerable swathe of open countryside. This is so to the extent that I do not think it can reasonably be regarded as being on the edge of that settlement.
13. Additionally, the appellant considers the existing residential enclave at Dough Bank to form part of Holt Fleet to the west and argues that the appeal site is not away from existing settlements under the terms of the PPTS. Whilst Holt Fleet is not a defined settlement in the Development Plan and is classified as open countryside, the PPTS does not specify that existing settlements must be

defined or have a settlement boundary. On the ground Holt Fleet is not an insignificant grouping of built development, incorporating dwellings (some of which have replaced former holiday chalets) as well as leisure caravans and a small number of services. The appeal site has a much closer relationship with Holt Fleet, and in particular the existing development on the south side of Holt Fleet Road, than it does with Ombersley. As such, despite not sharing the same postcode, in my view it could be regarded as being within, or on the edge, of Holt Fleet and in any event is not away or remote from it.

14. Development Plan Policy SWDP17 Part C criterion (x) requires sites to have reasonable access to health services, schools and employment. Paragraph 13 of the PPTS sets out sustainability criteria in relation to gypsy sites. It encourages local authorities to ensure that their policies: promote access to appropriate health services (b), ensure that children can attend school on a regular basis (c), and provide a settled base that reduces the need for long-distance travelling (d).
15. The Council and the appellant agree that the site is around 1600 metres from the main road through Ombersley (and the shops there), 1800 metres from the first school and 2000 metres from the medical centre. Additionally the Holt Fleet Convenience Store is around 650 metres to the west of the site. There is also a farm shop on the other side of the main road close to the appeal site which was discussed at the hearing. Whilst I understand that this is currently subject to enforcement proceedings as to the range of products being sold, even under the terms of its permitted use for the sale of local produce, it would be likely to meet some of the day-to-day shopping needs of the occupiers of the appeal site.
16. What the Council would regard as reasonable access to services and facilities is not defined in the Development Plan. However, the Site Assessment Background Report to the emerging DPD identifies a number of desirable criteria for gypsy sites. It classifies sites as green (under a traffic light system) if they are within 800 metres of a shop, 2000 metres of a primary school, and 1200 metres of a GP. Whilst appreciating that this site assessment methodology is of limited weight as set out above, the appeal scheme would nevertheless meet some of these desirable criteria.
17. The pedestrian route to all these facilities and services would be via Power Lane to the main road (A4133) which is busy with fast moving traffic. Although there is a footpath there is no street lighting there. It is common ground between the Council and the appellant that the convenience store is within walking distance of the site (along with the Wharf Inn pub, and The Holt Fleet restaurant) and I also consider the farm shop to be so. Thus I agree that the appeal site is within relatively safe and convenient walking distance of these facilities and consider that cycling to them may also be possible.
18. However, given the distance to Ombersley I agree with the Council that these factors would be likely to deter residents of the appeal site from walking or cycling to the village. There is no longer a bus service along the A4133 between Holt and Ombersley and the community bus service is intended for those with mobility issues. As such, I accept that the occupiers of the appeal site would have some reliance on the private car.

19. Development Plan Policy SWDP4 seeks to minimise demand for travel. Section A requires the layout of development to minimise demand for travel and offer genuinely sustainable travel choices. I have seen nothing to suggest that this policy does not apply to all development, even on the scale of the appeal scheme. However, I have found that there would be some opportunities for walking and cycling from the appeal site to some local services, and this being so the proposal would offer some genuinely sustainable travel choices. In providing a settled base for the appellant it would also minimise demand for travel since he would not be moving from site to site. Paragraph 29 of the National Planning Policy Framework (the Framework) recognises that different policies and measures will be required in different communities and opportunities to maximise sustainable transport solutions will vary from urban to rural areas.
20. Moreover, whilst a good deal of the journeys to and from the appeal site would probably be by car, the distances involved would not be great. Furthermore, the PPTS does not require sites to be accessible to services on foot. Rather, it seeks to promote access to appropriate health services, ensure that children can attend school on a regular basis, and provide a settled base that reduces the need for long-distance travelling. Taking all these factors into account, overall, I consider that the occupants of the appeal site would have reasonable access to health services, schools and employment and regard the site to be sufficiently accessible.
21. Both parties have referred to appeal decisions to support their cases in relation to locational sustainability. In particular the Council cites two recent appeal decisions at Powick<sup>3</sup> in the Malvern Hills District which were dismissed. I note their view that that site was not as far away from the settlement as is the case for the scheme before me. However, I am not aware of the full circumstances that led to that appeal decision or to the others referred to. Thus, I cannot be sure that they are directly comparable with the appeal scheme. I confirm in any event that I have considered the appeal proposal on its individual planning merits and have made my own assessment as to the sustainability of its location and access to local services.
22. I am also aware of the Dough Bank Residents Association's argument that the appeal site is further from Ombersley than a site at Acton Villa which has been discounted from the emerging DPD. Again, I am not aware of all the relevant facts and information that were before the Council in taking that stance and am mindful that the site selection process has not yet culminated. As such, I do not regard this in itself to be a reason to resist the appeal scheme.
23. I therefore conclude on this issue that the site would be in a sustainable location where occupiers of the development would have acceptable access to local services and facilities. Whilst there would be conflict with Development Plan Policy SWDP17 Part C criterion (i) the scheme would meet Part C criterion (x). It would generally align with the aims of Development Plan Policy SWDP2 (which does not rule out development in the open countryside that is permitted under SWDP17) and with Development Plan Policy SWDP4. It would also accord with the advice in the PPTS in this regard.

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<sup>3</sup> APP/J1860/C/16/3143512 and 3143513

### *Protected Species*

24. Development Plan Policy SWDP22 gives protection to designated wildlife and geological sites and provides for biodiversity and geodiversity enhancements where practical and Policy SWDP17 Part C criterion (iv) considers whether there is any significant impact on sites of ecological or biodiversity interests that cannot be mitigated. The Council indicates that insufficient information has been provided to assess the impacts of the appeal scheme on biodiversity and in particular badgers.
25. Local residents confirm that there are a number of badger setts on the overgrown land immediately to the south of the appeal site on the other side of the access track and the appellant does not dispute this. Local residents explained at the hearing that prior to the middle and eastern sections of the site being enclosed by fencing, badgers used to cross the appeal site and use it to forage. This remains the case on the western part of the site only.
26. The Worcester Biological Records Centre and other ecological data on the Worcestershire Habitat Inventory identify the closest records of badgers to be some 85 metres to the north west of the site. However, those records are based largely on badgers killed on the road and the Council was unclear how the data is collected or updated. In any case, the appellant has not submitted any surveys in this regard, and I see no reason to doubt the evidence submitted by local residents concerning badgers.
27. That said, the parties agree that there are no badger setts on the appeal site itself which is not designated for its wildlife interest. The setts are on the other side of the access track and do not directly adjoin the appeal site or abut its boundary. This being so, I cannot see that the appeal scheme would result in the wilful killing or injuring of badgers or lead to the intentional or reckless damage to, destruction of, or obstruction of access to a sett<sup>4</sup>.
28. I accept that the proposal would preclude badgers travelling across and foraging on the appeal site. I understand that despite erecting fencing the previous owner omitted two fence panels on the southern boundary of the site to allow badgers access to it. Nevertheless, I am conscious that the site could be completely fenced off and cleared of vegetation in the absence of the appeal scheme. Furthermore, given the relatively limited size of the appeal site, any alterations to the routes of the badger runs as a result of the proposal would not result in considerably longer or much more tortuous alternative routes. Given the nature of the surrounding area, nor would the appeal scheme's impact on the amount of remaining land for foraging be great.
29. Local residents consider that the closing off of the appeal site has meant that badgers now use the access track as a run and as a result are more likely to come in to conflict with vehicles. However, the track is relatively quiet and serves only a limited number of properties and I have seen no evidence of badger fatalities or injuries there. Furthermore, I am conscious that the use of the access track by badgers could not in any case be ruled out since it provides a direct route from the setts to the open land to the east.

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<sup>4</sup> Offences under the Protection of Badgers Act 1992

30. The appellant also confirmed at the hearing his intention to keep the western end of the site open as a suitable habitat and run for badgers. This could be secured via a planning condition. Whilst I note the views of the Dough Bank Residents Association that such an improvement could be better achieved by the reinstatement of the whole site to its original state, in my view this measure would to some extent mitigate the scheme's impact in this regard. Accordingly, overall, I find that the proposal would not adversely affect badgers.
31. Although the Council raises other generalised concerns regarding protected species and features of ecological/biodiversity value no further details were provided at the hearing. However, local residents refer to bats in the trees on the site. Whilst I understand that one protected tree has already been removed from the site, the remaining trees in the bank on the northern boundary of the site are to be retained as part of the appeal scheme. Although no tree survey has been undertaken, the submitted plans show the root protection areas (RPAs) and canopy tree spread. The amenity block would be sited on the southern boundary of the site away from the RPAs, as would the caravans. The areas of hardstanding would be of a porous construction and would not encroach significantly into the RPAs. The caravans would not have foundations and would sit on the hardstanding.
32. On this basis the Council's Tree Officer is content that the proposal could be constructed in a manner that would not pose a significant threat to the RPAs of any protected trees, and raises no objections to the proposal, provided the RPAs are not damaged during the construction phase. Details of the method of construction and materials of the porous hardstanding including its finished levels could be sought via a planning condition, as could measures to safeguard the trees during the development. Additionally, the positions of the amenity block, caravans and hardstanding as shown on the plans could be ensured by a planning condition. As such, I see no reason why the proposal as shown on the plans would be likely to lead to any adverse effects on trees.
33. Whilst I saw on site that lighting has already been attached to the trunks of some of the trees, any external lighting at the site associated with the appeal scheme could also be controlled by a planning condition. As such, I am satisfied that whilst there is a reasonably likelihood of bats being present on or near the site, they would not be adversely affected by the appeal scheme.
34. I therefore conclude on this issue overall, that the proposal would cause no harm to protected species. Since there would be no significant impact on sites of ecological or biodiversity interests that cannot be mitigated, the scheme would not conflict with Development Plan Policy SWDP 17 Part C criterion (iv). Nor would it be at odds with Development Plan Policy SWDP22 or paragraph 109 of the Framework which seeks to minimise impacts on biodiversity and provide net gains in biodiversity wherever possible.

#### *Other considerations*

35. The Worcester Gypsy and Traveller Accommodation Assessment (GTAA) was published in November 2014. Development Plan Policy SWDP17 sets out a local target for Wychavon of 31 pitches during the period 2014/15 – 2018/19. The South Worcestershire Addendum to the Worcestershire GTAA (Final Report October 2016) raises this figure to 33 pitches. Despite there being some

- provision of pitches in the past, the Council indicates that it needs to identify 18 pitches in the period to 2020/21.
36. Sites will be allocated through the emerging DPD, the preferred options for which were the subject of consultation in March 2016. A further call for sites has since been undertaken and will run until January 2017 (with another preferred options consultation anticipated for June/July 2017). The Council estimates that the adoption of the DPD will not be until August/September 2018.
37. Accordingly, the Council accepts that there is current outstanding unmet need for additional gypsy pitches in Wychavon and that it is unable to demonstrate a 5 year supply of gypsy and traveller sites in accordance with PPTS.
38. The Dough Bank Residents Association considers that to allow the appeal scheme would undermine the DPD process and I note their view that better sites are in the pipeline. Be that as it may, the DPD remains at an early stage of production and is subject to a further call for sites. The Council accepts that the provision of sites on the ground as a result of that process will not be achieved for a number of years. Furthermore, given the small scale of the appeal site it would not compromise the Council's overall strategy with regard to gypsy sites. Nor do I see any reason why it would cast doubt over the site assessment criteria currently being used.
39. The appellant confirmed at the hearing that he owns no other land and has searched for suitable alternative sites and can identify no available accommodation. He and his family would go back to a roadside existence if the appeal was unsuccessful. Local residents referred at the hearing to a site formerly occupied by the appellant in Lecestershire. The appellant explained that although he had lived there, that land is owned by his father in law and forms part of a wider gypsy site. He no longer lives there and due to the difficulties he explained of living on mixed gypsy sites, he has no intention of returning.
40. The Council referred to a recently approved gypsy site around three miles from the appeal site where 10 pitches are being built, but had no information as to its availability. The appellant is aware of this development but doubts that the site is available and in any case questions whether it would be suitable for him and his family given the prevalence of English Romany gypsies in the area. On the basis of the information before me, I have seen no evidence to suggest that suitable alternative sites exist.
41. Paragraph 27 of the PPTS advises that the lack of a 5 year supply of sites should be a significant material consideration in considering applications for the grant of temporary planning permission. Although in this case a permanent permission is sought, the lack of available sites to meet the identified need is nevertheless a matter that attracts significant weight in favour of the appeal scheme. Development Plan Policy SWDP17 advises that the Council will assess the suitability of planning applications against a number of criteria. I have found that of the criteria in Part C, although criterion (i) would not be met, the two other criteria disputed by the Council, (iv) and (x), would be satisfied.
42. In terms of the remaining criteria in Part C of Development Plan Policy SWDP17, the site is not within an international or national planning designation (such as a Special Protection Area or the Green Belt) and consequently

criterion (ii) is satisfied. The Site is within Flood Zone 1 where there is a low probability of flooding. Local residents advise that the site is vulnerable to surface water flooding from run off from the access during storms. They also state that this has worsened since the laying of the existing hardstanding on the site with water running southwards to other properties at a lower level further down the access track. However, the submitted Water Management Statement advises that soakaways and water butts would be used on the site along with permeable surfacing. The Council considers these drainage details to be acceptable in principle and they could be secured via a planning condition. On this basis, I see no conflict with criterion (iii).

43. Criterion (v) considers whether there is any significant visual impact on the landscape and if it can be mitigated. Local residents are concerned that the appeal site is prominent and the proposal would stand out and be seen by everyone entering or leaving the estate. I appreciate that Dough Bank is an attractive residential enclave and the appeal site is at the entrance to it. That said, the amenity block and the caravans would be few in number, single storey and would not appear unduly large or obtrusive. The site is enclosed by fencing and the existing trees would be retained with additional landscaping to the boundaries proposed. In this context, I am not convinced that the proposal would appear particularly dominant or significantly at odds with the surrounding residential area. Whilst it would be visible from a number of properties in Dough Bank it would not be prominent in the wider landscape.
44. The Open Spaces Society is concerned about the impact of the scheme on the enjoyment of the use of public footpath 733 Ombersley and consider it to be at odds with the historic nature of the area which is of high amenity value. However, the Council advises that this footpath runs to the east of the appeal site southwards so would not be unduly affected. It also confirms that the proposal would not have a significant visual impact on the character and appearance of the surrounding area. Based on the evidence before me and my own observations I concur with this finding. Thus, criterion (v) would be met.
45. Whether there is any significant impact on privacy and residential amenity for both site residents and neighbouring properties is covered by criterion (vi). The proposed amenity block would be a single storey building with a pitched roof and would be positioned close to the southern boundary of the site opposite Hillcrest on the other side of the access. A single small window serving a toilet is shown to the rear elevation. The mobile home would also be positioned on the southern boundary of the site end on to the currently open area of land between Hillcrest and Castle View. The appeal site is on higher ground than the houses to the south on the other side of the access track and the site slopes downwards to the west. Details of the finished levels for the hardstanding on which the caravans and amenity block would be sited, could be required via a condition to ensure they are not elevated within the site.
46. Given the separation distances involved, the proposed layout of the site described, the single storey nature of the small number of structures, the existing high fencing and the proposed boundary planting, even taking into account the difference in levels, I am not persuaded that any undue overlooking of Castle View or Hillcrest would arise or that the occupiers of nearby properties would experience any undue loss of light or outlook. As such, the scheme would cause no significant harm to the living conditions of nearby occupiers, or to site residents, and would meet criterion (vi).

47. Criterion (vii) considers whether the size of the site and the number of pitches are of an appropriate scale for the location. PPTS paragraph 25 also seeks to ensure that sites in rural areas respect the scale of and do not dominate settled communities. The Council does not consider that the provision of a single pitch would dominate the nearest settled community of Dough Bank or place undue pressure on the local infrastructure and I agree with these findings.
48. Local residents are concerned about the ownership of the private access which is maintained by an annual subscription and the delivery of the mobile home along the narrow access. However, the Highway Authority raises no objections to the scheme and I have seen nothing to suggest that the site would not have safe and convenient access to the highway network in accordance with criterion (viii). I see no reason why the appellant could not contribute to the maintenance of the private access and have seen no substantiated evidence to demonstrate that a mobile home could not be safely moved on to the site. In any event, these are not reasons to withhold planning permission.
49. Criterion (ix) concerns whether the site is capable of providing adequate on site services for water supply, mains electricity, waste disposal and foul and surface water drainage. The Council raises no objections in these regards and subject to the imposition of conditions I also consider that the site could be provided for adequately in these regards. Whether the site complies with good practice on designing gypsy and traveller sites is the subject of criterion (xi). No objections have been raised in this respect and I am mindful that the Good Practice Guide on Designing Gypsy and Traveller Sites 2008 was cancelled in 2015. Having regard to the proposed site layout, this criterion would be met.
50. Thus overall, I am satisfied that the scheme would align with the provisions of the PPTS and all but one of the eleven criteria in Part C of Development Plan Policy SWDP17. The Council agrees that the policy does not require each element or criteria to be met and I confirm that I have assessed the proposal against the criteria and find it to be suitable. Consequently, I consider it to accord with Policy SWDP17 as a whole. As set out above, I have also considered the other Development Plan policies referred to including SWDP2, SWDP4 and SWDP22 and found that the appeal scheme would be in accordance with them.
51. I have had regard to the concerns of local residents that the appellant has not followed proper processes and has undertaken development without planning permission. As set out above, I accept that the works undertaken so far at the site do not reflect those sought as part of the appeal scheme and have sympathy with local residents on this matter. However, I see no reason why any unauthorised works on the site (undertaken to date, or in the future) cannot be adequately controlled by the Council. Indeed I am aware of the High Court Injunction that is already in place. Nor am I persuaded that to allow the appeal would necessarily encourage others to ignore planning requirements.
52. I acknowledge the views of local residents that additional development on the estate is precluded. I am aware of Local Plan Policy DDB1 which only permits replacement dwellings on Dough Bank and resists new housing development and understand that this has been a long held intention for the estate. Be that as it may, the Local Plan is now superseded and I have been made aware of no equivalent replacement policy in the adopted Development Plan.

53. At the hearing the personal circumstances of the appellant and his family were discussed, in particular in relation to their need for settled a base for access to health care and schools for their two young children (and the third child that is expected). I also heard from local residents on these points who questioned the submitted information and claims made by the appellant. However, since the scheme complies with the development plan and the PPTS this matter is not determinative and there is no need to consider it further.
54. The parties refer to the Framework's presumption in favour of sustainable development. Given the relatively recent adoption of the Development Plan and Policy SWDP17, I have seen nothing to suggest that the development plan is absent, silent or that the relevant policies are out of date. The Government's Written Ministerial Statement of 22 July 2015 made a technical adjustment to paragraphs 49 and 159 of the Framework and clarifies that travellers should have the lack of a five year supply of deliverable traveller sites considered in accordance with the PPTS (rather than Paragraph 49 of the Framework). Accordingly, the first bullet point of the second part of paragraph 14 of the Framework applies in this instance and indicates that, for decision taking, the presumption in favour of development means approving development proposals that accord with the development plan without delay.

### **Conclusion and Conditions**

55. I have found that the appeal scheme would be in a sustainable location where the occupiers of the development would have acceptable access to local services and facilities and that it would cause no harm to protected species. Since it would cause no other harm and complies with the development plan and the PPTS, and in the context of a recognised need for gypsy and traveller sites in the district which has not been met by allocations or permissions, I conclude that the appeal should be allowed.
56. I have considered the Council's suggested conditions in the light of the advice in the Planning Practice Guidance and the discussions at the hearing. The Council suggests a condition limiting the permission to a temporary use only for period of 3 years and a personal condition limiting the use of the site to the appellant and his family. Since I have found the proposal would meet generally accord with the provisions of Development Plan Policy SWDP17 and the PPTS these are not justified. However, a condition limiting the occupancy of the site to gypsies and travellers generally is required in view of the special accommodation needs of gypsies and travellers. A condition specifying the maximum number of caravans on the site is necessary to limit the scale of the development. The siting of the caravans, amenity block and area of hardstanding as shown on the approved plans is also necessary in the interests of the protected trees and the character and appearance of the area.
57. A condition requiring the submission of a scheme of development is necessary in order to ensure a number of outstanding matters. The purpose of condition 4 is to require the appellant to comply with a strict timetable for dealing with these outstanding matters of detail which need to be addressed in order to make the development acceptable. The condition is drafted in this form because, unlike an application for planning permission for development yet to commence, in the case of a retrospective grant of planning permission it is not possible to use a negatively worded condition precedent to secure the subsequent approval and implementation of the outstanding detailed matters

because the development has already taken place. The condition therefore provides for the loss of the effective benefit of the grant of planning permission where the detailed matters in question are not submitted for approval during the time set by the condition, approved (either by the local planning authority or by the Secretary of State on appeal), and then implemented in accordance with an approved timetable. Should the requirements of the condition not be met in line with the strict timetable, then the planning permission falls away.

58. The method of construction and materials of the porous hardstanding (including proposed finished levels) and protection measures for the retained trees are required as part of the scheme of development in the interests of safeguarding protected trees and the character and appearance of the surrounding area, and also to ensure the satisfactory drainage of the site and to protect the living conditions of nearby occupiers. Details of the materials of the amenity block and boundary planting are also required in the interests of the character and appearance of the site and its surroundings. The control of external outdoor lighting is required in the interests of the character of the surrounding area, protected species, the living conditions of nearby occupiers and to avoid light pollution.
59. A scheme for the disposal of sewerage and surface water drainage in accordance with the submitted Water Management Strategy is required to ensure the site is adequately drained and to reduce the consumption of water. Details of refuse and bin storage are necessary to ensure that adequate means of waste disposal are provided and in the interests of the character and appearance of the area. The provision of an area of habitat suitable for badgers on the western part of the site is also required as part of the site development scheme in the interests of wildlife protection and biodiversity enhancement.
60. A condition to ensure the maintenance and replacement of planting is necessary in the interests of the character and appearance of the site and its surroundings. A condition to preclude the separate residential occupation of the amenity block is required to control the scale of the development and to ensure satisfactory living conditions for the occupiers of the site. Conditions to control the parking of commercial vehicles and industrial/commercial activities at the site are required in the interests of the character and appearance of the area and the living conditions of the occupiers of the site along with those of neighbouring residents.

*Elaine Worthington*

INSPECTOR

## **APPEARANCES**

### **FOR THE APPELLANT:**

Philip Brown  
Patrick Doran  
Wendy Evans

Philip Brown Associates  
Appellant  
Local resident

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

Kirk Denton  
David Clarke  
Simon Rees

Wychavon District Council  
Malvern Hills District Council  
Wychavon District Council

### **OTHER INTERESED PARTIES:**

Bob Watkins

On behalf of the Dough Bank Residents  
Association

### **DOCUMENTS SUBMITTED AT THE HEARING**

- 1 Completed Statement of Common Ground
- 2 Letter of support from a pub owner where the appellant has stayed
- 3 Letter from a bailiff confirming that he has moved the appellant on
- 4 Copy of a Notice to Vacate Land at the Travelodge Droitwich
- 5 Letter from Dr Tucker of Ombersley Medical Centre confirming Tina Doran's pregnancy
- 6 Letter from Dr Tucker of Ombersley Medical Centre confirming Patrick Doran's shoulder injury
- 7 Letter of support from Wendy Evans
- 8 Letter from the owner of the Holt Fleet Store
- 9 Letter from the Headteacher at Ombersley Endowed First School and Nursery
- 10 Appeal decisions APP/J1860/C/16/3143512 and 3143513 at Mountain View, Bastonford, Powick, Worcs, WR2 4QN
- 11 Development Plan Policy SWDP4 Moving Around South Worcestershire
- 12 South Worcestershire Addendum to the Worcestershire GTAA (Final Report October 2016)
- 13 South Worcestershire, Traveller and Travelling Show People, Site Allocations Development Plan Document, Preferred Options Consultation, March 2016
- 14 South Worcestershire, Traveller and Travelling Show People, Site Allocations Development Plan Document, Site Assessment Background Report, March 2016
- 15 Note on Maintaining a Five Year Supply of Traveller Pitches in Wychavon

## **Annex A**

- 1) The site shall not be occupied by any persons other than gypsies and travellers as defined in Annex 1 of the Planning Policy for Traveller Sites.
- 2) No more than two caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 (of which no more than one shall be a static caravan), shall be stationed on the site at any one time.
- 3) The caravans, amenity block, and area of hardstanding shall be sited in accordance with drawing number PBA/02 Block Plan.
- 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 the requirements set out in (i) to (iv) below:
  - i) within 3 months of the date of this decision a scheme for: the materials and method of construction of the area of porous hardstanding shown on the approved plans including proposed finished levels; the external materials of the amenity block; the boundary treatments including tree, hedge and shrub planting (incorporating details of species, plant sizes, proposed numbers and densities); measures for the protection of the retained protected trees during the course of the development; details of any proposed and existing external lighting; the disposal of sewage and drainage of surface water in accordance with the submitted Water Management Statement; refuse and bin storage; and the provision of an area of habitat suitable for badgers at the western end of the site (hereafter referred to as the site development scheme) shall have been submitted for the written approval of the local planning authority and the said scheme shall include a timetable for its implementation.
  - ii) within 11 months of the date of this decision the site development scheme shall have been approved by the local planning authority or, if 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 site development 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.
- 5) At the same time as the site development scheme required by condition 4 above is submitted to the local planning authority there shall be submitted a schedule of maintenance for a period of five years of the proposed planting beginning at the completion of the final phase of implementation as required by that condition; the schedule to make provision for the replacement, in the same position, of any tree, hedge or shrub that is removed, uprooted or destroyed or dies or, in the opinion of the local planning authority, becomes seriously damaged or defective, with another of the same species and size as that originally planted. The

maintenance shall be carried out in accordance with the approved schedule.

- 6) The amenity block building hereby permitted shall be used only for amenity purposes ancillary to the use of the site as a residential caravan site for one gypsy family, and not as a separate residential unit, and shall be constructed in accordance with the following approved plans: Proposed Amenity Block Floor Plan, Rear Elevation, End Elevation and Front Elevation.
- 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.