

Appeal Decision

Hearing held on 1 February 2017

Site visit made on 1 February 2017

by S J Papworth DipArch(Glos) RIBA

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

Decision date: 26 June 2017

Appeal Ref: APP/H1840/W/16/3157521

Land off Tewkesbury Road, Eckington, Worcestershire WR10 3DE

- 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 J Price against the decision of Wychavon District Council.
 - The application Ref W/15/01013/CU, dated 18 April 2015, was refused by notice dated 7 July 2016.
 - The development proposed is change of use of land from waste ground to mixed use for stable and keeping of horses and caravan site for single gypsy family with associated development (improvements to vehicular access, internal access track, hard standing, stable block/utility block, septic tank and retain electricity junction box).
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Decision

1. I allow the appeal and grant planning permission for change of use of land from waste ground to mixed use for stable and keeping of horses and caravan site for single gypsy family with associated development (improvements to vehicular access, internal access track, hard standing, stable block/utility block, septic tank and retain electricity junction box) at Land off Tewkesbury Road, Eckington, Worcestershire WR10 3DE in accordance with the terms of the application, Ref W/15/01013/CU, dated 18 April 2015, subject to conditions 1) to 12) on the attached schedule.

Application for Costs

2. At the Hearing an application for costs was made by Mr J Price against Wychavon District Council. This application is the subject of a separate Decision.

Main Issues

3. These are;
 - The effect of the proposal on the aims of sustainable development, as to the location of the site and whether the occupiers would be dependent on the use of a private vehicle to access services and facilities for day-to-day living.
 - Whether there are other considerations, including the personal circumstances of the appellant and his family and the supply of alternative sites, which outweigh any harm identified.
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Reasons

Policy

4. Policy SWDP2 of the South Worcestershire Development Plan, adopted in February 2016, sets out the development strategy and settlement hierarchy, based on the principles of providing for employment and housing, to safeguard and wherever possible enhance the open countryside, and to focus most development on the urban areas, where both housing needs and accessibility to lower-cost public services are greatest. The hierarchy places Eckington as a Category 2 village, where the role is predominantly aimed at meeting locally identified housing and employment needs.
5. Policy SWDP17 is specific to gypsies and travellers and at section C states that the South Worcestershire Councils will identify additional sites in a Traveller and Travelling Showpeople Site Allocations Development Plan Document and will assess the suitability of proposals and planning applications against 11 listed criteria. The minimum number of permanent traveller pitches needed in Wychavon as identified in the 2014 Gypsy and Traveller Accommodation Assessment is shown in the Policy as 31. An addendum to that Assessment was published in October 2016 increasing the Wychavon figure to 33. The Statement of Common Ground presented at the Hearing agrees that 25 new permanent pitches have been approved in Wychavon since 2014.
6. An updated timetable for the Site Allocations Development Plan Document was presented at the Hearing and anticipates Initial Consultation (Regulation 18) being repeated in June/July 2017 following a further call for sites that ended on 9 January 2017, Publication (Regulation 19) in December 2017, Submission (Regulation 22) in March 2018, Receipt of Inspector's Report (Regulation 25) in August 2018 and Adoption (Regulation 26) in September 2018. The suitability of sites coming forward during this process has been assessed against criteria derived from Policy SWDP17, and the implications of that process will be considered in the first main issue.
7. Government policy is contained in Planning Policy for Traveller Sites. Within the section on Decision Taking, Policy H reiterates the requirements of Section 38(6) of the Planning and Compulsory Purchase Act 2004 that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise. Paragraph 23 states that applications should be assessed and determined in accordance with the presumption in favour of sustainable development and the application of specific policies in the National Planning Policy Framework and Planning Policy for Traveller Sites. Paragraph 25 states that local planning authorities should very strictly limit new traveller site development in open countryside that is away from existing settlements or outside areas allocated in the development plan. Local planning authorities should ensure that sites in rural areas respect the scale of, and do not dominate, the nearest settled community, and avoid placing an undue pressure on the local infrastructure.
8. The Framework sets out the three dimensions of sustainable development at paragraph 7, and at paragraph 14 states that at the heart of the National Planning Policy Framework is a presumption in favour of sustainable development, which should be seen as a golden thread running through both plan-making and decision-taking.

Sustainable Development

9. The 11 criteria of Policy SWDP17 are assessed as follows, as a result of discussion at the Hearing and with the benefit of the site inspection and a tour of the surrounding area;
10. *i Whether the site is within, or on the edge of, a town or Category 1, 2 or 3 settlement.* The site is described as being 1.1km from the edge of Eckington, and the criterion is therefore not strictly met.
11. *ii. Whether the site is within an international or national planning designation.* The footnote to the policy makes clear that this includes areas such as the Cotswold Area of Outstanding Natural Beauty. The site is not within that designated area and hence the criterion does not apply. It is however adjacent to it and representation was made by third parties at the Hearing as to an adverse effect, particularly from high level viewpoints from within the designated area on Bredon Hill. The location of the proposed utility-room, mobile home, touring caravan and stables would form a distinct group, and would be near an established group of buildings at Nortonside Farm. It would be close to mature hedging with the ability to seek further screening or filtering of views through a landscaping condition.
12. *iii. Whether the site is outside Flood Zone 1 or vulnerable to surface water flooding.* The site is not in a flood risk area, but it is appropriate to address the concerns of third parties as to flooding on the road and run-off from fields, photographic evidence of which was provided. Such run-off should be prevented on each site, as it would present a danger to road users. There is no indication that the site is in a location that would present a risk to occupiers of a caravan, or others.
13. *iv. Whether the site has any significant impact on local plan designations such as Conservation Areas and Significant Gaps, or on sites of ecological or biodiversity interests that cannot be mitigated.* This does not apply to the appeal site.
14. *v. Whether any significant visual impact on the landscape can be mitigated.* The effect would be limited as set out in criterion ii, albeit the proposal would introduce built form and caravans to a presently unused area of scrubland. Whilst the visual impact is not significant, what limited impact that would occur can be sufficiently mitigated by landscaping as to make the proposal acceptable.
15. *vi. Whether there is any significant impact on privacy and residential amenity for both site residents and neighbouring properties.* This is not the case.
16. *vii. Whether the size of the site and the number of pitches are of an appropriate scale for the location.* An enforcement notice for 10 pitches on a larger site was upheld at appeal in 2004 (Ref; APP/H1840/C/04/1152752 and 2 others), and another appeal against a refusal of permission for 8 pitches, again on a larger site, was dismissed in the same year (APP/H1840/A/04/1162029). The present appeal proposal is for a single family pitch on a part of the previous site, and would not be inappropriate in scale having regard to the location.
17. *viii. Whether the site has safe and convenient access to the highway network.* This is an objection raised by third parties but not the Council, having received

advice from the highway authority. The Council did however attach an informative to the Refusal Notice regarding the need for a condition. Whilst traffic speeds on the road appear likely to be at the 60mph national speed limit, due to the largely straight alignment, and whilst the appellant controls only limited lengths of the required sightlines, the visibility on both directions is reasonable and can be kept clear sufficiently to allow a safe access. This would be assisted by the use being by those who would be well aware of the situation through regular access and egress.

18. *ix. Whether the site is capable of providing adequate on-site services for water supply, mains electricity, waste disposal and foul and surface water drainage.* This is stated to be the case and a condition would be needed to ensure the provision of drainage.
19. *x. Whether the site has reasonable access to health services, schools and employment.* The site is 1.5km from the shop and the primary school at Eckington, and over 3km to the nearest doctor at Bredon. There is only an infrequent bus service and that which passes the site twice a week in one direction does not provide the return journey. The route to the nearest shops and school at Eckington is along the grass verge of a busy, unlit road, and the footway only starts at the point where the speed limit reduces on entering the village. Nevertheless, whilst this would realistically be likely to result in the use of a vehicle for day-to-day living, the distances are only very little further than that considered reasonable by the Council. The distance to the school is less than the 2km considered as acceptable in the Council's site assessment for plan-making purposes, albeit as a desirable rather than essential criterion.
20. *xi. Whether the site complies with good practice on designing gypsy and traveller sites.* This criterion is complied with so far as is needed for a single family pitch, and the proposal includes a utility block and parking for a touring caravan.
21. The appeal site therefore fails to accord with criterion i, as it is not within, or on the edge of Eckington as a Category 2 settlement, it is rather, 1.1km away from the edge of the village. It is noted however that the Council use a different criterion when assessing sites coming forward under the plan making process. In that case the test is whether the site is within 1km of the settlement, and the appeal site is therefore 100m too far away. It is further noted that the Council regard this criterion as an absolute necessity; a site failing to be within the 1km distance being described at the Hearing as a 'show-stopper' no matter how a site fares in relation to other criteria. However, the reasoning in relation to criterion x is that the site does have reasonable access, so that criterion i is the only one not strictly accorded with.
22. The 11 criteria in Policy SWDP17 are clearly designed to test the suitability of sites coming forward at both plan-making and as planning applications. Each criterion begins '*whether*' which, taken with the policy statement that the Council will '*assess the suitability of proposals and planning applications against the following criteria*' means, on a plain reading of the words, that a site's suitability is to be assessed against the criteria as a whole, with no indication of a weighting to be attached to any particular criterion, or that any one may be essential. The Policy is not written in that way, and had that been intended another form of words could have been employed. The reasoned justification does not suggest restrictions on how the criteria are to be considered, other

than to refer to a Good Practice Guide on Designing for Gypsy and Traveller Sites that was cancelled in 2015, and the Planning Policy for Traveller Sites.

23. The Council's approach to the plan-making site assessment is somewhat more relaxed than the wording criterion i of the policy, looking at 1km distant rather than being within, or on the edge of a settlement. As far as the approach to decision taking is concerned, the appellant submitted Council Planning Committee Reports for sites recommended for approval that were 1.5km from a category 2 settlement and more than 2km from a Category 3 settlement.
24. On that basis, the failure to accord with the single criterion i of Policy SWDP17, or the fact of being 100m further away from Eckington than the criterion used by the Council for site selection within the plan-making regime should be considered as part of a balanced assessment of the suitability of the site. That balancing exercise will be carried out in the second main issue that follows, but in conclusion on this main issue, the site has reasonable access to services and facilities for day-to-day living, albeit likely to involve the use of a private vehicle.

Other Considerations

25. A consideration in that balance should be the acknowledgement that the Council is unable to demonstrate a 5 year supply of specific and deliverable sites as required by paragraph 10 of Planning Policy for Traveller Sites, and that the anticipated adoption of the Traveller and Travelling Showpeople Site Allocations Development Plan Document is presently estimated as being in the order of 18 months away. It is clear that the 'within, or on the edge of' criterion is being relaxed in order to find sites. Paragraph 27 of the national policy goes on to state that if a local planning authority cannot demonstrate an up-to-date 5 year supply of deliverable sites, this should be a significant material consideration in any subsequent planning decision when considering applications for the grant of temporary planning permission.
26. Another consideration in the balance is Policy H of the central Government document which, whilst stating at paragraph 25 that local planning authorities should very strictly limit new traveller site development in open countryside that is away from existing settlements or outside areas allocated in the development plan, clearly does not preclude such development as the passage goes on to state that sites in rural areas should respect the scale of, and not dominate, the nearest settled community, and should avoid placing an undue pressure on the local infrastructure. That latter part is accorded with in the case of the appeal proposal due to its small scale and benign impacts when considered in relation to all other criteria in Policy SWDP17; the site is not so remote as to cause harm to the character and appearance of the countryside or other matters covered by the local policy.
27. The appellant gave details of the family's circumstances, with young children who have not attended school, roadside living with severe disruption to healthcare and Mr Price's ability to earn a living through a regular and urgent need to vacate the stopping places and move on. It appears that the injunction that covers the whole of the 2004 appeal site prevents the present appeal site from being used by the family as an unauthorised home from which to seek planning permission. That injunction would be overcome were permission be granted as sought, but would remain on the other land, and

would prevent intensification of the use over that other land, and the harm identified by Inspectors in 2004 concerning larger-scale proposals.

28. The Council's reason for refusal refers to this not being considered sustainable development. However, sustainable development is not just a matter of accessibility, as the Framework makes clear at paragraph 7. The economic role would be furthered by providing a base for occupiers to work from, contributing to economic activity more widely. The site would provide the housing for travellers in an area that currently cannot demonstrate the required level of supply, assisting the social role. The environmental role would not be jeopardised as previous set out, and would be furthered by minimising the harm through illegal encampments with conditions able to control the landscaping of the site.
29. To sum-up, there is a limited breach of the provisions of a single criterion out of eleven in Policy SWDP17 against which the suitability of proposals are to be assessed, having mind to the Council's operation of site assessment in plan-making. The Policy does not state that or all, or any one of, the criteria are to be met. The proposal accords with local and national policy aims of ensuring a supply of traveller sites in suitable locations and where the effects on the environment and the settled community are acceptable. A balanced appraisal of the proposal against these policy aims indicates that the limited failure to accord with one criterion is significantly outweighed by the benefits of granting permission.
30. As a result, and notwithstanding the particular circumstances of the appellant family, and the provisions of paragraph 27 of Planning Policy for Traveller Sites for temporary permission to be granted where a 5 year supply of deliverable sites cannot be demonstrated, there is no reason in this case to limit the duration of permission or the occupancy for a site that is suitable for permanent gypsy use. The material considerations in favour of the grant of permission outweigh the limited conflict with Policy and the location not being on the edge of the settlement.

Conditions

31. The Council suggested conditions which were discussed at the Hearing. The conclusions on the main issues are that there is no need to restrict permission to a temporary or personal one and those suggested conditions are not required. A condition is required restricting the use to gypsy and travellers as defined in Annex 1: Glossary of Planning Policy for Traveller Sites, and another limiting the number of caravans to ensure that the use remains small in scale. The use should not commence until details have been submitted for approval of drainage, landscaping, and the appearance of the stables and utility block, although a requirement for the appearance of the mobile home to be submitted for approval is not reasonable, as this might change and it would unduly limit the choice available; the nature of the site is not so sensitive as to warrant that level of control. The position of buildings and caravans on the site is as shown on the submitted drawings and a condition is required naming the drawings, because otherwise than as set out in this decision and conditions, it is necessary that the development shall be carried out in accordance with the approved plans as this provides certainty.
32. The suggested outright prohibition of external lighting is unreasonable, but in view of the rural location, control would be justified. It is reasonable and

necessary to control the size of vehicles and to prevent commercial activities. In order to ensure the safety of the entry onto the highway, it is necessary to control the erection of gates that might require a vehicle to block the carriageway while they are being opened, particularly as that might include one towing a touring caravan. Network Rail had requested stock-proof fencing along the boundary with the adjoining railway line, but the boundary referred to includes land outside the site and not under the appellant's control. To ensure no harm occurs it is reasonable to require such fencing around the paddock perimeter, but only prior to the use of the paddock commencing.

Conclusions

33. Whilst the personal circumstances of the appellant and his family are pressing, the site scores well against criteria in the relevant Development Plan policy and the requirements of national guidance on gypsies and travellers, as well as with regard to the three dimensions of sustainable development. There is a single criterion of the local policy that is not met, but the policy does not indicate that this has to be the case, and in the balance, the benefits of the proposal in an area that cannot demonstrate a five year supply of sites significantly outweighs this limited failing. The material considerations indicate a decision otherwise than in strict accordance with the locational Policy SWDP17 criterion i.
34. This Decision has had regard to the Human Rights Act 1998 and the Equality Act 2010, as well as the best interests of the appellant's children, but as the site has been found suitable for permanent use by any persons satisfying the definition of a gypsy or traveller, these considerations, as far as they concern Mr Price and his family in particular, are not determinative in this case. For the reasons given above it is concluded that the appeal should be allowed.

S J Papworth

INSPECTOR

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

A Brindle	Principal Development Control Manager
D Duggan	Senior Planner, Policy Team
Cllr A Hardman	Bredon Ward Councillor

FOR THE APPELLANT:

A Heine	Heine Planning
J Price	Appellant
E Price	Spouse of appellant

INTERESTED PERSONS:

G Ransted	Eckington Resident
N Wilkes	Eckington Resident
G Glaze	Eckington Resident

DOCUMENTS

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| Document | 1 | Statement of Common Ground submitted by appellant, agreed at Hearing |
| Document | 2 | Planning Committee 15 December 2016 The Hill, Canada Bank submitted by appellant |
| Document | 3 | Planning Committee 22 September 2016 The Paddocks, Comhampton Lane submitted by appellant |
| Document | 4 | South Worcestershire Addendum to Worcestershire Gypsy and Traveller Accommodation Assessment submitted by Council |
| Document | 5 | South Worcestershire Traveller and Travelling Showpeople Site Allocations Development Plan Document Preferred Options Consultation March 2016 submitted by Council |
| Document | 6 | South Worcestershire Traveller and Travelling Showpeople Site Allocations Development Plan Document Site Assessment Background Report submitted by Council |
| Document | 7 | Appeal Decision APP/H1840/C/1152752 8 November 2004 submitted by Council |
| Document | 8 | Traveller and Travelling Showpeople Site Allocations Development Plan Document Timetable submitted by Council |
| Document | 9 | Extract Development Plan Eckington map showing facilities for use at site inspection submitted by Council |
| Document | 10 | Extract Development Plan Bredon map showing facilities for use at site inspection submitted by Council |

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Plan 1 Location Plan, Plan 2 General Location Plan, Plan 3 Proposed Site Layout Plan, Plan 4 Stable Block Elevations and Plan, and Plan 5 Utility Block Elevations and Plan.
- 3) The site shall not be occupied by any persons other than gypsies and travellers as defined in Annex 1: Glossary of Planning Policy for Traveller Sites (or its equivalent in replacement national policy).
- 4) 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 static caravan) shall be stationed on the site at any time.
- 5) The residential use of the site hereby permitted shall not begin until details of the foul and surface water drainage system to serve the development have been submitted to and approved in writing by the Local Planning Authority. The approved drainage system shall be provided prior to the first residential use of the site.
- 6) The use of the paddock for the grazing of animals shall not begin until there has been erected around the paddock, and along the western boundary of the site on land adjacent to the railway line, a 1.8m stock-proof fence the details of which shall have been submitted to and approved in writing by the Local Planning Authority. The fence thereafter shall be maintained and kept stock-proof at all times.
- 7) No construction works on the utility and/or stable block hereby permitted shall be commenced until details of the materials to be used in the construction of the external walls and roofs have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.
- 8) No part of the development shall be commenced until full details of soft landscaping works to be provided on the site have been submitted to and approved in writing by the Local Planning Authority. The details submitted must include:
 - a plan showing details of all existing trees and hedges on the application site. The plan should include, for each tree/hedge, the accurate position, canopy spread and species, together with an indication of any proposals for felling/pruning and any proposed changes in ground level, or other works to be carried out, within the canopy spread.
 - a plan showing the layout of proposed tree, hedge and shrub planting and grass areas.
 - a schedule of proposed planting - indicating species, sizes at time of planting and numbers/densities of plants.
 - a written specification outlining cultivation and other operations associated with plant and grass establishment.

a schedule of maintenance, including watering and the control of competitive weed growth, for a minimum period of five years from first planting.

All planting and seeding/turfing shall be carried out in accordance with the approved details in the first planting and seeding/turfing seasons following the completion or first occupation/use of the development, whichever is the sooner.

Any trees or plants which, within a period of five years from the completion of the planting, die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless otherwise agreed in writing by the Local Planning Authority.

- 9) No vehicle over 3.5t shall be stationed, parked or stored on the site.
- 10) No commercial activities shall take place on the land, including the storage of materials.
- 11) No external lighting shall be installed on the site other than in accordance with details that have previously been submitted to and approved in writing by the Local Planning Authority.
- 12) No gates are to be erected at the site entrance onto the B4080, or within 10m of it, other than in accordance with details that have previously been submitted to and approved in writing by the Local Planning Authority.