



Appeal Decision

Hearing held on 4 May 2017

Site visit made on 4 May 2017

by Elaine Worthington BA (Hons) MTP MUED MRTPI

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

Decision date: 26 July 2017

Appeal Ref: APP/G2435/W/16/3165782

Field, Ashby Road, Belton, Leicestershire, LE12 9XT

- 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 M and Mrs C Pearson against the decision of North West Leicestershire District Council.
 - The application Ref 16/00296/FUL, dated 11 March 2016, was refused by notice dated 7 July 2016.
 - The development proposed is the change of use from agricultural field to Showman's Yard.
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Decision

1. The appeal is dismissed.

Background

2. The parties are agreed that the appellants satisfy the definition of travelling showpeople in the Planning Policy for Travellers Sites (August 2015) (PPTS) Annex 1 (members of a group organised for the purposes of holding fairs, circuses or shows (whether or not travelling together as such). This includes such persons who on the grounds of their own or their family's or dependents' more localised pattern of trading, educational or health needs or old age have ceased to travel temporarily). I see no reason to come to a different view. This background has led to my identification of the main issues below.

Main Issues

3. The main issues in this case are:
 - Whether the proposal would be a suitable site for development having regard to national and local policies which seek to protect the countryside and achieve sustainable patterns of development; and
 - The effect of the proposal on the character and appearance of the surrounding countryside; and
 - The effect of the proposal on highway safety; and
 - Whether any harm would be outweighed by other material considerations, including the general need for the supply of travelling showpeople plots and the accommodation needs of the appellants, to justify the development.
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Reasons

Protection of the countryside and sustainable patterns of development

4. The appeal site is an open field on the south side of Ashby Road. It is outside the development limits for Belton and therefore in the countryside in policy terms. Policy S3 of the adopted North West Leicestershire Local Plan (Local Plan) relates to the countryside and seeks to control development outside of defined development limits. It sets out a number of exceptions where development will be permitted. The parties are agreed that the appeal proposal does not meet the circumstances outlined in criteria (a) to (f).
5. 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 indicates that local planning authorities should very strictly limit new traveller site development in open countryside that is away from existing settlements.
6. The Emerging North West Leicestershire Local Plan (publication version) (Emerging Local Plan) Policy H7 concerns Gypsies and Travelling Showpeople and sets out levels of provision for sites and a number of criteria for new sites. The Emerging Local Plan is being examined and remains subject to possible further consultation regarding modifications. The Council anticipates its adoption by October 2017. Given its relatively advanced stage of preparation, and since the criteria seem to generally align with those in the PPTS, I afford emerging policy H7 some limited weight.
7. The sustainability criteria set out in the PPTS require sites to be within a reasonable distance of services and facilities. Emerging Local Plan Policy H7 criterion (a) also expects new sites to be located with reasonable access to a range of services, such as shops, schools, welfare facilities or public transport.
8. Permission is sought for single plot for one family. Belton has a number of facilities including a convenience store, pub, doctor's surgery, hairdressers, village hall and school. Whilst the local bus service is irregular, Belton is nevertheless regarded by the Council as a sustainable settlement with a level of service provision that would meet the day to day needs of the appellants. The appeal site is on the south side of Ashby Road and the future occupiers would need to cross the road to reach the village and its facilities. These could be accessed via Church Lane which meets Ashby Road to the east of the appeal site. Ashby Road is a B road with a 40 mph speed limit and has no footpaths or street lights in the vicinity of the appeal site.
9. That said, the appellants would provide a new footpath to link up with the existing footpath on the east side of Church Street. Whilst no plan has been provided, options for its route are set out in the Transport Statement and were discussed at the hearing. The appellants contend that a new stretch of footpath could be provided on the south side of Ashby Road within the highway verge, or on the north side adjacent to the playing fields, again within the highway verge (this option would also allow the possibility of connecting to an existing route to the village across the playing fields).
10. Local residents are concerned that a pedestrian route from the appeal site to Church Street would be indirect and contrived and that the length of footpath required would be significant. However, the Council estimates that the site entrance is less than 100 metres from the footpath on Church Street and I

consider that it would provide a relatively direct route to the village centre. The relevant verges on either side of Ashby Road are not particularly narrow and I have seen no substantiated evidence to suggest that any drainage issues on the northern highway verge would necessarily preclude the construction of a footpath there. Although the use of the unmade route across the playing field would be impractical in bad weather, it could still provide an alternative route to the village at other times.

11. Whilst I note local residents' concerns, since it would only lead to the appeal site, I see no reason why the creation of a new footpath to Church Street would necessarily attract children to walk along Ashby Road. I appreciate the difficulty of crossing Ashby Road due to the speed of the traffic and bends in the road described by local residents. However, I am mindful that the appeal proposal concerns a single plot for one family and would not lead to a high number of pedestrians seeking to cross Ashby Road.
12. Overall, despite its reservations regarding the costs involved, the Highway Authority is generally content that a satisfactory pedestrian route could be provided to link the site to the existing footpath on Church Street (including the use of tactile paving at the crossing points). I have been presented with no compelling evidence to the contrary and see no reason why appropriate details could not be secured via a planning condition. Nor do I regard there to be any grounds to doubt that such a footpath could be funded by the appellants. On this basis, I am satisfied that the appeal site is not away from existing settlements and is within a reasonable distance of services and facilities in Belton.
13. Paragraph 25 of PPTS also requires local planning authorities to ensure sites in rural areas respect the scale of, and do not dominate, the nearest settled community, and avoid placing undue pressure on the local infrastructure. Additionally paragraph 14 states that when assessing the suitability of sites in rural settings, local planning authorities should ensure that the scale of such sites does not dominate the nearest settled community. Emerging Local Plan Policy H7 criterion (b) similarly expects sites to be proportionate to the scale of the nearest settlement, its local services and infrastructure.
14. The appeal proposal concerns a single plot for one family and is thus of a limited scale. A condition could be imposed to limit the occupation of the plot to two caravans to ensure it is not occupied by any additional residents. The Council raises no objections to the proposal in terms of its scale and advises that it would not result in the settlement being dominated. I am also content that the proposal would not dominate Belton, or place any undue pressure on the local infrastructure there.
15. I therefore conclude on this issue the proposal would be a suitable site for development having regard to national and local policies which seek to protect the countryside and achieve sustainable patterns of development. Whilst there would be some conflict with Local Plan Policy S3, the proposal would therefore accord with the advice in the PPTS and Emerging Local Plan Policy H7 in this regard.

Character and appearance

16. The supporting text to Local Plan Policy S3 seeks to control development outside defined development limits in order to protect the countryside for the sake of its natural beauty. Whilst I note the views of the appellants to the contrary, I consider that this aspiration broadly aligns with the core planning principle of the Framework to recognise the intrinsic character and beauty of the countryside and its advice at paragraph 109 which seeks to protect and enhance valued landscapes.
17. The appeal site is a large plot of open undeveloped grassland which is delineated on its boundaries by tall hedgerows including some mature trees. There is a stable building close to the site entrance onto Ashby Road. The site is surrounded by fields on the south side of Ashby Road and despite its boundary planting it is seen very much as part of the wider countryside to the east, west and south. It is also directly opposite the playing fields on the north side of Ashby Road and so appears set considerably apart from Belton itself and the built development there.
18. The appeal site would be occupied by the appellants in a mobile home/chalet. It would also be used to store their equipment and vehicles including a number of fairground rides. Paragraph 19 of the PPTS states that local authorities should have regard to the need that travelling showpeople have for mixed use yards. The proposal includes a mobile home/chalet, a touring caravan, two towing trailers, a shed, pick-up trucks, a winch lorry, an extending footboard, three adult rides (two measuring around 70 feet long by 14 feet high and another measuring some 60 feet long and just over 14 feet high) and four smaller children's rides. These would all be sited on a large area of hardstanding in the middle of the front section of the site.
19. The appellants generally work and travel to fairs between Easter and November such that the rides and equipment would not be on the appeal site during that period. They would return to the site between December and April when the rides would be packed up and covered in tarpaulin for storage. The larger adult rides would be disassembled into two sections. The appellants explained at the hearing that the rides and equipment are tested yearly when they are erected and in operation at fairs and that this is primarily when they are maintained and repaired. Any maintenance undertaken the appeal site would be limited to that which can be done with the rides packed away.
20. Nevertheless, even bearing in mind the seasonal variations in the use of the site and the fact that the structures and vehicles proposed are not permanent or fixed to the ground, the proposal would introduce a considerable amount of development to the appeal site including the siting of large commercial vehicles and equipment along with a significant area of hardstanding.
21. The existing hedgerows surrounding the site are substantial, and inter-dispersed in places with mature trees. Additional native planting is also proposed to infill any gaps. I accept that in the summer months the site would be well screened in longer range views on approach from the east and west along Ashby Road as well as from the surrounding countryside. That said, both the existing and proposed screening would be diminished when the hedgerows and trees are not in leaf. This would coincide with the period during the winter months when the rides and equipment would be on the site. At such times, it

seems likely to me that the proposed development would be seen through, and in the case of the rides, above, the boundary planting.

22. Moreover, alterations to the site access are proposed. Whilst no revised drawing has been submitted the appellants anticipate that, in order to provide the adequate visibility splays and junction radii required by the Highway Authority, the existing access would need to be widened and the hedgerow along the northern site boundary cut back. Additionally a long 20 metre stretch of hard surfaced 6 metre wide driveway would be provided into the site from Ashby Road. In my opinion, such a proposed access would be considerably wider than the existing modest gated field access and would open up views of the site from Ashby Road greatly. The cutting back of the existing hedge on the site's Ashby Road frontage and its reduction in height would also increase the visibility of the site.
23. In this context, the proposed development would create a significant isolated pocket of commercial and residential development in the countryside. This unacceptable intrusion would be appreciated from Ashby Road from where the proposal would appear as an incompatible and incongruous feature that would be out of character with its surroundings. Its detrimental visual impact and unacceptable urbanisation of the open green site would be further exacerbated by the wide surfaced access and driveway that would be created to Ashby Road. Overall, to my mind, the proposal would seriously detract from the rural appearance of the surrounding countryside and undermine the beauty of the wider landscape. That the site is not part of a designated landscape does not alter my findings.
24. This would be so even taking into account the possibility of imposing conditions to limit the number of caravans and the size and number of rides on the site to those shown on the submitted plan. Although the appellants suggest the use of a cellular mesh system for the hardstanding which would allow gravel or grass to show through, it would not be possible to use this material for the access road. As such, this measure would be insufficient to mitigate the proposal's visual impact to any meaningful extent.
25. Whilst additional tree planting in the form of a screening belt of field maples is proposed to the site frontage, this would take some time to mature and would not address the visibility of the proposed development through the access. I also appreciate that new hedge planting would be provided to the sides of the proposed access within the site. However, this would not screen all views of the proposed development taken through the access, and again would take time to establish and mature.
26. I therefore conclude on this issue that the proposal would be harmful to the character and appearance of the surrounding countryside. This would be contrary to Local Plan Policy S3 and Local Plan Policy E4 which requires new development to respect the character of its surroundings. It would also conflict with Emerging Local Plan Policy H7 criterion (f) which expects sites to be compatible with landscape, environment, heritage and biodiversity as well as the physical and visual character of the area. Furthermore it would be at odds with paragraph 109 of the Framework and one of its core planning principles.

Highway safety

27. Despite its initial concerns (and those of local residents), the Highway Authority is content that an appropriate access could be provided to the site with adequate width and radii to ensure sufficient visibility and to enable large vehicles to enter and exit the site without straying significantly over the centre line of the road into the opposing carriageway. It suggests that such an access could be secured via a planning condition.
28. However, the Highway Authority remains concerned about the proposed increase in use of the access in light of the speed of traffic on Ashby Road and its accident record. Highways Design Guide (6CsDG) Section IN5 paragraph 1.29 concerns access to B class roads such as Ashby Road. It advises that the Highway Authority will normally apply restrictions on new accesses for vehicles and the increased use of existing accesses on roads with a speed limit over 40 mph or where measured vehicle speeds are in excess of 40 mph, and roads where there is an existing problem with road safety.
29. Based on the operation of their current yard during 2015, the appellants estimate that a total of 46 two way trips (there and back) for the trailer and 25 two way trips for the HGVs would take place at the appeal site over the period of a year. These movements would be mainly between April and November during the fair season and the Highway Authority does not dispute them. However, no estimate is made of the trips that would be associated with the appellants' use of the site as a family home, particularly during the winter.
30. Using TRICS¹ data for a single dwelling, the Highway Authority estimates the proposal would generate around six vehicle movements per day and refers to other appeal decisions where similar estimates have been accepted. The appellants argue that these would be more in the order of two trips a day between December and April. I accept that the appellants would not be commuting to work during the winter and that some opportunities for walking and cycling exist. Even so, the site is not well served by public transport and in practical terms I consider that the number of trips to services and facilities that would be required to meet their day to day needs (including those to take their young children to school/nursery), would be more likely to be in the region of those estimated by the Highway Authority.
31. Whilst the established agricultural use of the site would give rise to some trips by farm vehicles, overall the number of vehicle movements that would be generated by the appeal proposal would in my view be considerably higher.
32. Although Ashby Road has a speed limit of 40 mph, recorded speeds are higher. The latest speed surveys recorded speeds of 47 mph in a westbound direction and 49 mph in an eastbound direction. The appellants do not dispute these figures. Community speed watches are undertaken twice a year and, alongside the recorded speeds indicated, the Parish Council refers to much higher individual vehicle speeds. I saw at my visit that the traffic in Ashby Road is quite fast moving. The road is not particularly wide and is winding and undulating in places consistent with its rural nature. Even in the middle of the afternoon the road was fairly busy with traffic and there was a regular flow of vehicles including a good number of lorries and agricultural vehicles.

¹ Trip Rate Information Computer System – a database for trip rates for developments used for transport planning

33. The accident records for this section of Ashby Road from 2011 to 2016 show a fatal collision west of the appeal site in 2013. They also include five other serious accidents and four further slight accidents. I note the appellants' view that the fatal accident was a result of a blind spot at an existing junction. I am also aware of their contention that none of the incidents were in close proximity to the appeal site or obviously speed related, and only one involved a vehicle turning right off Ashby Road into a field. Be that as it may, to my mind these accidents records indicate that there is an existing problem with road safety on this section of Ashby Road.
34. I appreciate that it is only the appellants who would drive vehicles onto and off the appeal site, and note that the banksman role would be undertaken by one or other of them to guide vehicles into and out of the site in the interests of safety and to mitigate disruption to other road users. There would be no convoys onto or off the site and movements would not take place at peak times. The fairground equipment would not be driven through Belton but to the A42 and the motorway. Any gates to the appeal site would have to be positioned well back from the site entrance, and even the longest vehicles would be able to pull off the road and into the site rather than wait in the highway or overhang it. I do not doubt that the appellants take safety seriously, are vigilant in supervising vehicle movements, and are keen to avoid any damage to their equipment.
35. However, even taking account of all these factors, I consider that the proposed increase in the number of vehicles, including slower moving large HGVs, turning onto and off Ashby Road, where traffic speeds exceed the limits and there are existing problems with road safety, has the potential to unacceptably interrupt the free flow of traffic on Ashby Road. As a result the proposal would increase the potential for conflict between vehicles and would be directly at odds with the advice in the Highway Authority's Highway Design Guide which seeks to maintain safety and the free flow of traffic on the road network.
36. I understand that despite the current safety problems, there are no planned Highway Authority schemes for traffic calming schemes on this part of Ashby Road and note the appellants' view that excessive speeds are a matter for enforcement. Even so, that does not mean that existing highway safety problems do not exist and I have no information to indicate that any such measures will be implemented or that they will necessarily be successful in bringing down speeds. In any event, I must consider the appeal on the basis of the current situation.
37. I have also had regard to the appellants' argument that the increase in the number of vehicles using Ashby Road as a result of the appeal proposal would not be great in relation to the number of vehicles already using it, and note that the Highway Authority does not claim there to be insufficient capacity on Ashby Road to accommodate the appeal development. However this does not alter my findings in relation to the scheme's impact on highway safety outlined above.
38. I therefore conclude on this issue that the proposal would be harmful to highway safety. This would be contrary to Local Plan Policy T3 which permits development only where its highway design and layout make adequate provision for vehicular access and circulation. It would conflict with the Highway Authority's Design Guide, and the advice at paragraph 32 of the

Framework which requires safe and suitable access to the site to be achieved. I also confirm with paragraph 32 of the Framework in mind, that I consider the residual cumulative impacts of the proposal would be severe in this instance.

Other considerations

The supply of travelling showpeople plots

39. There is disagreement between the parties as to whether the Council can demonstrate a five year supply of deliverable housing sites. The appellants consider that the Council cannot do so and thus regard Local Plan Policy S3 to be out of date under the terms of paragraph 49 of the Framework. They refer to the presumption in favour of sustainable development at paragraph 14 of the Framework and another appeal decision in the District in this regard.
40. That said, I am mindful that the technical adjustment made to paragraph 49 of the Framework via a written statement² is clear that those who fall under the definition of a traveller under the PPTS cannot rely on the lack of a five year supply of deliverable housing sites under the Framework to show that relevant policies for the supply of housing are not up to date. Such persons should have the lack of a five year supply of deliverable traveller sites considered in accordance with the PPTS.
41. The PPTS aims to promote more private traveller site provision and to increase the number of traveller sites in appropriate locations with planning permission to address under provision and maintain an appropriate level of supply. It also requires local planning authorities to identify and update annually a supply of specific deliverable sites sufficient to provide 5 years worth of sites against their locally set targets. The Leicestershire, Leicester and Rutland Gypsies Travellers Accommodation Needs Assessment Refresh Report May 2013 (GTAA) identifies a need for nine travelling showpeople plots for 2012 to 2031.
42. Emerging Local Plan Policy H7 refers to the production of a Gypsy and Traveller Site Allocations Development Plan Document which will set out the provision for the nine plots. The Council confirmed at the hearing that although there was a call for sites in February 2016 no progress has been made on this document and there is no timescale for future allocations. Accordingly, the Council accepts that there is current outstanding unmet need for additional plots for travelling showpeople in the District and that it is unable to demonstrate a five year supply of travelling showpeople sites in accordance with the PPTS. The Showmen's Guild of Great Britain supports the proposal and highlights the shortage of showmen's sites in the area.
43. Paragraph 27 of the PPTS advises that the lack of a five 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, and the Council's failure to meet that need, is nevertheless a matter that attracts significant weight in favour of the appeal proposal.

² HLWS167 22 July 2015

Accommodation needs and personal circumstances

44. The appellants and their two young children currently live at a site for showpeople at Hoton Park, Wymeswold Road where they occupy a 30m by 30m yard. They have been there for the past 15 years but have outgrown the relatively small yard which was originally occupied by only Mr Pearson. Their rides cannot all be accommodated on the plot and they currently leave equipment on nearby farms and in a layby. They have to pay rent to the farmers and are concerned about the risks of damage and vandalism to the rides when stored remotely. Furthermore, living conditions at the existing yard are cramped.
45. The appellants chose the appeal site because they operate their longstanding business in the area and attend fairs nearby. The site has good transport links to the nearby motorway system and is close to the village facilities but away from residents. The Showmen's Guild of Great Britain supports the proposal on this basis. Belton contains a range of suitable facilities to meet day to day needs, including a primary school.
46. The appeal site would provide a larger yard to accommodate all the appellants' equipment and allow a more efficient running of the business and improved security. It would also provide better living conditions for the family including more room for the children to play. Furthermore, it would allow the possibility of the future succession of the business to the appellants' children. These are benefits to the appellants which count in the proposal's favour.
47. Additionally the appellants advise that the appeal site is close to elderly relatives and other family members who would offer to support to this family. However, whilst I appreciate that proximity to family members allows mutual support, the particular advantages of the appeal site over and above the appellants' current site in these regards have not been demonstrated and this limits the weight that I attribute to them.

Alternative accommodation

48. The appellants have made attempts to find an alternative site over a number of years. They have considered other plots on Hoton Park where they currently live, other existing travelling showpeople yards within the District, Mr Pearson's former family home and land that has been advertised for sale. These have all been ruled out for a number of reasons including availability, land ownership issues and price. In my view the appellants have made genuine and concerted efforts over a long period of time to find another site and they confirmed at the hearing that they continue to do so despite having bought the appeal site.
49. Local residents refer to a site at Garndon Park in Charnwood where they understand there to be availability. However, the appellants question whether this site is available for travelling showpeople or for gypsies and travellers. In the absence of any further information relating to that site, I have seen no substantiated evidence to suggest that it is available or suitable for the appellants.
50. Besides, I am conscious that in seeking to determine the availability of alternative sites for travelling showpeople use, there is no requirement in planning policy or case law for an appellant to prove that no other sites are available or that particular needs could not be met from another site. In this

instance there does not appear to be any reasonable alternative accommodation for the appellants and this attracts further weight in favour of the appeal proposal.

Other planning matters

51. Despite the concerns of local residents and the Parish Council, subject to the imposition of conditions, the Council raises no objections to the proposal in relation to noise and smell, residential amenity, light pollution, flood risk, archaeology or contamination. The absence of harm in these regards counts neither for, nor against the proposal.
52. The appellants refer to the approval of 16 houses nearby on Ashby Road. However, I am not aware of the full circumstances that led to that approval and so cannot be sure that they are the same as in the case before me. This matter therefore adds no weight in favour of the appeal proposal.
53. I note the appellants' concerns as to the Council's handling of the planning application including the preparation of the committee report and the parish meeting that was held. However, these are matters between the Council and the appellants. I confirm that I have considered the appeal proposal on its own planning merits and made my own assessment as to its impacts.

Planning Balance and Conclusion

54. I have found that the appeal scheme would be within a reasonable distance of services and facilities in Belton would not dominate the existing settlement, or place any undue pressure on the local infrastructure there. The absence of harm in these regards counts neither for, nor against the proposal.
55. The lack of available sites to meet the identified need for travelling showpeople plots in the District, along with the absence of a five year supply of deliverable sites, and the absence of any progress in identifying sites for allocation, are matters that attract significant weight in favour of the appeal proposal. The lack of reasonable alternative accommodation for the appellants attracts further weight in its favour. There would also be some personal benefits to the appellants arising from the appeal proposal which add some further moderate weight in its favour.
56. The appellants already have a long established settled base and to dismiss the appeal would not make them homeless or disrupt the educational needs of the children. Even so, negative impacts of dismissing the appeal on the appellants arise since they would have to continue to live on their existing cramped site and store equipment remotely. Additionally, in the absence of acceptable alternative accommodation they would need to continue to search for a larger site. This would interfere to some limited degree with the best interests of the children and each member of the family's right for respect for private and family life and lends a small amount of additional weight in favour of the appeal.
57. However, I consider that the proposal would cause substantial harm to the character and appearance of the surrounding countryside and considerable harm to highway safety, and am satisfied that the well-established and legitimate aims of determining an appeal in accordance with the development plan and planning policies which seek to protect the countryside and highway safety in the wider public interest, can only be adequately safeguarded by the

refusal of permission in this instance. Thus, whilst bearing in mind the need to eliminate discrimination and promote equality of opportunity, in my view the adverse impacts of dismissing the scheme on the appellants, are necessary and proportionate.

58. Bringing matters together, the other considerations in this case, even taking into account the family's Article 8 rights and the PSED considerations, do not clearly outweigh the harm I have identified. As such, the proposal is not justified and for the reasons set out above, I conclude that the appeal should be dismissed.

Elaine Worthington

INSPECTOR

APPEARANCES

FOR THE APPELLANTS:

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Local Resident
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