



Appeal Decision

Hearing Held on 23 August 2017

Site visit made on 23 August 2017

by Susan Ashworth BA (Hons) BPI MRTPI

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

Decision date: 11th October 2017

Appeal Ref: APP/J1860/W/17/3171745

Land at Station Road, Bransford Worcestershire

- 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 Michael Newbury against the decision of Malvern Hills District Council.
 - The application Ref 15/00209/FUL, dated 20 January 2015, was refused by notice dated 16 September 2016.
 - The development proposed is change of use of land to site one static caravan and one touring caravan for one gypsy family.
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Decision

1. The appeal is dismissed.

Preliminary matters

2. The site has a long and complex planning history which includes personal temporary planning permissions, granted on appeal in 1982 and renewed by the Council in 1987, for the residential use of the site by a gypsy. I understand that the site has not been occupied since 1987 although indications of its former use are still apparent on site. In 2011 planning permission was granted on appeal for the change of use of the land to site one static caravan and one touring caravan for one gypsy family.¹ That permission was not implemented and has now lapsed.
3. The Government's 'Planning policy for traveller sites' August 2015 (PPTS), sets out a revised definition of gypsies and travellers for the purposes of the policy as: *'Persons of a nomadic habit of life whatever their race and origin including such persons who on grounds only of their own or their family's or dependants' educational or health needs or old age have ceased to travel temporarily but excluding members of an organised group of travelling showpeople or circus people travelling together as such'*. The definition specifically excludes persons who have ceased to travel permanently.
4. It is a matter of common ground between the main parties that the appellant and his wife have gypsy status. Although the appellant has relocated since the previous appeal and is looking to retire in the future, he is still currently working and lives a nomadic style of life. From all I have heard and read, I am satisfied that the appellant and his wife meet the definition set out in the PPTS.

¹ Appeal Ref: APP/J1860/A/10/2135304

5. At the hearing a response to the appellant's drainage strategy and revised plan, itself submitted during the appeal process, was presented on behalf of the third parties. Given the short notice and the level of technical content in that submission, the appellant was afforded five days after the hearing to respond. I have taken relevant comments into account and have determined the appeal on the basis of the plan that was presented and discussed at the hearing.²

Main Issues

6. The main issues in this case are:
1. The effect of the proposal on the character and appearance of the area;
 2. The accessibility of the site with regard to community services;
 3. Whether sufficient information has been submitted to demonstrate that the site can be adequately drained, having particular regard to the roots of protected trees and, if not, whether the matter can be reasonably addressed by planning condition;
 4. Whether there are any material considerations to outweigh any harm which may rise from the first three issues, including:
 - a) The need for and provision of sites for gypsies within the area.
 - b) The accommodation needs and personal circumstances of the appellant and his wife.

Reasons

Character and appearance

7. The appeal site is a triangular shaped area of land located on Station Road, Bransford. It is bounded on all sides by mature planting which includes substantial boundary hedging and three mature oak trees, protected by a Tree Preservation Order.³ The site, which is overgrown, accommodates a timber structure and a large concrete slab, understood to have been associated with the former use of the site as gypsy accommodation. The vehicular access to the site is gated.
8. Policy SWDP 2 of the adopted South Worcestershire Development Plan, February 2016 (SWDP) sets out a development strategy and settlement hierarchy, the aims of which include the safeguarding and (where possible) enhancement of the open countryside. Policy SWDP 17, which relates specifically to proposals for traveller sites, includes a requirement to assess whether any significant visual impact on the landscape can be mitigated. Policy C of the PPTS, requires that when assessing the suitability of sites in rural settings, the scale of such sites should not dominate the nearest settled community.
9. The area surrounding the site is predominantly open and agricultural. Residential development, including that in close proximity to the appeal site is generally sporadic and set in clusters or takes the form of isolated individual dwellings. The road itself is a narrow, winding lane, with no footpaths on either side and no street lighting.

² 'Proposed Siting of Caravans and Landscaping' Rev A 14.3.17.

³ Tree Preservation Order Station Road, Bransford No. 470 (2010)

10. The siting of a static caravan and a touring caravan, and vehicles associated with a gypsy pitch, would alter the character and appearance of the site itself. However, views into the site are generally from a short range, specifically from the lane through the access and gateway. Such views are limited. Mitigation in the form of additional planting would screen the caravans further. I noted the presence of public rights of way some distance to the west and south. However, the site would be screened from view from these paths given its already dense screening. Consequently I am satisfied that the proposal would have no significant visual impact on the landscape. In this respect the development would therefore meet the tests of the policies set out above.
11. Whilst the PPTS seeks to 'very strictly limit' development in the open countryside, it does not rule it out but requires that an assessment is made of the scale of the development in relation to that of the nearest settled community. In this instance I am satisfied that the proposal for one pitch would not dominate the community.

The accessibility of the site

12. The Government sets out in the National Planning Policy Framework (the Framework) three dimensions of sustainable development, which include, as part of the social dimension, the need for accessible local services. This important caveat in the Framework is reflected in policies SWDP 1 and SWDP 2, the thrust of which is to direct new development to sustainable locations. The appeal site lies outside even the lowest tier of the settlement hierarchy. SWDP 4 requires that proposals must demonstrate they offer genuinely sustainable travel choices and SWDP 7 requires an assessment as to whether the site has a reasonable access to health services, schools and employment.
13. The site lies around 1.4 kilometres from Bransford, around 1.8 kilometres from Collets Green and around 3.5 kilometres from Rushwick. These settlements have a limited range of day to day facilities, including sports and social facilities, a petrol station selling convenience goods and public houses and restaurants. There is a primary school at Collets Green. However, notwithstanding the distances involved, the unlit and tortuous nature of Station Road, and the lack of footpaths, makes it an unattractive route for walking and cycling particularly in winter.
14. The full range of core services, facilities and employment opportunities are located in Worcester some 3-5 miles from the site and outside a reasonable walking distance. A regular bus service runs along the A449 to Worcester, and a less frequent service along the A4103 from Bransford to Worcester. However, the distance to bus stops coupled with the nature of Station Road as outlined above, would significantly constrain access to core services and it is likely that the occupants of the site would rely on private transport for such journeys. Moreover, genuinely sustainable travel choices would not be available.
15. For that reason, the proposal would not be consistent with the aims of planning policies which encourage accessible forms of development. Nevertheless I acknowledge that journeys would be short and any harm would be limited. I have taken into account the conclusions of the Inspector in the previous appeal who balanced the harm against the benefits of reducing the need for longer

distance travelling and providing a settled base for occupants. However, the Inspector's conclusions pre-date the introduction of the Framework in 2012 and the SWDP adopted in 2016 against which the proposal must now be assessed. I will turn to the benefits of the proposal later in my decision.

Drainage

16. The site lies within Flood Zone 1 which has a very low risk of flooding. Assessments carried out by Johnston Smith Consulting Limited on behalf of local residents in January 2011 indicate, following percolation testing, that the ground strata is incapable of supporting the discharge of liquids onto the site. The Council's drainage consultants also advise that the underlying geology comprises strata not normally associated with infiltration qualities. Accordingly there is a danger that any increased surface water run off could cause localised flooding and the possible pollution of nearby clear water fishing pools which contain a substantial amount of game fish.
17. Policy SWDP 17 advises that sites should be capable of providing adequate on-site services for waste disposal and foul and surface water drainage.
18. The appellant's drainage strategy, submitted during the course of the appeal, identifies that 8m x 14m x 0.3m gravel filled attenuation and infiltration areas would be provided around the caravans. Foul waste would be disposed of by means of a septic tank with treated foul water being disposed of by way of a 3m x 3m gravel filled soakaway.
19. The drainage proposals appear to be at an early stage of development. There are no details of the septic tank or location of soakaways before me and whilst the appellant's engineer confirmed at the hearing that additional sustainable drainage measures could be incorporated into the scheme, there are no details of such measures before me. Moreover, there is a significant disagreement between the parties as to whether the stormwater calculations used to inform the design of the scheme are accurate and whether the system has adequate capacity. I understand that the site was not surveyed prior to the hearing. In addition, it is unclear how the treated water from the proposed septic tank would be dealt with given the lack of porosity of the site. Whilst a drainage mound or constructed wetland might be appropriate, there is no such scheme before me for consideration.
20. I share the concerns of the Council that the submitted plan is schematic only and does not accurately show the position or size of the trees protected by the TPO. Nor is there any information as to the extent of the roots of the trees. Accordingly it is not possible to accurately assess the impact of any drainage proposals on the protected trees.
21. On the basis of the evidence before me I cannot accurately conclude that the site can be adequately drained, nor can I conclude that the proposal would preserve the roots of the protect trees. As such I cannot be certain that the proposal would satisfy the requirements of Policy SWDP 17.
22. The previous appeal was allowed subject to a condition which required the subsequent agreement of the full details of foul and surface water drainage works to incorporate sustainable drainage principles, and an assessment of the hydrological and hydro-geological context of the development. I have considered whether a similar condition might be appropriate in this instance.

23. The hydrological and hydro-geological condition of the site is now known and has been agreed by the parties to be challenging. The representation made by the appellant after the hearing advises that there are options available for the disposal of both surface and foul water within the site. However, it would be unreasonable to require matters to be dealt with by condition where there is doubt that a satisfactory solution can be achieved, particularly in this instance given the proximity of the protected trees and the fishing lakes. In addition, in this case, there is considerable public interest in this aspect of the proposal. If the matter were dealt with by condition, I cannot be certain that third parties would necessarily be included in the process of the assessment and discharge of the submitted details. Accordingly whilst such a condition would be necessary to make the development acceptable in planning terms, it would not be reasonable. As such it would not meet the tests set out in paragraph 206 of the Framework.

General need for and provision of gypsy sites

24. The PPTS requires that the level of local provision and need should be considered when dealing with proposals for gypsy sites. The Council is required to demonstrate a 5 year supply of permanent traveller pitches. On the basis of the Worcestershire Gypsy and Traveller Accommodation Assessment 2014 and subsequent addendum 2016, the main parties agree that as at April 2017, there is a shortfall of some 9 pitches.
25. The Council accepts the shortfall and is in the process of producing a Site Allocations Development Plan Document to address the issue. I understand that a recent call for sites indicates that there are five potentially deliverable sites in the district which could deliver some 17 pitches. However, this document is unlikely to be adopted until the end of 2018 at the earliest. As it is at an early stage of preparation it can carry little weight at present.
26. Consequently considerable weight needs to be given to the lack of a demonstrable 5 year supply of permanent traveller pitches in favour of the grant of permission.

The accommodation needs and personal circumstances of the appellant.

27. The appellant is currently living away from the area. Whilst I understand that the site he is occupying does not have the benefit of planning permission I am not aware that enforcement action is pending or that he is likely to be made homeless in the immediate future. Furthermore from all that I have heard at the hearing, there is no specific need for him to live in the Malvern area, given that he has family ties in both Southampton and Warwickshire. I accept that the appellant does not currently have an authorised site although for the above reason he does not have an immediate need for accommodation. No personal circumstances have specifically been put forward in support of the application although I acknowledge that Mrs Newbury has some health issues.
28. No alternative accommodation has been considered by the appellant prior to this appeal. Whilst there is a suggestion that a search was carried out for many years prior to 2011, I also understand that the appellant had previously been granted a personal planning permission for a temporary period until December 2012 on a site in Warwickshire. I acknowledge that the appeal site would provide the appellant and his wife with a settled base. However, I cannot be sure on the basis of the evidence before me that facilities,

specifically healthcare facilities, would not be more readily accessible in other areas where there is an available provision for gypsies and travellers. Accordingly the appellant's personal need carries only limited weight as a benefit of the scheme.

Other Matters

29. I have taken into account the concerns of local residents regarding highway safety. Traffic using the lane appeared to be light although there is no specific evidence before me about the precise volume of traffic or vehicle speeds. Any additional traffic generated by one additional residential site is unlikely to be significant. Moreover, the vehicular access to the site, which appears to have existed for some time, meets current standards in terms of visibility. No objection to the proposal was raised in highway safety terms, by the Highway Authority. As such I am satisfied that the proposal would not compromise highway safety.
30. Article 8 of the European Convention on Human Rights affords the right to respect for private and family life, including the traditions and culture associated with a gypsy way of life. Based on the evidence dismissing the appeal would not interfere with the Article 8 rights of the appellant, since the evidence is not persuasive that the appellant and his wife would be made homeless or be unable to practice their traditional way of life. I accept the points made by one of the third parties that Article 8 also applies to members of the settled community. On the basis of all I have seen I am not persuaded that the proposal, if allowed, would interfere with the private or family lives of local residents.
31. I have had regard to the Public Sector Equality Duty (PSED), contained in the Equality Act 2010 which seeks amongst other things to eliminate discrimination, harassment and to advance equality for opportunity and good relations between persons who share a relevant protected characteristic and those who do not. Romany Gypsies have a protected characteristic for the purposes of the PSED. Whilst dismissal of the appeal would deprive the appellant the opportunity to live on this site, this is set against the serious effect the proposal would have in terms of other planning considerations. It does not therefore follow that the appeal should succeed.

Planning balance

32. I have found that the proposal would make a contribution to the provision of windfall sites for gypsy and traveller pitches in the area. Given the lack of a 5 year supply of sites this matter carries considerable weight in favour of the scheme. In addition the appellant's personal circumstances and need for accommodation carries limited weight as a benefit of the proposal.
33. However, the proposal would not constitute accessible development which the government is seeking to promote and I cannot be certain that the site can be satisfactorily drained. These matters each carry significant weight against the proposal. As such the adverse impacts of the proposal significantly and demonstrably outweigh the benefits.

Conclusion

34. For the reasons set out, and taking into account all other matters raised, I therefore conclude that the appeal should be dismissed.

S Ashworth

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr Paul Smith – Paul Smith Associates
Mr Alan Corner – Hydro-Logic Services
Mr Michael Newbury – The Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Mr Simon Rowles- Malvern Hills District Council
Mr David Clark- Malvern Hills District Council

INTERESTED PERSONS:

Cllr Tom Wells - District Councillor
Mr Keith Collins – Local resident
Mr Martin Jones – Infrastructure Design Studio
Mr Ron Taylor- Local resident
Mr Williams – Local resident
Ms Lynda Williams- Local resident

DOCUMENTS SUBMITTED AT THE HEARING:

1. Copy of representation made by Mr Collins on behalf of the local community.
2. Comments made by Mr Jones in respect of drainage.

DOCUMENT SUBMITTED AFTER THE HEARING

1. Response of Mr Corner to the representation made by Mr Jones.