



## Appeal Decision

Hearing Held on 30 January 2018

Site visit made on 30 January 2018

**by Mike Robins MSc BSc(Hons) MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 29<sup>th</sup> March 2018**

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**Appeal Ref: APP/W1850/W/17/3180531**

**Oak Tree View, Beggars Ash Lane, Wellington Heath,  
Herefordshire HR8 1LN**

- 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 Tony Holland against the decision of Herefordshire Council.
  - The application Ref 160238, dated 16 January 2016, was refused by notice dated 18 January 2017.
  - The development proposed is the change of use of land, outside the village of Wellington Heath from agriculture to a one-family traveller site including stationing of 2 mobile homes, 2 touring caravans, treatment plant, sheds and associated parking/turning/hardstanding and new access.
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### Decision

1. The appeal is dismissed.

### Procedural Matters

2. A Draft Statement of Common Ground was submitted by the appellant. This was agreed in part by the Council, save for clarification on the latest official figure for additional pitches in the County by 2019. No signed statement was provided and a further update position on pitches was provided by the Council at the Hearing<sup>1</sup>. The statement set out, amongst other matters, agreement on the tenancy of the appellant and his dependants and the lack of a five year supply of deliverable sites, including the need for additional sites.
3. The development plan for the area includes the Hereford Local Plan Core Strategy, adopted 2015 (the Core Strategy). In addition I have considered representations on emerging plans and policies. Core Strategy Policy H4 deals with traveller sites and defers the accommodation needs to a Travellers Sites Document (DPD). This completed consultation in December 2017 and the Council report it will be submitted for examination imminently. While it is relatively advanced in its stage of preparation, when considered against the requirements of paragraph 216 of the National Planning Policy Framework (the Framework), I am conscious of objections against matters including the methodology, and can afford this limited weight at present. I do note that this DPD was informed by an updated Herefordshire Gypsy and Traveller and Travelling Showperson Accommodation Assessment (GTAA).
4. The Wellington Heath Neighbourhood Development Plan (the NP) is also relatively well advanced in its preparation, having recently completed its

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<sup>1</sup> Document 4

Regulation 16 consultation. It was reported that there were no objections to the principle policy relied on by the interested parties to this appeal, that of the strategic gap Policy WH3. Notwithstanding this, the plan still has to be independently examined prior to public referendum. The lack of objections to the strategic gap policy does allow me, in terms of the progress of the plan, to give this policy moderate weight.

5. Although the site is not within the Malvern Hills Area of Outstanding Natural Beauty (AONB), it lies immediately adjacent to it and the AONB Management Plan recognises the importance of protecting views, and sets out specific policies addressing the protection of the setting of the AONB. These include Policies BDP1 and BDP2. While the site may not benefit from the statutory duties afforded to AONBs, nonetheless its role in the setting of the AONB must be considered and, as set out in the Framework, great weight should be given to conserving the landscape and scenic beauty.
6. The Council's reason for refusal was a relatively narrow one focussed on visual intrusion associated with the raised land necessary to form a new access and turning area, and its effect on the setting of the AONB. However, there were a large number of interested parties who raised further concerns. These matters were represented at the Hearing by the Wellington Heath Parish Council, supported by a planning agent and landscape witness. They included the status of the appellant and his dependants, support for the Council's objections and detailed further harm, which they argued would occur to the character and appearance of the area. These matters were clearly set out in a number of letters and in a statement to the appeal from Marches Planning Consultancy.
7. As a consequence I consider the main issues are as follows.

### **Main Issues**

- Whether the appellant and proposed occupiers of the site fall within the definition of gypsies and travellers set out in the Planning Policy for traveller Sites (PPTS);
- The effect of the proposed development on the character and appearance of the surrounding area and the setting of the AONB; and
- Whether any harm arising from the above is outweighed by other considerations, including the need for gypsy and traveller sites, personal circumstances and Human Rights considerations.

### **Reasons**

8. The site is a small area of land accessed off Beggars Ash Lane, a road that leads from Ledbury towards the village of Wellington Heath. The site is reported to have been used for grazing and cared for by the appellant for over 25 years. He was able to purchase the site in approximately 2015. The current access to the site is located just next to the village welcome sign, and the land falls away from the road following the general slope here to a high, steep bank immediately next to the adjacent stream. The AONB boundary is the other side of the road, the site therefore lying just outside of it.
9. The proposal would include repositioning of the access to the other end of the site, with a need to raise the land to match the level of the road and provide a sloped access and turning area onto the site. In addition to the roadside

hedge, which is set behind a verge, there are trees to the other boundaries, albeit these are quite sparse in places with an open area providing views across the valley towards Hilltop Fruit Farm.

### *Gypsy and Traveller Status*

10. The appellant set out his personal background, which included being born into a Romany Gypsy family with strong local connections and regularly travelling with his parents. When they ceased to travel, he reports that he continued a nomadic life until, approximately 14 years ago, 12 prior to his application, he and his wife settled into a house for the benefit of their daughter's education. She has now left education and within a few months of this, Mr Holland submitted his planning application.
11. The proposal encompasses two mobile homes for the appellant, his wife and daughter and his parents, Mr John Holland and Mrs Kathleen Holland, who currently live on the Council owned Orchard Park site, albeit it is reported that they are finding it difficult to manage on that site.
12. For planning purposes, paragraph 1 of the Annex to the PPTS defines gypsies and travellers as follows: *Persons of nomadic habit of life whatever their race or 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.*
13. Paragraph 2 states the following: *In determining whether persons are 'gypsies and travellers' for the purposes of this planning policy, consideration should be given to the following issues amongst other relevant matters: a) whether they previously led a nomadic habit of life b) the reasons for ceasing their nomadic habit of life c) whether there is an intention of living a nomadic habit of life in the future, and if so, how soon and in what circumstances.*
14. The Council have not questioned the status of the appellant or his family members, confirming that they are of gypsy/traveller heritage and in the officer's report finding that they met the three tests set out in the PPTS.
15. However, interested parties did raise questions regarding the status of the appellant's parents and, in light of the period spent in housing, that of the appellant and his family too.
16. That the appellant and his parents led a nomadic lifestyle in the past is, in my view, confirmed and is supported by testimony from supporters and contemporary accounts in newspapers and their placement on Council owned sites. As a result of their age it would appear that the appellant's parents have ceased that life, but the appellant himself continued to travel for landscaping work, although it was accepted that this was local to the house in Holme Lacy. Testimonial letters support that, for a period, the appellant maintained a caravan. However, it was reported that the difficulty and cost of storage, which was not possible at the house in Holme Lacy, led to cessation of that ownership and the associated short periods of travelling.
17. Nonetheless, the appellant produced evidence of promotional leaflets and of locations to where he is preparing to expand his landscaping business, and stated his intention to purchase a touring caravan and to take up a more nomadic way of life again, irrespective of the outcome of this appeal. While

this evidence was not particularly robust, I have no reason to disbelieve this and his intentions are supported not just by his heritage, but also by other matters brought to my attention with regards the health of both the appellant and his wife, as well as the evidence of their daughter.

18. Consequently, although his nomadic existence may have predominantly ceased some 14 years ago, in my view, the educational needs of his daughter represents a valid reason to reduce or indeed to cease travelling and move into a house. I am satisfied that the stated aversion to bricks and mortar, the effect that this has had and the intention to resume travelling are genuine in this case and therefore the appellant complies with the definition in the PPTS, as do his immediate dependants, his wife and child.
19. Furthermore, I am conscious of the strongly held belief and practice of caring for elderly members of the family, and the intention that the appellant's parents may indeed travel with him if they shared the settled base sought under this appeal, although contradictory evidence on this was indicated in the committee minutes for this case. Nonetheless, I am satisfied that Mr Holland and all those intending to reside on the site can be considered to either meet the definition as a gypsy or traveller or, if the proposal were granted for the single family unit, would be dependants of such.
20. In my consideration of this matter I have had due regard to the relevant authorities<sup>2</sup> put to me by the appellant and by interested parties in this case and to an appeal decision, also referred to by all parties<sup>3</sup>.

#### *Character and Appearance*

21. The Government's aims, set out in the PPTS, seek, amongst other things, for planning authorities to have due regard to the protection of local amenity and environment. Policy H advises that LPAs 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. While the site is relatively close to Wellington Heath, it is located in the countryside and it is not allocated for this type of development.
22. Although the site is relatively contained by hedgerow and tree boundaries, it forms part of a patchwork of fields ringing the southern edge of the village of Wellington Heath and of the sloping valley setting of the Malvern Hills. Identified in the Council's Landscaped Character Assessment as being Settled Farmlands on River Terrace, this is defined as small to medium scale field pattern areas with tree cover limited to watercourses and with sparse and dispersed settlements, limited to small discrete clusters.
23. The site, although stepping down from the level of the road, reflects the historic natural slope both from the ridge, on which part of the village sits, and from the higher land and Frith Woods to the east. As a result, near to the existing entrance the land slopes significantly before levelling out through the lower part of the site with a general slope towards the tributary of the River Leadon on its western edge. Although adjacent to the village welcome sign,

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<sup>2</sup> Regina v South Hams District Council, Ex Parte Gibb and Others [1995] QB 158.  
Wrexham CBC v National Assembly for Wales and Berry [2003] EWCA Civ 835  
Chapman v. The United Kingdom (Application no. 27238/95)

Document 2

<sup>3</sup> APP/W1850/W/13/3007927

the site is well separated from the village with only a few sporadic properties visible on higher land. It reads as open countryside with a distinctly rural character, and is a component of an important wider landscape that provides a setting for both the AONB and the village. Importantly, it is part of a landscape that is not degraded by the commercial activities to the edge of Ledbury or the fruit farming to the west.

24. The Landscape Sensitivity and Capacity Assessment, produced to inform the development of the NP, identified the site as part of a relatively large area, Parcel 20, which forms a highly important part of the AONB setting. It detailed the hedgerow along Ledbury Road/Beggars Ash as forming a strong boundary to the village. While the weight I can give to the NP is limited by its stage of production, the evidence supporting it appears to characterise the area well and supports my own view of it as an important component of the landscape here. The finding of a high or very high landscape value and low capacity for development is, in my view, appropriate.
25. The proposal would need a significant area of land raising to allow for access off the road and down to the lower part of the site, between 1.3 and possibly 2.0m approximately. Although I am not convinced that the level of cut and fill implied by interested parties would be necessary for the proposed units on the site, the area suitable for positioning the caravans would be limited by the topography of the site. Consequently, two mobile and two touring caravans, associated sheds, treatment plant and vehicle parking, along with the very extensive hardsurfacing that would be required, would establish a very significant cluster of development here. In such a setting, caravans would be notably out of character with the area and, in this proposal, of a scale that would make them a prominent addition.
26. In landscape terms this would undermine the essential character of the area, altering the landform and natural slope introducing a hard surfaced and incongruous element. Visually the roadside hedge would provide some screening, albeit the scale of the proposal would lead to quite significant prominence to views through the entrance, over the hedge and particularly from the road when descending out of the village. I accept that views would be limited from within the AONB, but publically accessible views would be obtained from the road, which is the principle route into and out of the village and for access to parts of the AONB. There would also be more distant and filtered views from the footpath to the north and potentially from the wider landscape to the west.
27. My own observation and the evidence supporting the NP lead to a conclusion that this is an important and sensitive landscape, contributing to the setting of the village and the AONB. While the site is relatively contained and potentially further planting could add some further screening, the scale of the proposal would result in a large group of caravans and structures placed in a location where they would be visible within the context of a highly rural area, albeit located relatively closely to the village. The road is clearly used by local traffic, but would also be used by some accessing the AONB, either on foot, cycling, riding or by car. Overall I consider that the proposal would materially harm the character and appearance of the area.
28. Gypsy and traveller sites are not entirely precluded from a rural setting by the PPTS. Nor are they by the Core Strategy, where Policy RA3 allows for such

development where it accords with Policy H4, which in itself seeks only, among other matters, that proposals offer reasonable access to services and appropriate screening and landscaping. I accept that gypsy and traveller sites can take place in the countryside and that necessary development and the placement of caravans will in many cases lead to some harm.

29. However, I must consider the development plan as a whole and the proposal would conflict with Policies LD1 and SS6 of the Core Strategy. These policies seek development that is influenced positively by the character of the landscape and which conserves and enhances the scenic beauty of important landscapes and those environmental assets that contribute to distinctiveness. Furthermore, while of lesser weight, the proposal would conflict with emerging Policy WH3 of the NP, which seeks to protect the landscape setting, prevent coalescence with Ledbury and preserve the rural nature of the village, through maintenance of a Strategic Gap, of which this site is a component. Due to the sensitivity of the landscape here and the scale and nature of the development, I give this harm substantial weight.

#### *Other Considerations*

30. The PPTS, paragraph 3, states that the Government's overarching aim is to ensure fair and equal treatment for travellers, in a way that facilitates their traditional and nomadic way of life while respecting the interests of the settled community.
31. The most recent GTAA, the methodology of which is challenged by the appellant, nonetheless indicates that there is a need for the provision of sites. It finds a shortfall for those with cultural need and those who specifically meet the PPTS definition, and identifies a need for some limited expansion on four of their existing sites. It proposes that natural turnover of pitches on the existing sites would satisfy the demand over the plan period. Nonetheless, it also accepts that there will still be some need for the provision of small private sites for families that would rather live as a family unit on their own sites.
32. The emerging document does not therefore preclude development on unallocated sites and, in absence of its adoption, and ongoing objections to the methodology used, the Council cannot be considered to be able to identify a five year supply of sites; nor is this challenged by the Council at this stage. The general unmet need is a factor to which some weight may be attached.
33. This appeal is predicated on the lack of harm and the need for general provision of sites, albeit the appellant indicated that if the proposal be unacceptable for other reasons that their personal circumstances be taken into account.
34. There are now no educational requirements or children associated with this family group, but I have noted the wish to bring the family together to facilitate a return to a nomadic way of life and for health and care reasons for the appellant's parents. His parents are currently living on a Council run site. This is relatively close to the appellant's existing housing and indeed to Hereford and the hospital, where presumably there is a need to visit regularly for appointments, as set out in the appellant's statement. The principal driver for a change would appear to be the need for them to access a separate ablution block. I sympathise, but a move to the appeal site would be further from the hospital and may remove some of the security of the larger site, especially if



the appellant and his wife are away travelling. I appreciate at the appeal it was indicated that his parents may also travel, but this statement is in contradiction with arguments set out in the appellant's statement and in the additional representations to the Committee, where it was stated that his parents are unlikely to be travelling much if at all due to their advanced age.

35. The appellant and his wife currently have secure accommodation, albeit I fully accept that culturally bricks and mortar are not what they would wish and that there is evidence of health problems associated with their stay in such housing. The appellant has suggested that there is an extensive waiting list at the site where his parents currently live; this is not challenged by the Council. I also note that the emerging DPD identified that there are waiting lists at the four Council run sites. In response to the question regarding the possibility of access to other private sites, the appellant indicated that they were not suitable, although I have limited evidence to support this position.
36. The lack of available and suitable alternative sites, together with the extent of the need for sites is a factor weighing in favour of the proposal. On the face of it there appears to currently be few alternatives to the proposal for the appellant to find a settled base for himself and his extended family from which to travel. While I give this significant weight, it is somewhat tempered by my concerns over the suitability of the site to meet the needs of his parents and by the fact that none of those intending to live at the site would be forced into homelessness or to a roadside existence were the appeal to be dismissed.

#### *Other Matters*

37. Interested parties raised further concerns principally with regard to ecology, highway safety and foul drainage. I am aware of the Highway Authorities' view on the proposed access and am satisfied that acceptable visibility can be provided mostly within the existing verge and without undue effect on the hedge. While an ecological survey has not been formally carried out, I am satisfied that there would not be significant harm from the introduction of caravans onto this area of grassland, and while the amount of infill would be disruptive, I have no evidence it would be materially harmful in the long term. I consider there may be the potential for harm to trees, but this is a matter that could be addressed by suitable condition.
38. I note the concern that the provision of a private treatment plant, a biodisc or similar, may have detrimental effects on the water quality of the adjacent stream, and note concerns of other riparian owners who have access to this stream. However, it is unclear to me whether connection to a mains drainage system could be achieved, in light of the relatively close proximity of a pumping station, or indeed, if a private treatment plant was necessary, that it would inherently be harmful. Plants of this type can be designed and operated to produce acceptable levels of effluent in such circumstances and such approaches can also be secured by condition.

#### *Planning Balance*

39. The appellant has drawn my attention to the Public Sector Equality Duty (PSED) and matters as regards Article 8 of the European Convention on Human Rights, enacted in the UK by the Human Rights Act 1998. I have found that as Romany Gypsies, the appellant and his family share a protected characteristic for the purposes of the Equality Act 2010. It does not follow from the PSED

that the appeal should succeed. However, the shortage of sites may indicate inequality of housing opportunity for Romany Gypsies. The equality implications add weight in favour of the appeal, although I must consider whether dismissal of the appeal would be proportionate in light of any potential equality impacts.

40. Furthermore, a private and family life encompasses the need for Romany Gypsies to live in caravans in accordance with their culture and tradition. It is argued that living in a house does not meet those needs currently, nor does it address the wish to establish the family group on one site. I am conscious that the appellant also owns the site and consequently, dismissing the appeal would interfere with the appellant's Article 8 rights. However, such interference must be balanced against the wider public interest when pursuing these qualified rights.
41. Drawing all these matters together, I have found that the use of the land as a residential caravan site of this scale would have a substantial adverse effect on the character and the appearance of the area here, which I have found to be a sensitive and important landscape contributing to the setting of the village and the adjacent AONB. Consequently, the development would conflict with Core Strategy Policies LD1 and SS6 in this regard and I have attached substantial weight to this harm.
42. In favour of the proposal, I have found that there is a general need for further sites in Herefordshire, a lack of alternative provision, to which I have given some weight, and I have given significant weight to the personal circumstances of the appellant. However, this does not in this case outweigh the harm I have identified.
43. The legitimate protection of the public interest regarding this sensitive landscape cannot be achieved by means that are less interfering with the appellant's rights. This action is proportionate and necessary in the circumstances and would not, therefore, result in violation of the appellant's rights under Article 8. Following careful consideration of the need to eliminate discrimination, advance equality of opportunity and foster good relations between those with protected characteristics and others, I conclude that the impact of the dismissal of this appeal is justified and proportionate.

## **Conclusion**

44. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should be dismissed.

*Mike Robins*

INSPECTOR



## APPEARANCES

### FOR THE APPELLANT:

Dr Simon Ruston BA(Hons) MA, MA, PhD MRTPI	Ruston Planning, Planning Consultant
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Tony Holland	Appellant
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Claire Holland

Gemma Holland

### FOR THE LOCAL PLANNING AUTHORITY:

Gemma Webster	Senior Planning Officer – Herefordshire Council
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Liz Duberly CMLI	Senior Landscape Officer - Herefordshire Council
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### INTERESTED PERSONS:

Mr Mohamed	of Counsel, Instructed by Helen Hamilton
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Helen Hamilton	Marches Planning - Planning Consultant
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Carly Tinkler BA CMLI FRSA	Landscape Consultant
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Frank Rozelaar	Wellington Heath Parish Council
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## DOCUMENTS

- 1 Interested Parties Document Bundle
- 2 Appellant's submission of Authorities including:  
*Mrs Bridget Jones v Roger Michael Green: Friends of Fordwich and District [2005] EWCA Civ 1727, and*  
*R v Shropshire County Council (1991) 23 HLR 195*
- 3 Enlarged figures from Landscape Sensitivity and Capacity Assessment
- 4 Council update on emerging Traveller DPD
- 5 Examples of leaflets promoting appellant's landscaping services
- 6 Council's notification letter