



Appeal Decision

Hearing Held on 22 May 2018

Site visit made on 22 May 2018

by Tim Wood BA(Hons) BTP MRTPI

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

Decision date: 19 June 2018

Appeal Ref: APP/V2635/W/17/3180116

The Jays, The Common, South Creake, Fakenham, Norfolk NR21 9JA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mrs Jean McPhee against the decision of King's Lynn and West Norfolk Borough Council.
 - The application Ref 16/02104/F, dated 1 December 2016, was refused by notice dated 16 June 2017.
 - The application sought planning permission for the continued use of land as a gypsy caravan site for siting of one caravan without complying with conditions attached to planning permission Ref 09/01387/F, dated 15 June 2010.
 - The conditions in dispute are Nos 3 and 4 which state that:
 - 3.** *"No more than one caravan as defined in the Caravan Sites and Control of Development Act 1960 and supplemented by the Caravan Sites Act 1968 shall be stationed on the site at any one time."*
 - 4.** *"Within 4 months of the date of this decision the second caravan on the site shall be removed."*
 - The reasons given for the conditions are:
 - 3.** *"To ensure that the site is occupied by a caravan as defined in Condition 3."*
 - 4.** *"In order to protect the character and appearance of the area in accordance with PPS1, PPS7 and PPS9 and Development Plan Policies CS06, CS12 and 4/6."*
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Decision

1. The appeal is allowed and planning permission is granted for the use of land as a gypsy caravan site at The Jays, The Common, South Creake, Fakenham, Norfolk NR21 9JA in accordance with the application Ref 16/02104/F dated 1 December 2016, without compliance with condition numbers 3 and 4 previously imposed on planning permission Ref 09/01387/F dated 15 June 2010 and subject to the following 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: Proposed Site Plan V3; Sight Lines; Amenity Building (see text of decision for explanation of the correct version).
 - 3) Within 2 months of the date of this decision, or other such time as may be agreed in writing by the local planning authority, full details of foul

and surface water drainage arrangements for the site shall be submitted to the local planning authority. Within 2 months of the written approval by the local planning authority of such details, or other such time as may be agreed in writing by the local planning authority, the approved foul and surface water drainage scheme shall be constructed on site.

- 4) No more than 1 caravan shall be occupied by Mr and Mrs McPhee senior or a widow or widower of such a person and the other caravans 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).
- 5) No more than 7 (seven) 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 (one) shall be a static caravan) shall be stationed on the site at any time.

Preliminary Matter

2. I have altered the description of the development that is allowed by this appeal when compared to the original grant of planning permission as it would seem illogical and confusing to refer to the stationing of one caravan only, when this appeal allows up to 7. I consider that there would be no prejudicial effect on any party as a result of this.

Application for costs

3. At the Hearing an application for costs was made by the appellant against the Council. This application is the subject of a separate Decision.

Main Issue

4. The main issue in this appeal is whether the proposed increase in the number of caravans would have any unacceptable effects on the area.

Reasons

5. The Council indicates that, as a matter of principle, the site would be acceptable for a more intensive use as a gypsy and traveller site and would comply with Policy CS09 of the Core Strategy. The Council have also confirmed that, the site is an authorised gypsy and traveller site and the siting of the proposed additional caravans and structure would be acceptable in visual terms and that a suitable access can be maintained. From my own consideration of this matter, I agree that there would be no unacceptable effects on the area from the increase in the number of caravans and other items, associated with its use as a gypsy and traveller site.
6. The Council's written case and that presented at the Hearing makes it clear that it considers that a number of the proposed occupiers do meet the definition of gypsies and travellers in the Planning Policy for Traveller Sites (PPTS), and some do not. This is the basis for the Council refusing the application and any other matters discussed at the Hearing essentially arise from this distinction. However, the Council have confirmed the acceptability of the proposal and the identity of who may occupy the site (apart from perhaps Mr and Mrs McPhee senior) is purely secondary and would not strictly influence my decision. Notwithstanding this point, virtually all of the evidence and

discussions centred on the status of the intended occupants and so I will address this as a secondary matter.

7. The site has planning permission for the use as a site for gypsies, as set out in the heading to this decision. The site is currently occupied by Mr and Mrs McPhee senior and the Council are content that their status as gypsies is not in question; on the basis of what was discussed at the Hearing, I agree with the Council. At some times in the past other family members have occupied the site, contrary to the restriction contained in Condition 3 of the planning permission. These have comprised Mr and Mrs McPhee's 2 adult daughters and their children, and Mr and Mrs McPhee's adult sons and their immediate family. The Council considers that the adult sons and their immediate family members fall within the definition in the PPTS. However, the Council considers that Mr and Mrs McPhee's adult daughters and their children do not fall within the definition. This arises from the fact that the adult daughters do not work and so, even when they did travel, there was no economic purpose for that travelling. The Council's view is that the wider family group comprises of a number of different households and so they should be viewed separately for the purposes of assessing whether they are within the PPTS definition.
8. The PPTS definition of gypsies and travellers defines them as "*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' education or health needs or old age have ceased to travel temporarily, but excluding members of an organised group of travelling showpeople or circus people living together as such.*"
9. The Council considers that the adult daughters and their children form separate households from Mr and Mrs McPhee senior and that the adult sons and their families also form a separate household. The Council do not appear to dispute that the daughters have travelled in the past but because the Council identify no economic purpose to the travelling, they fall outside the PPTS definition. However, the appellant argues that the wider family group forms a single household who rely on each other in various ways and have only been separated by the need for work (in the case of the adult sons) and by the enforcement of planning restrictions in the case of the adult daughters.
10. From what is submitted in the documents and from the discussions at the Hearing, it seems clear to me that the adult daughters have close links with their parents and brothers. The daughters provide care for their parents and provide day-to-day practical help. It was stated that when they lived on the same site, they function as one household with daily duties of cooking, clothes washing etc. being undertaken as one group, as well as meals being taken as a family. It was stressed that there was no separation of these functions between the various members of the wider family. The current separation of the adult daughters from their parents is an enforced one which has resulted from the Council serving a Breach of Condition Notice. In addition, the appellants indicated that the adult daughters would not otherwise be separated from their parents as it is unsafe for single women and children to travel alone.
11. From the evidence submitted and from the discussions at the Hearing it is clear that the wider family group want to be considered as a single group or household and that it is important for them to maintain this link. There is clear interdependency in terms of providing care and practical help for Mr and Mrs

McPhee senior and security for the adult daughters who would otherwise be separated from their parents and brothers. It seems to me that their day-to-day family life revolves around each other and that meal-times and household duties are undertaken as one (apart from periods of enforced separation, and even then, daily visits are undertaken). On the whole, the separation of the daughters from Mr and Mrs McPhee has been an enforced one and not one which would be permanent by choice. The adult sons travel for economic purposes and their use of the site as a base is not objected to by the Council.

12. Having carefully considered the written evidence and listened to the explanations given for some periods of travelling over time, I accept the Council's point that there is some vagueness in relation to some periods of time, possibly explained by a lack of recollection. Notwithstanding this, I am satisfied that the wider family group should be considered as a single household for the purposes of the PPTS definition as there is clear interdependency and close links between the various members. Accordingly, and in relation to the specific point of the Council's case, I consider that the adult daughters of Mr and Mrs McPhee (and their own children) are part of a household which falls within the PPTS definition of gypsies and travellers. I find that this is consistent with the 'Gypsy and Traveller Accommodation Assessment' prepared for this Council and others, wherein it states at paragraph 2.20 that "...a household where some family members travel for nomadic purposes on a regular basis, but where other family members stay at home to look after children in education, or other dependents with health problems etc. the household unit would be defined a travelling...".

Conditions

13. The Council has suggested a number of conditions for my consideration. I agree that the standard time limit and a condition requiring compliance with the approved drawings are necessary in order to ensure a satisfactory form of development. There was some correspondence in relation to which version of the Amenity Building drawing is the correct version. It was agreed that it is the version which shows the building with 2 windows in the rear elevation and which refers to this as the north elevation and 1 window in the end elevation (west elevation). This has been called 'version 2' in some correspondence but the drawing has not been named as such.
14. I also agree that there should be no more than 7 caravans (of which 1 could be a mobile home) in order to preserve the character of the area. On account of the specific acceptability of the site for gypsy and traveller accommodation, I shall include a condition which requires that occupants of the site meet the definition within the PPTS with the exception of one unit which shall be able to be occupied by Mr and Mrs McPhee senior; I have chosen to refer to the appellants in person rather than to refer back to their status as previously defined in the previous Circular 01/2006 in acknowledgement of the fact that Mr and Mrs McPhee occupy the site and could continue to do so even if the appeal failed.
15. The Council also request that the site should have suitable foul and surface water drainage installed. The timing of this in relation to the commencement of development was discussed at the Hearing and I consider that it would be acceptable to require this within a suitable period, allowing the development to commence, in view of the fact that it would otherwise prevent other family

members occupying the site, exposing them to the prospect of further separation from family members and possible road-side stays.

16. Although much of the Hearing was taken up considering the circumstances of the appellant and the wider family, it is readily acknowledged by the Council that the site could be acceptably developed for the proposal without conflicting with Policy CS09. In these circumstances a condition restricting the occupation to the named individuals only was not requested and I see no need for such a personal condition (with the exception of Mr and Mrs McPhee senior).
17. The Council has also requested a number of conditions relating to possible contamination of the site. This has arisen due to a former use of an adjacent site. The site is already in an authorised use as a gypsy and traveller site and the land within it is partially used as garden. There was no requirement within the original planning permission for such measures to be undertaken and it strikes me that this would have been the appropriate time to consider such conditions and their necessity. In this context, I do not find that such conditions are justified.

Conclusions

18. Various other matters were discussed at the Hearing, which could have possibly affected consideration of the appeal. However, these would only arise and be relevant if the status of the occupiers was found to be a primary issue. As I have concluded that gypsy and traveller status has been demonstrated and is not a key factor in this appeal, it is not necessary to consider these matters, as they have no bearing on the outcome of the appeal. In addition, the removal of Condition 4 of the previous permission logically follows from the appeal.
19. I have concluded that the proposal would have no unacceptable effects on the locality and it is agreed by all parties that the criteria of Policy CS09 would be satisfied. In addition, the appellant has satisfactorily demonstrated that the intended occupiers of the site do fall within the definition of gypsy and travellers as set out in the PPTS and whilst not determinative in this case, this adds a degree of weight to this already acceptable proposal. Therefore, the appeal is allowed.

S T Wood

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

M Hargreaves
Mr and Mrs J McPhee
D McPhee
H McPhee
C Henderson

FOR THE LOCAL PLANNING AUTHORITY:

C Fry
N Patton
S Jarman