



Appeal Decision

Site visit made on 22 May 2018

by David Murray BA (Hons) DMS MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29th June 2018

Appeal Ref: APP/U1620/W/17/3180219

40 Sims Lane, Quedgeley, Gloucester, GL2 3NJ.

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
 - The appeal is made by Mr W Fry against the decision of Gloucester City Council.
 - The application Ref. 16/01524/FUL, dated 2 December 2016, was approved on the 24 March 2017 and planning permission was granted subject to conditions.
 - The development permitted is the permanent change of use of site to gypsy site for 1 family unit containing 1 static caravan and 1 touring caravan.
 - The condition in dispute is No 1 which states that: "The use of the land for the stationing of one mobile home hereby permitted shall be carried on only by Mr William Fry and Mr Joseph Shandy Rafferty and shall be for a limited period of three years from the date of this permission. The mobile home and the caravan shall be removed on or before the expiry of this 3 years and the land shall revert to domestic curtilage to be held in association with no.40 Sims Lane."
 - The reason given for the condition is: "The nature of the development is such that it is only considered acceptable in this location having regard to the appellant's special circumstances in accordance with Planning Policy for Traveller Sites' and policies FRP.12 and BE.21 of the Gloucester City Council Second Deposit Local Plan 2002."
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Decision

1. The appeal is dismissed

Main Issue

2. The main issue is whether the requirements of condition no.1 imposed on permission 16/01524/FUL are reasonable and necessary and fulfil a proper planning purpose having regard to the provisions of the development plan and other material considerations.

Reasons

Background

3. The appeal site is a broadly rectangular area of land which lies alongside the garden of a new house (occupied by the appellant's brother in law Mr Rafferty) situated on the edge of a mainly residential area in Quedgeley, a suburb of Gloucester. The planning application was submitted for the permanent change of use of the site for 1 gypsy site for one family unit comprising 1 static caravan and 1 touring caravan, however the Council decided to grant a limited period permission of three years as set out in the bullet points above. In addition to the reasons for the condition specified in

the final bullet point above, the officer's report makes clear that it was considered that a permanent permission should not be granted because the static caravan would not be visually acceptable in the street scene. Further the site lies within a 'Cordon Sanitaire' around the Netheridge and Longford (sewage treatment) works and that occupiers of the residential site are likely to be adversely affected by smell from the treatment works.

4. I also note that the report shows that a retrospective change of use of the land to a gypsy site was granted temporary permission in 2011. A further temporary permission was granted in 2013, despite the request for a permanent permission, and a subsequent appeal against the condition specifying temporary permission was dismissed in 2014 under ref. APP/U1620/A/14/2216080. This is material to the current appeal. The Inspector concluded that only a limited period permission could be justified in the short term by the lack of new gypsy sites in the area at that time and the personal circumstances of the appellant and family, given the harm he identified to the appearance of the area and that the appeal site was sited close to the treatment works and that there was likely to be a problem with smells which would harm the occupiers of the appeal site.
5. At my site visit it was clear that the change of use has been implemented in that a static mobile home was stationed on the site and was in residential use, and a touring caravan was also sited there.

Policy context

6. The development plan includes the Council's Joint Core Strategy adopted in November 2017. The emerging district level plan for Gloucester is the Gloucester City Plan (GCP) which is at draft stage. In due course this will supersede the Gloucester City Second Deposit Draft Local Plan (2002).

Whether only a temporary permission is necessary

7. There are two elements to the Council's concerns; the impact of the use in the long term on the character and appearance of the area, and secondly whether the living conditions of the residential unit would suffer from a smell nuisance arising from the treatment works.

Character and appearance

8. The area around the appeal site is residential in character and there is variety in the form of local properties ranging from the two storey house on the neighbouring site to small bungalows along Sims Lane. The static mobile home on site has the appearance of a small bungalow and I do not consider that this appears materially out of place in the street scene. Nevertheless, the site is hard surfaced with walls and railings along the frontage which gives a stark and hard appearance to the street scene. This causes limited harm to the appearance of the area, however while the introduction of new landscaping and tree planting may not be practical with a short term permission, the permanent permission sought would allow for the opportunity to add landscaping which could be required by condition, to make this aspect of the scheme acceptable. This is a similar conclusion to that reached by the Inspector in the 2014 appeal.

Effect on living conditions

9. Policy FRP.12 of the 2002 Local Plan sets out that development likely to be adversely affected by smell from the Netheridge and Longford works and within the constraint area identified on the proposals map, will not be permitted. Policy D14 of the emerging Gloucester City Plan continues this restriction on development within the Cordon Sanitaire.
10. More specifically the Council refer to the advice from Severn Trent (ST) which includes an odour contoured map around the works and this shows that the appeal site lies within a zone between 3 and 5 ouE/m³ (Newbiggin criteria). ST says that justifiable complaints regarding foul odour can be made by residents living in areas that fall within a lower category zone where there is exposure with 1 hour to a level greater than 1.5 ouE/m³. This is therefore clear evidence that the residents living on the appeal site would be likely to experience an unacceptable level of odour nuisance.
11. The Council and ST put the onus on the appellant to demonstrate that the specific circumstances of the appeal site are such that the occupants would not suffer from the predicted nuisance. Further this responsibility on the appellant to securing a safe development is also set out in paragraph 120 of the national Planning Policy Framework (the Framework).
12. The appellant's case in this appeal deals with the lack of suitable alternative circumstances in the locality and the appellant's personal circumstances and his aim to make long term decisions to help bring up his young family in a stable environment. However, there is little detailed evidence submitted to consider against the Council's evidence of the predicted odour nuisance. I note that the appellant and family have lived on the site for over six years and say that they have had no issues with the perceived smell from the sewerage works, although he also says that some smells in the air are experienced in the summer but these are said to be minimal.
13. At my site visit I was conscious of a background smell which I suspected came from the treatment works and even for the limited period that I was in the vicinity of the appeal site I would describe the smell as noticeable and unpleasant although my limited exposure and subjective assessment cannot be construed as a proper long term assessment of the odour issue.
14. While I recognise that the appellant does not consider that there is smell problem at the site and in any event appears willing to put up with odour in order to secure a permanent site for his family, I have to consider the proposal in terms of the general effects on the residential environment. The appellant's limited evidence before me does not demonstrate that the Council's concerns can be set aside.
15. Even if I was to give substantial weight to the evidence submitted about the lack of alternative sites locally at the moment for gypsies and travellers, and the personal circumstances put forward for the appellant and his family to benefit from permanent accommodation, these factors have already been taken into account in the granting of the temporary permission. They do not outweigh the level of smell nuisance that has been shown to be probable in the location of the appeal site in the long term.

16. I conclude that the limited period of the permission put forward in condition No.1 has not been shown to be unreasonable or unnecessary and I find that at the moment it fulfils a proper planning function having regard to the provisions of the development plan and other considerations.

Conclusion

17. For the reasons given above I conclude that condition No.1 imposed on permission 16/01524/FUL should not be varied or deleted.

David Murray

INSPECTOR