The Planning Inspectorate

Appeal Decision

Hearing Held on 5 September 2018
Site visit made on 5 September 2018

by Mike Robins MSc BSc(Hons) MRTPI

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

Decision date: 11 October 2018

Appeal Ref: APP/H1840/W/17/3190058
1 The Paddocks, Comhampton Lane, Dunhampton, Ombersley DY13 9ST

- 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 R Jones against the decision of Wychavon District Council.
- The application Ref 17/01413/CU, dated 6 July 2017, was refused by notice dated 31 October 2017.
- The application sought planning permission for the change of use to extend an existing gypsy traveller site for a second pitch with mobile home, associated hard standing and utility block without complying with conditions attached to planning permission Ref W/14/01586/CU, dated 21 October 2014.
- The conditions in dispute are Nos 5 and 10 which state that:
  ***5**: No more than 2 caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 (of which no more than 1 shall be a static caravan or mobile home) shall be stationed on the site at any time. The caravans shall be sited in accordance with Plan 2: Proposed Site Layout Plan*.
  The reason given for the condition is:
  To help ensure the proposed development does not harm the character and/or appearance of the rural landscape in accordance with policy GD2 and ENV1 of the Wychavon District Local Plan (adopted June 2006).

  ***10**: The development hereby permitted shall be carried out in accordance with the following approved plans:*
  Plan 1 - Location Plan (Scale 1:1250) Rev A (Received 15/08/14)
  Plan 2 - Proposed Site Layout
  Plan 3 - Proposed Utility Building - Elevations and Floor Plans
  The reason given for the condition is:
  To define the permission.

Decision

1. The appeal is allowed and planning permission is granted for the change of use to extend an existing gypsy traveller site for a second pitch with mobile home, associated hard standing and utility block at 1 The Paddocks, Comhampton Lane, Dunhampton, Ombersley DY13 9ST in accordance with the application Ref 17/01413/CU, dated 6 July 2017, without compliance with condition numbers 5 and 10 previously imposed on planning permission Ref W/14/01586/CU, dated 21 October 2014, and subject to the conditions set out in the attached Schedule.

Application for costs

2. At the Hearing an application for costs was made by Mrs R Jones against Wychavon District Council. This application is the subject of a separate Decision.

Preliminary Matters

3. The proposed development would be occupied by the relatives of the appellant and their families to form an extended family site. Although the Council initially identified a lack of detail regarding the future occupants, it was confirmed at the Hearing that they would take this matter no further and accepted that the appellant and future occupiers are to be considered gypsies and travellers within the meaning of Annex 1 of the Planning Policy for Traveller Sites (PPTS) in that they are persons of nomadic habit, travelling for the purposes of employment. Furthermore, the existing permission has a condition restricting occupiers to those benefitting from such status. I have determined the appeal on that basis.

4. Just prior to the Hearing, the Council indicated that the Highway Authority (HA) would not be attending the event and the Council was '*not in a position to pursue these refusal reasons at the appeal*'[1]. Nonetheless, a Councillor did attend the event, who, along with local residents, set out their continued objection to the scheme on highway safety grounds.

Main Issues

5. The main issues in this case are:

- Whether the location is appropriate for the intensification of use proposed having regard to the character and appearance of the area, its accessibility and to the cumulative scale in relation to the settled community;
- The effect on highway safety for users of the access and local road network;
- The need for gypsy sites locally and personal circumstances; and
- The planning balance.

Reasons

Background

6. The existing site forms part of a larger parcel of land which had permitted equestrian use including sheds and stabling. This was divided into four plots. The proposal seeks an intensification of use as a gypsy site on one of those plots following a permission originally granted for a single pitch in 2010 on appeal[2] and subsequently extended to a further pitch on the same plot in 2014[3]. The proposal before me addresses the extended part of the plot and would result in two further pitches, comprising 2 mobile homes and 2 touring caravans and a larger utility block to serve the site. The result of this would be 4 pitches on this plot, 3 of which would be associated with this proposal, a total of 6 caravans.

[1] Council e-mail dated 29 August 2018
[2] APP/H1840/A/09/2104535
[3] W/14/01586/CU

7. The site is currently laid in part to hardstanding with landscaping to each side which is currently maturing. It shares its access with the original approved site and is set back from a minor country road that forms part of a local network of narrow lanes. There are further pitches associated with the Paddock; on Plot 4, which has planning permission, and on Plot 2, a proposal that was refused for retrospective development and which is reported to be the subject of an appeal. The area lies in relatively close proximity to the hamlet of Comhampton, and to the smaller hamlet of Acton, which lies adjacent to the main road, the A449.

Policy Context

8. The development plan includes the South Worcestershire Development Plan, adopted in 2016 (SWDP). While this sets out overarching development principles that seek sustainable development, it addresses development outside of defined settlement boundaries in Policy SWDP2, which seeks to strictly control development in such areas. Policy SWDP17 specifically deals with gypsy and traveller sites and sets out 11 criteria for assessment. These policies must be read alongside PPTS, the latest version of which was published in 2015. However, during the course of the appeal, a revised version of National Planning Policy Framework (the Framework) was published on 24 July 2018. Parties were able to comment on any changes associated with this revised version.

9. The Council is also in the process of preparing a Travellers and Travelling Showpeople Development Plan Document (DPD), which will allocate sites. Although this has reached the stage of preferred options, it is accepted that the site before me was not promoted for inclusion. The publication has been delayed and it is anticipated that the DPD will be adopted before the end of 2019, but at this stage it carries limited weight in the decision making process.

Whether the location is appropriate

10. The appeal site lies outside of any identified settlement and is therefore within the countryside for planning purposes. The PPTS does not rule out the provision of rural traveller sites, but it does expect that such development is very strictly limited in open countryside that is away from existing settlements or outside of areas allocated in the development plan, albeit this relates specifically to new development. It further requires that sites in rural areas respect the scale of, and do not dominate, the nearest settled community and avoid placing undue pressure on local infrastructure.

11. Policy SWDP17 broadly reflects the PPTS in its criteria, although it specifically includes the expansion or intensification of existing sites in its assessment criteria. It seeks to limit such development to being within or adjacent to the edge of a settlement. This is not the case here and conflict therefore arises with this criteria.

12. Turning to the other criteria, the Council argue conflict with v. vii., viii, x. and xi, noting visual impacts, cumulative scale of development relative to the nearest community, unsafe access and lack of accessibility to health services, schools and employment. Arguments regarding compliance with the Good Practice Guide on Designing Gypsy and Traveller Sites, now withdrawn, were not pursued, and I see no reason to consider that the site layout proposed is not acceptable.

13. Whilst the site is clearly within the countryside, long range views into and out of it are already limited by vegetation, other than to the east while the planting is maturing. While some of the hedging is deciduous, it is of a scale that would continue to provide some level of screening, in particular to the appeal site which is set back from the road. The relatively low-level existing static units can be seen in glimpsed views from laybys along Owlhill Lane and gate entrances on Comhampton Lane near to the junction with Dog Lane. There would be a limited increase in presence as a result of this scheme.

14. As mentioned above, two further parcels of land along the lane are used as gypsy and traveller sites, and despite the findings of a colleague in relation to the appeal regarding the development on Plot 4[4], who found limited connection, the further development of Plot 2 has altered that relationship and there is a clear connection now between the roadside sites. Those now present form a larger cumulative collection of buildings, which are not typical of the open, agricultural character or the associated traditional cottages which establish the appearance and part of the character of the area. Nonetheless, the scheme before me would be set back from the road and a less visible component of this.

15. While there is another gypsy site at Mount Pleasant, located to the northwest, this is relatively well separated and the two sites are not read together in any material views.

16. I acknowledge the concerns of the Council and local residents that the development would extend the existing gypsy and traveller development. Nevertheless, the proposal would relate acceptably to its immediate context and would represent only a limited additional contribution to the cumulative development of the Paddocks. While the overall development of roadside sites is increasingly harmful, the intensification proposed here would not represent significant harm in its own right to the appearance of the area.

17. There is an established local character in terms of use and activity set by the approved pitches along the lane. This proposal would increase that activity and the cumulative scale of development, and this must be considered against the relationship it has to the local area.

18. While there was some discussion at the Hearing on what should be considered as the nearest settled community, I am satisfied that this is Comhampton. Comhampton is a small hamlet, made up of houses dispersed along a narrow lane that winds through the settlement. There are no particular facilities or services available in the hamlet, but there is a cohesive sense to it as a community. The Paddocks lie close to the western edge, separated by a field from the nearest property. In filtered views across the field, the intensification of use would be visible, but as set out above there would be limited public views of the proposal.

19. Nonetheless, there has been a change in the character with different patterns of noise, activity and structures associated with the development of the Paddocks, which is in contrast to the traditional character of the lanes through Comhampton. This proposal would contribute further to that change.

[4] APP/H1840/A/11/2150564

20. At the Hearing, discussion focussed on the principle of a tipping point, where incremental development of this and adjoining sites has led cumulatively to this altered character, such that the Council and local residents argued that the size and number of pitches were now of an inappropriate scale.

21. I have sympathy for this view. All sites, be they for the settled or the travelling community should be properly planned. In absence of the DPD, the incremental development of sites such as the Paddocks can be considered relatively unplanned and must be carefully assessed. In relation to the change in character and how this may be experienced, it must be acknowledged that the access routes to and from the site would not solely be thorough the narrow lanes of Comhampton. Alternative routes are likely to be used dependant on the destination. However, I also acknowledge that Comhampton is a small community and the Paddocks has developed well beyond its initial use as an area for the keeping of horses.

22. Nonetheless, it seems to me that an additional two pitches located back from the roadside would represent only a limited increase in visual change. The fact that this would be a family site, with all the opportunities for shared travel and support, further limits the impact that the intensification would have on the overall cumulative level of development. In my own mind, I consider that the tipping point, even in absence of the unconsented site on Plot 2, is near, but not exceeded by this proposal.

23. Turning to accessibility, it cannot be claimed that the site offers many opportunities for alternative access other than private vehicles. The lanes are not conducive to walking or cycling regularly and the distances are generally prohibitive. Nonetheless, within a relatively short drive it has been demonstrated that a wide range of services, including for health, education and employment are available. I am of the view that the policy prevailing now, as opposed to that in place when previous decisions have been made, would weigh against a new development. However, what is before me is the intensification of an existing development into a larger family plot.

24. I note my colleagues in the earlier decisions regarding both Plot 1 and Plot 4 have found the site to be generally accessible or sustainable, and I note that paragraph 103 of the Framework acknowledges that sustainable transport solutions will vary between urban and rural areas.

25. This does not take away the fact that the proposal, as it stands, conflicts with SWDP17, in particular the first criteria, which, in seeking locations within or on the edge of settlements, is seeking to limit impacts on the character and appearance of the countryside, of which I have identified some limited harm, and to promote sustainable travel.

26. In relation to the highway network, criteria viii, I address this below.

The effect on highway safety

27. The previous decisions, and indeed previous assessments by the Council, have not engendered particular concerns from the HA. Nonetheless, it is argued now that the cumulative impact, associated with a general increase in use of the surrounding roads, notably Owlhill Lane, have contributed to a traffic environment which is no longer acceptable, in terms of safety and damage to the roadside verges and roads themselves.

28. That the lanes around the site are narrow and include some right-angled bends with limited visibility is not in question. However, while I have anecdotal evidence on the use of the roads, this is not particularly supported by evidence from my site visits. While I accept these can only represent a snapshot, I did visit at what could be considered the peak afternoon period and for an extended period during the afternoon, and traffic was very limited generally. Nor does it appear that excessive use was borne out by the survey carried out by the HA, although full details of this has not been provided and I note residents felt this to be out of date and did not address all routes.

29. There are two issues to consider. The first is the access itself. I note some concerns that traffic would travel at speeds at which the visibility splay proposed to be available to users would be insufficient. I considered this matter at my site visit. The access is clearly in use at present, and the lane to either side has pinch points and bends which severely limit speeds achievable along it, albeit this does represent one of the straighter sections. Nonetheless, the access is wide and there are splays, which in my view, allow for sufficient visibility.

30. The second issue is in relation to pressures on the immediate local network. The proposed intensification would lead to an increase in vehicles using this site. The pattern of use of a gypsy site will vary considerably depending on the needs of the family and the extent of travelling carried out. In terms of movements, I have been given no compelling evidence that this would be significantly different from that expected from an intensification of use on a housing plot or indeed for additional dwellings, other than those associated with initial delivery of the caravans. Furthermore, any existing traffic will, as I have set out above, use a variety of routes into and away from the site depending on destination.

31. This does not mean that it can be ignored, as the road network is poor. I note particular points raised regarding the increased use of Owlhill Lane, relating to the development of the farm attraction, and issues such as the priority junction from Comhampton Lane onto Bishops Wood Road. However, in such circumstances the narrow roads, and poor forward visibility tends to lead to the vast majority of drivers moderating their speeds, and this is borne out in that no evidence was put to me of serious accidents being recorded in the immediate area of the site. The risk of an irresponsible driver always remains, but applies equally across all such rural roads.

32. Overall, I must make as assessment on whether this proposal would represent an unacceptable increase in pressure on the road network or increase in risk. I have been provided with limited evidence to prove that, in this case, the effect can be considered severe, or the risks unacceptable. I am sympathetic once again to the concerns that the cumulative increase associated with incremental levels of development must lead to a point where the effect becomes severe, but on the basis of the evidence before me and my own observations, I do not find this development represents that point.

Conclusions on issues 1 and 2.

33. In addition to the principal concerns of the Council, I am aware of concerns regard privacy, noise and disturbance raised by local residents. In my assessment, the site is sufficiently removed from the nearest property to limit any overlooking or privacy issues, and it was confirmed at the Hearing that the

mains electricity connection would be available to the proposed further pitches, so the issue of generator noise would not apply in this case. Significant noise, if associated with a generator, music or dogs is something that should be addressed under separate legislation through the Council.

34. Overall, I have addressed the national policy and the criteria set out in Policy SWDP17. I have found there to be conflict with criteria i in terms of the location of the proposed intensification of use. While I have identified some limited harm to the character and appearance of the area, and consequently limited conflict with SWDP2, which seeks to safeguard and where possible enhance the open countryside, I consider that this would not represent conflict with criteria v, which identifies significant visual harm. I have also noted that the site can be considered only moderately accessible, but this represents intensification of an existing use and not a new site. There is cumulative pressure on the local road network associated with the piecemeal development of sites here, and a risk that further proposals would result in a scale of development exceeding levels appropriate regarding the relationship to the settled community. In this case, I have found that this tipping point has not been exceeded.

35. I must be clear that my findings on this do not set any sort of precedent for further developments of a similar nature. I have acknowledged that there are increasing cumulative effects and these must be considered in light of the merits of any further proposals, should they be put forward.

The need for gypsy sites locally and personal circumstances

36. Initial submissions, accepted by both main parties, identified that the Council could not demonstrate a five year supply of sites. Later information from the Council suggested that against the need identified in SWDP17, and adjusted for the later Gypsy and Traveller Accommodation Assessment, the requirement was only 3 pitches, and this the Council suggested would be permitted soon.

37. It is important to note that this level represents a minimum provision and remains a shortfall at his point in time. This should be considered as a significant material consideration when subsequently considering the grant of temporary permissions, but also indicative of a need generally for pitches in the area. While the Council are confident that they will soon not have a shortfall, sites are still needed and the circumstances of the future occupiers of this scheme would appear to suggest that alternatives are limited in this area. The provision of these additional pitches, albeit on a small scale, carries weight in favour of the proposal.

38. Turning to personal circumstances, there is no dispute that the future occupiers meet the definition of gypsies and travellers. I have limited further information other than to note the new occupiers have families, including a young child, and have been reliant on temporary or shared use of sites for the previous 12 months. I have no doubt that the provision of a settled base on a family site would be beneficial.

The planning balance

39. As set out above I have concluded that the proposal would cause limited harm to the character and appearance of the area and would conflict with policies of the SWDP. Nonetheless, the PPTS does not definitively exclude development in

rural areas, indeed Policy C specifically addresses it, and in this case the proposal is for the intensification of use and not a new or expanded site.

40. Set against this are the benefits associated with the provision of further pitches generally and the development of a small family site, allowing for a settled base for family members. In this case, I find that the benefits would outweigh the limited harm I have identified.

41. Since the intended site occupiers are gypsies, they have a protected characteristic for the purposes of the Public Sector Equality Duty and I have taken this into account in my determination of the appeal.

Conditions

42. At the Hearing, the parties discussed which conditions should be retained and any further conditions necessary in relation to the proposed intensification of use on the site. I have considered the suggested conditions in the light of the Framework and Planning Practice Guidance.

43. Conditions relating to the status of occupiers (1), restrictions on vehicle size (2) and commercial activities (3) are reasonable and necessary to be retained to ensure continued appropriate use as a gypsy site.

44. Condition 5 of the original permission has been altered to reflect the new proposed scale of development (4); such a condition remains necessary to ensure the proposal is retained at a suitable scale. A condition restricting alterations to the layout unless notification is made to the Council is retained (5).

45. A detailed landscaping condition was suggested by the Council. The introduction of the new units will alter the layout of the site, with at least one replacing a current area of landscaping. It is necessary to consider a new landscaping plan and to ensure that the previous plan has been fully complied with prior to the introduction of any new caravans to ensure a suitable layout is achieved, although I have simplified the condition to enable this (6).

46. To ensure the foul and surface water drainage remains suitable for the increased use, a requirement to submit and comply with details remains necessary (7). Finally, to provide certainty, the original plans condition needs to be modified to reflect the new plans as required (8). The appellant has confirmed acceptance of the proposed pre-commencement conditions which are necessary to ensure a satisfactory layout and level of landscaping to protect the character and appearance of the area, as well as to address the environmental risks associated with drainage.

Conclusion

47. For the reasons given above I conclude that the appeal should succeed. I will grant a new planning permission without the disputed conditions but substituting others and restating those undisputed conditions that are still subsisting and capable of taking effect.

Mike Robins

INSPECTOR

CONDITIONS SCHEDULE

1) The site shall not be occupied by any persons other than gypsies and travellers as defined in Annex 1 of the PPTS.

2) No vehicle over 3.5 tonnes shall be stationed, parked or stored on this site.

3) No commercial activities shall take place on the land, including the storage of materials.

4) No more than 6 caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 (of which no more than 3 shall be a static caravan or mobile home) shall be stationed on the site at any time. The caravans shall be sited in accordance with the approved site plan (reference 1 The Paddocks Comhampton Lane Dunhampton Ombersley DY14 9ST)

5) Any material change to the position of a static caravan, or its replacement by another mobile home in a different location shall only take place in accordance with details submitted to and approved in writing by the local planning authority.

6) Prior to additional caravans being brought onto the site, a scheme of landscaping and schedule of maintenance shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall include indications of all existing trees and hedgerows on the land, identify those to be retained and set out measures for their protection throughout the course of development.

   All planting and seeding/turfing shall be carried out in accordance with the approved details in the first planting and seeding/turfing seasons following the first additional caravan being brought onto the site.

   The planting shall be maintained in accordance with the approved schedule of maintenance. Any trees or plants which, within a period of five years from the completion of the planting, die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.

7) Prior to additional caravans being brought onto the site, full details of all foul and surface water drainage systems to serve the development shall be submitted to and approved in writing by the Local Planning Authority. The approved drainage works shall be implemented in accordance with the approved details before the first occupation of any additional caravans on the site and shall be retained thereafter.

8) The development hereby permitted shall be carried out in accordance with the following approved plans: Site Plan - 1 The Paddocks Comhampton Lane Dunhampton Ombersley DY14 9ST; 02 Utility Block Plan Scale 1:100.

APPEARANCES

FOR THE APPELLANT:

David Addison MRTPI	Planning Consultant – AddisonRees Planning
Simon Rees MRTPI	Planning Consultant – AddisonRees Planning
Mrs R Jones	Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Katherine Smith	Planning officer – Wychavon District Council
Denise Duggan	Policy Officer - Wychavon District Council
Councillor Peter Tomlinson	County and District Councillor

INTERESTED PERSONS:

Richard Essex	Local Resident
Simon Deakin	Local Resident
Gillian Painter	Local Resident

DOCUMENTS

1 Aerial photographs
2 Decision Ref:15/00559
3 Committee Report Ref:15/00559
4 Copy of agreed plans, extant planning permission
5 Supplementary Costs Statement - appellant
6 Supplementary Costs Response - Council