



## Appeal Decision

Hearing Held on 3 September 2019

Site visit made on 3 September 2019

**by Thomas Hatfield BA (Hons) MA MRTPI**

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

**Decision date: 3<sup>rd</sup> October 2019**

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**Appeal Ref: APP/F1040/W/19/3223052**

**Land north west of Shardlow Road, Aston-on-Trent, Derbyshire, DE72 2AQ**

- 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 Matthew O'Brien against the decision of South Derbyshire District Council.
  - The application Ref 9/2017/0893, dated 9 August 2017, was refused by notice dated 18 October 2018.
  - The development proposed is described as "*material change of use of land to use as residential caravan site for 6 gypsy families, including erection of two amenity buildings, laying of hardstanding and access improvement*".
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### Decision

1. The appeal is allowed and planning permission is granted for a change of use to a residential caravan site for 6 gypsy families, including erection of two amenity buildings, laying of hardstanding and access improvement at land north west of Shardlow Road, Aston-on-Trent, Derbyshire, DE72 2AQ in accordance with the terms of the application, Ref 9/2017/0893, dated 9 August 2017, subject to the conditions set out in the attached schedule.

### Preliminary Matters

2. The Derby, Derbyshire, Peak National Park Authority and East Staffordshire Gypsy and Traveller Accommodation Assessment 2014 (GTAA) is the most recent assessment of the need for gypsy and traveller pitches in the District. It identifies a need for 38 pitches in South Derbyshire between 2014 and 2034, 14 of which relate to the period 2014-2019, with a further 7, 8, and 9 pitches in each of the following 5 year periods to 2034. In this regard, the Council acknowledges that it is currently unable to demonstrate a 5 year supply of deliverable sites to meet this need.
3. The GTAA incorrectly states that 63 pitches existed in the District at the base date of the study in 2014, whereas the actual figure at that time was 74 pitches. However, this error does not affect the findings of the GTAA, as the figure of 63 existing pitches does not feed into the assessment of future need, as set out in Table A.21 of that document. This was acknowledged at the hearing by the Council's Planning Policy Team Leader who was involved in the production of that study.

4. The Government's definition of 'gypsies and travellers' has changed since the GTAA was published in 2015, and now excludes those who have permanently ceased to travel. However, there is no clear evidence before me that this would reduce the requirement identified in the GTAA. In this regard, whilst a third of the respondents to the GTAA stated that they had not travelled in the last 12 months, that may indicate a temporary rather than a permanent cessation of travelling. Separately, whilst the GTAA identifies very different levels of need for each of the participating authorities, this reflects existing gypsy and traveller populations, historic patterns of site provision, and proximity to key routes.
5. Derbyshire County Council are currently seeking to commission a new GTAA. However, that study has not yet been undertaken, and at present the GTAA 2014 represents the most up-to-date assessment of need that is available.
6. Pre-commencement conditions are attached to this Decision. As required by Section 100ZA(5) of the Town and Country Planning Act 1990, the appellant has agreed to these conditions in writing in the Statement of Common Ground.

### **Main Issue**

7. The main issue is the effect of the proposal on the character and appearance of the countryside.

### **Reasons**

8. The explanatory text to Policy BNE5 of the South Derbyshire Local Plan Part 2 (2017) states that gypsy and traveller sites are acceptable in principle in rural areas, subject to compliance with Policy H22. In this regard, Policy H22 requires that development does not result in an unacceptable impact on the surrounding landscape unless it is capable of sympathetic assimilation.
9. The appeal site is located in open countryside a short distance from the edge of Aston-on-Trent. It is set within a mostly flat agricultural landscape that is characterised by relatively small fields separated by hedgerows. The nearby temporary gravel works buildings dominate the surrounding area, and pylons and fast moving traffic along Shardlow road are also prominent visual features. The Council's Landscape and Visual Impact Appraisal (LVIA) describes the landscape value of the site and the surrounding area as 'low', except in relation to the Aston Cursus to the east. I concur with that view.
10. The countryside surrounding the appeal site is well used for recreational purposes, as I observed during my site visit. There are a number of footpaths in the surrounding area, including paths that run along both the northern and western boundaries of the site. The proposal would be particularly prominent in views from the footpath to the west, and it would significantly alter views across the site from this route. In this regard, the Council's LVIA identifies the visual impact from along this path as being 'major adverse'. However, appropriate planting and landscaping along the site's western boundary could be secured by a suitably worded planning condition. At the hearing, the Council stated that this would reduce the visual impact of the proposal to 'minor to moderate adverse' once any new planting had matured. Whilst a significant visual change would still be experienced from the adjacent path in the short term, these effects would be mitigated over time. Such a condition would also allow for a more detailed landscaping scheme to be secured that

addresses the Council's other concerns regarding the type of planting proposed. The appeal proposal would otherwise not be prominent in longer public views from the surrounding area.

11. My attention has been drawn to a number of appeal Decisions where proposals for gypsy and traveller sites have been dismissed based on landscape harm and/or visual impact. However, the full details of those cases including the surrounding landscapes and topography, are not before me. I am therefore unable to assess any direct comparability to the current appeal proposal, and I have determined the appeal on its own merits.
12. For the above reasons, I conclude that the proposal would result in some localised harm to the landscape. I return to this matter in my Overall Balance and Conclusion, below.

### **Other Matters**

13. The Council is currently in the process of producing a Gypsy and Traveller Site Allocations Development Plan Document (DPD) in order to allocate additional sites in the District. However, this emerging document is currently at a very early stage, and it is not expected to be adopted until November 2021 at the earliest. Any new allocations would also require an additional lead-in time in order to secure planning permission, discharge conditions, and be built out. Any availability of new gypsy/traveller sites is therefore somewhat off.
14. The appeal site is within walking distance of Aston-on-Trent, which is identified as a Key Service Village in the South Derbyshire Local Plan Part 1 (2016). It contains a number of services and facilities, including a primary school, a post office/local shop, a church, a public house, and a bus service to Derby, albeit this is relatively infrequent. A footpath leads directly from the site to Aston-on-Trent, and whilst this is not surfaced, it provides a good connection into the village. Given its location, I do not consider that the site is 'away from' existing settlements for the purposes of the Planning Policy for Traveller Sites. Whilst it is asserted that there are no spaces available at the local primary school and that the doctor's surgery is at capacity, there is no detailed evidence before me to confirm this. In any case, the number of pupils/patients generated by the proposal would be likely to be small. I further note that neither the Education Authority nor the doctor's surgery have objected to the proposal on these grounds.
15. The appeal site would be accessed directly off Shardlow Road, which is a busy route that is subject to a 60 mph speed limit. However, the proposed access would have good visibility in both directions and would be capable of incorporating adequate visibility splays. Conditions could also be attached to ensure that vehicles waiting to enter the site do not cause an obstruction. I further note that the Highway Authority has not objected to the development on highway safety grounds.
16. My attention has been drawn to appeal decision Ref APP/K2420/C/13/2205416. That Inspector took a different view from the Council in respect of highway safety and dismissed the appeal. However, the access arrangements in that case, and the surrounding road layout, are not before me and so it is unclear whether there is any direct comparability to the current appeal proposal.

17. The development proposes 6 pitches, which would not generate a significant amount of traffic. Accordingly, any impact on congestion within Aston-on-Trent would be minor.
18. The site is near to the remains of the Aston Cursus, which is a Scheduled Ancient Monument. The appeal site is separated from the Cursus by Shardlow Road and by the hedgerows on either side of it, and I do not consider that it would harm its setting. In addition, a Geophysical Survey<sup>1</sup> has been submitted by the appellant which indicates that the appeal site has little archaeological potential. I further note that the Derbyshire County Development Control Archaeologist raises no objection to the proposal, subject to trial trenching of the site being secured by condition.
19. The appeal site is within Flood Zone 1 (low probability of river flooding). Whilst waterlogging is reported by local residents, appropriate drainage measures could be secured by condition. I further note that neither the Lead Local Flood Authority nor the Environment Agency have objected to the proposal on flood risk grounds.
20. Interested parties have raised concerns about the potential discharge of effluent into the adjoining brook. However, any such discharge would require an environmental permit, which is outside of the planning regime.
21. The Council's Officer Report states that the site consists of Grade 3 agricultural land. It is unclear from the information before me if it is Grade 3a or Grade 3b, and whether the site therefore consists of 'best and most versatile' agricultural land. However, any loss of 'best and most versatile' land would be relatively small in this case. Nevertheless, any such loss would add, albeit modestly, to the weight against the proposal.
22. At the hearing, concern was raised that the proposal could set a precedent for new housing developments on the edge of Aston-on-Trent. However, the explanatory text to Policy BNE5 of the South Derbyshire Local Plan Part 2 (2017) states that gypsy and traveller sites are acceptable in principle in rural areas, subject to compliance with Policy H22. That is not the case for bricks and mortar housing.
23. The size of the development is relatively modest, and it would not dominate any nearby settled community in my view.
24. In terms of biodiversity, the vast majority of the existing hedgerows would be retained, and significant areas of new planting would be created. This would provide an opportunity for biodiversity enhancements. I further note that the Council's Officer Report states that "*the site is currently an area of improved grassland with no features suitable to host protected species*".
25. A number of representations refer to an increased fear of crime should the proposal be allowed. However, there is no evidential basis linking the proposal with criminal activity. Whilst it is asserted that a previous unauthorised gypsy site in the area attracted anti-social behaviour, there is no indication that the current appellant was involved in that.

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<sup>1</sup> TVAS, Ref LRS 17/231, dated November 2017

26. Any effect on the gap between Aston-on-Trent and Shardlow would be modest, and the proposal would not undermine the separation between these 2 settlements.
27. Appropriate lighting details are capable of being secured by condition in order to control any light pollution arising from the proposal.
28. The appeal site is not located within the Green Belt.
29. It is a long-established principle that the planning system does not exist to protect private interests such as the value of land and property.

### **Conditions**

30. The Council suggested a number of conditions, some of which I have edited for clarity and enforceability. In addition to the standard time limit condition, I have imposed a condition that requires the development to accord with the approved plans. This is necessary in the interest of certainty. I have also imposed conditions relating to archaeology, which are necessary in order to ensure that any archaeological remains are appropriately investigated and recorded. A further condition requiring the installation of protective fencing around retained trees and hedgerows is necessary to ensure that they are protected during the construction process. Conditions relating to surface water and foul water drainage are necessary in order to ensure that the proposal does not increase flood risk elsewhere and that foul water is appropriately addressed. Another condition relating to the access onto Shardlow Road is necessary in the interests of highway safety. These conditions are pre-commencement in nature as any construction works could affect the site's archaeology or harm hedges and trees that are to be retained. Similarly, all site works will be informed by the proposed drainage arrangements, and the proposed access will be in use during the construction phase.
31. Conditions relating to landscaping, boundary treatments, hard surfacing, construction materials, the storage of commercial vehicles, and restricting the use of the site for commercial purposes, and to 12 caravans, are necessary in order to protect the character and appearance of the area. A condition relating to lighting is also necessary in the interests of character and appearance and to control any light pollution associated with the site. A further condition relating to the proposed access gates is necessary in the interests of highway safety. Another condition requiring that the private driveway, turning head, and parking spaces be installed prior to first occupation is necessary in order to ensure that those facilities are available to future occupiers. A condition requiring the submission and approval of details relating to a pedestrian gate is also necessary so that future occupiers are able to access services and facilities in the village. A further condition restricting the occupancy of the site to gypsies and travellers is necessary given that I have attached weight to the general need for gypsy and traveller sites in the District. Finally, a condition removing permitted development rights in relation to boundary treatments is necessary in order to protect the character and appearance of the area.
32. The Council also suggested a condition that would have required the submission and approval of a Landscape Management Plan. However, that would be disproportionate for a scheme of this size. Moreover, the site is relatively flat, and given the nature of the proposal I do not consider it necessary for details of proposed site levels to be submitted and approved. In

addition, it is unnecessary for the condition requiring the submission and approval of a scheme of soft landscaping to be pre-commencement in nature, and I have instead made this a pre-occupation condition.

33. At the hearing, interested parties suggested a number of other conditions. However, I do not consider that there is any reasonable planning justification for restricting the tenure of the site to prevent rental of pitches. Moreover, the proposal is residential in nature and is around 100 metres from the nearest dwelling. I therefore do not consider that conditions requiring the submission and approval of a noise impact assessment or requiring that the site be connected to mains electricity are necessary in this case.

### **Overall Balance and Conclusion**

34. As set out above, the proposal would result in some localised harm to the character and appearance of the countryside. However, this harm could be mitigated by planning conditions. In addition, some loss of 'best and most versatile' agricultural land may result from the proposal.
35. Set against this is the lack of a 5 year supply of gypsy and traveller sites and a significant unmet need in the Borough that is unlikely to be resolved in the near future. Moreover, the appeal site is in a relatively accessible location close to a Key Service Village. These considerations carry significant weight in favour of the proposal.
36. In the circumstances of this appeal, the relatively limited harm that would arise is clearly outweighed by the benefits of allowing the appeal. Moreover, on balance, I do not consider that the proposal would result in an unacceptable impact on the surrounding landscape or the local environment. It would therefore accord with Policies SDT1, BNE5 and H22 of the South Derbyshire Local Plan Part 2 (2017).
37. For the reasons given above I conclude that the appeal should be allowed.

*Thomas Hatfield*

INSPECTOR

### **Schedule of 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: Site Layout Plan; Amenity Building; Proposed Shower Block.

#### *Pre-commencement conditions*

- 3) No development shall take place until a Written Scheme of Investigation for archaeological monitoring has been submitted to and approved in writing by the Local Planning Authority. The scheme shall include an assessment of significance and research questions; and:
  - i) the programme and methodology of site investigation and recording;
  - ii) the programme and provision to be made for post investigation analysis and reporting;
  - iii) provision to be made for publication and dissemination of the analysis and records of the site investigation;
  - iv) provision to be made for archive deposition of the analysis and records of the site investigation;
  - v) nomination of a competent person or persons/organization to undertake the works set out within the Written Scheme of Investigation.

No development shall take place other than in accordance with the approved Written Scheme of Investigation.

- 4) No development shall take place until protective fences have been erected around all trees and hedgerows shown to be retained on the approved plans. Such fencing shall conform to best practice as set out in British Standard 5837. The fences shall be retained in situ during the course of ground and construction works, with the protected areas kept clear of any building materials, plant, debris and trenching, and with existing ground levels maintained; and there shall be no entry to those areas except for approved arboricultural or landscape works.
- 5) No development shall take place until a scheme of surface water drainage has been submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be implemented prior to the first occupation of the development.
- 6) No development shall take place until a scheme for the drainage of foul water from the site has been submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be implemented prior to the first occupation of the development.
- 7) No development shall take place until the existing access to Shardlow Road has been modified in accordance with the application drawings. The junction shall be laid out, constructed and provided with visibility sightlines of 160m in both directions, both measured to a point 1m in from the nearside edge of the carriageway, as measured from a point located centrally and 2.4m back into the access. The area within the sightlines shall thereafter be kept clear of any object greater than 1m in

height (0.6m in the case of vegetation) above the nearside carriageway channel level.

*Pre-occupation conditions*

- 8) Prior to the first occupation of the development hereby approved, the site investigation and post investigation assessments shall have been completed in accordance with the programme set out in the Written Scheme of Investigation approved under Condition 3, and provision shall have been made for the publication, dissemination, and archive deposition of the results.
- 9) Prior to the first occupation of the development hereby approved, a scheme of soft landscaping shall be submitted to and approved in writing by the Local Planning Authority. The approved scheme shall include landscaping of the full extent of the western boundary of the site. All planting, seeding or turfing comprised in the approved scheme shall be carried out in the first planting and seeding seasons following the first occupation of a pitch or the completion of the development, whichever is the sooner; and any plants which within a period of five years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.
- 10) Prior to the first occupation of the development hereby approved, details of all external lighting (including the type of light appliance, the height and position of fitting, illumination levels and light spillage) to be installed shall be submitted to and approved in writing by the Local Planning Authority. The lighting details shall thereafter be installed as approved.
- 11) Prior to the first occupation of the development hereby approved, details of a pedestrian gate and access from the site to the adjacent public footpath (to the west) shall be submitted to and approved in writing by the Local Planning Authority. The approved details shall be carried out prior to the first occupation of any pitch and shall thereafter be retained.
- 12) The private driveway, turning head, and parking spaces for each pitch indicated on the approved plans shall be surfaced and made available for use prior to the first occupation of the development hereby approved, and shall thereafter be retained.

*Other conditions*

- 13) The site 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).
- 14) No more than 12 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 6 shall be static caravans) shall be stationed on the site at any time.
- 15) No more than one commercial vehicle per pitch shall be kept on the land for use by the occupiers and they shall not exceed 3.5 tonnes in weight.
- 16) No commercial activities shall take place on the land, including the storage of materials.



- 17) Prior to the construction of any hard surfacing, details of the proposed hard surfacing materials shall be submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be carried out using the approved materials.
- 18) Prior to their incorporation into the buildings hereby approved, samples of the facing materials to be used shall be submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be constructed using the approved facing materials.
- 19) Any entrance gates erected in the private driveway shall be set back by a minimum distance of 15m from the road as measured from the nearside edge of the carriageway.
- 20) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no boundary treatments shall be erected other than those expressly authorised by this permission.

## **APPEARANCES**

### FOR THE APPELLANT:

P Brown	Planning Consultant
M O'Brien	Appellant
M O'Brien	
S Spencer	Derbyshire Gypsy Liaison Group

### FOR THE LOCAL PLANNING AUTHORITY:

I McHugh	Planning Consultant
N Northrop	Landscape Consultant
R Stewart	South Derbyshire District Council
K Beavin	South Derbyshire District Council

### INTERESTED PERSONS:

P Watson	Ward Councillor
T Hurrell	Aston-on-Trent Parish Council
M Selby	Aston-on-Trent Parish Council
L Dixon	
E Evan Tawse	
R Meakin	
G Meakin	
J Gidlow	
C Sellek	
M Sellek	
S Graham	
P Jesper	
L Anderson	
G Hudson	
A Caulow	
J Barnes	
G Simpson	
J Lambert	
G Bridges	
C Eley	
P Hudson	
P Ashdown	

## **DOCUMENTS SUBMITTED AT THE HEARING**

- 1 Completed Statement of Common Ground, dated 3 September 2019