
Appeal Decision

Hearing Held on 15 October 2019

Site visit made on 15 October 2019

by S J Papworth DipArch(Glos) RIBA

an Inspector appointed by the Secretary of State

Decision date: 4 November 2019

Appeal Ref: APP/H1840/W/19/3221290

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.
 - The appeal is made by Mrs Jones against the decision of Wychavon District Council.
 - The application Ref 18/02265/FUL, dated 29 October 2018, was refused by notice dated 15 January 2019.
 - The development proposed is change of use of land to extend existing traveller site for a further pitch, including construction of utility block.
-

Decision

1. I allow the appeal and grant planning permission for change of use of land to extend existing traveller site for a further pitch, including construction of utility block at 1 The Paddocks, Comhampton Lane, Dunhampton, Ombersley DY13 9ST in accordance with the application Ref 18/02265/FUL, dated 29 October 2018 and subject to conditions 1) to 9) on the attached schedule.

Application for Costs

2. An application for costs had been made by Mrs Jones against Wychavon District Council. This application is the subject of a separate Decision.

Main Issues

3. These are;
 - Whether the site represents a sustainable and suitable location for the development of additional gypsy/traveller development.
 - Whether the proposed development would dominate the settled community of Comhampton in terms of the scale of development, the number of pitches, the appearance of the development, the activity associated with the pitches and the development of the open countryside.
 - The weight to be attached to other considerations.

Reasons

4. The parties have supplied a planning history for the area, and reference will be made to 2 previous appeal as follows; reference APP/H1840/W/17/3190058 dated 11 October 2018 granted permission for 2 additional pitches on the adjoining land to the west of the appeal site edged yellow on a plan supplied by the appellants. A further appeal reference APP/H1840/W/17/3190189 dated 5

September 2019 granted temporary personal permission for a single pitch on adjoining land to the north edged green. These appeals will be referred to by the year of their Decision; 2018 and 2019 respectively.

The Location of the Proposal

5. The South Worcestershire Development Plan was adopted in February 2016 and Policy SWDP2 sets out the development strategy and settlement hierarchy, which includes focussing most development on the urban areas and to assess windfall development proposals in accordance with the hierarchy. Development in the open countryside will be strictly controlled. The provision of traveller pitches is the subject of Policy SWDP17 which states that additional sites will be identified in a site allocations Development Plan Document, although this is not yet in place. Windfall sites such as the appeal site will be assessed against eleven criteria, although the Council agreed that the criteria are not stated as having all to be met.
6. The first criterion is '*whether the site is within, or on the edge of, a town or Category 1, 2 or 3 settlement*' and the Council supplied an updated '*Village Facilities and Rural Transport Study*' which now places the former Category 3 settlement of Crossway Green, the nearest to the site, into Category 4 as in 2019 it had no key services. In any event and as noted by both the 2018 and the 2019 Inspector, the site never could be described as '*within or on the edge of*' that settlement even when it was assessed as being within the higher category. Both Inspectors therefore noted conflict with that first criterion of the policy with some harm resulting, their conclusions leading to a grant of permission in each case were taken on balance of this finding and other considerations. The conclusion now is also that the site does not accord with the strict wording of criterion i of the policy.
7. Paragraph 25 of Planning Policy for Traveller Sites states that local planning authorities 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. Whilst the effects of the proposal will be considered in the second main issue, the existence of the other lawful permanent sites and the sporadic 'bricks and mortar' development along the network of lanes lead to the view that this is not truly open countryside, although it is away from settlements with a range of facilities.
8. Criterion x asks '*whether the site has reasonable access to health services, schools and employment*' although the latter is of limited applicability to a traveller site, where a nomadic searching for work would be a requirement of gypsy status as defined in Planning Policy for Traveller Sites. The 2018 Inspector found a range of services available within a reasonable driving distance, and the 2019 Inspector found the travelling distances to access shops and services not to be significant in the context of the provision of a gypsy and traveller site.
9. There is a convenience shop at a petrol filling station on the main road and the village of Ombersley in particular was seen to have various facilities, said to be in the region of 4km from the site. The gypsy way of life does involve travel and Planning Policy for Traveller Sites does not preclude a location somewhat remote from such services.

10. The question of access to secondary schooling was raised at the Hearing, the speaker referring to the low take-up by the traveller community of that level of education. Local residents confirmed that, when they had children of that age, travel to Worcester was required, and that the bus service was not adequate then. Other schools at Droitwich and Stourport-on-Severn were also mentioned but access would be no better. Paragraph 13 of the Government policy seeks to ensure that children can attend school on a regular basis, while reducing the need for long-distance travel.
11. The appeal proposal is for an extension of an existing traveller site and it is stated that the intended occupiers would be part of the extended family of the appellant who is the occupier of a pitch nearer the road. This arrangement would permit some shared journeys that would reduce the adverse effect of the location.
12. The conclusion on this main issue as to the sustainability and suitability of the location is that access would be available to services, health and education, but reliant on the use of a private vehicle, and that this is not in line with Government and local policy aims of reducing the need to travel and concentrating development in urban areas. That was a shortcoming identified by the 2018 Inspector for the adjacent site but as in that case, the occupation of the appeal site by family members may assist in reducing the harm in combination. That possibility will be weighed in the balance later.

The Effects of the Proposal

13. The Council consider that due to the cumulative number of pitches, the scale of the development, the appearance of the development, the activity associated with the pitches and the further extension of the site into the open countryside, the proposal would dominate the nearest settled community. The risk of such domination is referred to in paragraphs 14 and 25 of Planning Policy for Traveller Sites, and paragraph 3 states the Government's overarching aim is to ensure fair and equal treatment for travellers, in a way that facilitates the traditional and nomadic way of life of travellers while respecting the interests of the settled community. Criteria v and vii of Policy SWDP17 concern visual impact and whether the size of the site and the numbers of pitches are of an appropriate scale for the location.
14. In line with the findings of the 2018 Inspector, it appears reasonable to consider the nearest settled community as being Comhampton, and the Council mention that specifically in the Reason for Refusal. There has been change and an incremental increase in the numbers of travellers through the grant of a permanent permission for intensification and a temporary permission for a wholly new site to the north, while the numbers of residents in the settled community are likely to be constrained by countryside policies. Reference was made to the effects of the tourist attraction to the south-west, and this indicates that even rural communities may be subject to other types of change through development.
15. Looking first at the cumulative number of pitches, the appellant has provided a useful aerial view of plots 1 to 4 along this part of the lane, annotated to show the various pitches that have been the subject of applications, appeals and permissions. Other traveller sites were seen further from Comhampton, but at a distance where the cumulative effect would be limited and in the case of the

Dog Lane pitches, there is an alternative access direct to the A449 that could limit further still the cumulative effect.

16. The present appeal proposal is for a further single pitch of one static mobile home and is promoted on the basis of being for a family member, in answer to comments about this being a commercial proposition. Taking the forgoing into consideration and having toured the surrounding area, the conclusion is that the appeal proposals, even within the duration of the adjoining 3-year permission, would not result in a cumulative level of harm. Similar conclusions result from consideration of the scale of the development, which would be limited and acceptable, such that policy SWDP17 criterion vii is met.
17. Turning to the appearance of the development and the alleged further extension of the site into the open countryside, the proposal would be a rearward extension of the 2 present sites at Plot 1, edged blue and yellow on the appellant's aerial view, and would still remain within a boundary delineated by the rearward extent of Plot 2 and Plot 4, and would retain sufficient 'buffer' of land further still to the rear. The Inspector's objection to Plot 2 was as much through the part-filling of the gap along the lane as it was to any rearward projection, and that plot did not have the benefit of lawful frontage development of residential use.
18. The southern hedgerow is attractive and well-established, containing the mix of species sought by the Council in any future boundary treatment. The view along the lane already takes in the development and boundary treatment of the existing sites between the appeal site and the lane and that would be altered further by the implementation of the 2018 permission to increase the number of pitches. The site layout places the utility block against the south boundary hedge and the mobile home to the west boundary with one of those on the yellow edged land. In both cases the bulk of the open area of the site would remain undeveloped.
19. The addition of the appeal proposals would not result in a significant visual impact, the wording of criterion v, and any view of additional structures would be limited and largely filtered even in winter by the quality of the boundary hedge, with conditions able to secure further appropriate landscaping. There would as a result be no significant harm through the visual effect or the alleged further extension into the open countryside that could not be satisfactorily mitigated.
20. Lastly in the Council's list of concerns set out in the Reason for Refusal is that of the activity associated with the pitches, and here there would be a cumulative effect also. References has already been made to the intention that this would be for the use of a family member and the possibility of shared vehicle journeys. Such a relationship of the occupiers would also tend to limit the possibility of noise and disturbance as this would affect other family members, and there would likely be a degree of mutual interest in controlling the adverse effects, and certainly less risk than with completely unrelated occupiers. The conclusion is that with that relationship, the effect of an additional pitch would not be significant in terms of activity, noise and disturbance to the rural area.
21. Local residents refer also to the nature of the narrow country lanes, and whilst the access to the highway is acceptable in line with criterion viii of the Policy, there would be an increase in the use of the lanes. That increase could be

subject to the shared use of vehicles previously mentioned, and the lanes are public roads available to others to gain access to the A449. Nevertheless, there are clearly conflicts as referred to from vehicles associated with the tourist attraction along Owlhill Lane, and the route through Comhampton from there to the appeal site is torturous and narrow. However, there are viable alternative routes as previously noted by Inspectors, and the nomadic way of life implies absence for periods in search of work, rather than regular commuting for at least some occupiers.

22. It is appropriate while considering the effect of the proposal to look at the remaining criteria in Policy SWDP17; criterion ii on planning designations is not appropriate to the location, criterion iii on flooding is met, criterion iv on conservation areas or significant gaps is not appropriate, criterion vi on privacy and amenity is met, criterion ix on site services can be met, and criterion xi with the reference to the Good Practice document is no longer applicable.
23. The 2018 appeal refers to the concept of a 'tipping point', and the Inspector considered that this point *'even in absence of the unconsented site on Plot 2, is near, but not exceeded by this proposal'* whereas the site at Plot 2 now has the benefit of a 3-year temporary, personal, permission granted in September 2019. That 2019 Inspector however concluded that the nearest settled community would not be dominated, and that decision was taken in the knowledge of the Plot 1 appeal Decision the previous year. Whilst mentioned, that later Inspector did not specifically adopt the concept of there being a 'tipping point'.
24. It follows nevertheless that a further pitch would place the situation nearer still to that point, but taking all matters into consideration, and allowing for the limited duration of the Plot 2 permission, that point would not be reached on a permanent basis by the single additional pitch now proposed, considering the family relationship put forward.
25. To sum up, there would be some identifiable harm and a failure to accord with all of the criteria in Policy SWDP17, although they are not stated as all needing to be met. The single additional pitch would not be of such an effect as to result in traveller sites in the vicinity dominating the nearest settled community, but this conclusion is based on the site being an extension of the existing site for a family member, for the reasons set out above.

Other Considerations and Planning Balance

26. The Council updated the 5-year supply situation at the Hearing and again on the publication of the October 2019 *'South Worcestershire Gypsy and Traveller Accommodation Assessment – Final Report'* and the commentary *'Maintaining a Five Year Supply of Traveller Pitches in Wychavon'*.
27. Whilst the cumulative 5-year requirement situation stood at zero at the time of the Hearing, the October 2019 Gypsy and Traveller Accommodation Assessment submitted by the Council a week later resulted in the position of there being no 5-year supply by a matter of 10 pitches. The appellant expressed the view that if no further pitches are granted permission, the position would rise to a shortfall of 13 pitches by January 2020.
28. This is clearly a dynamic situation as the 2018 Inspector had noted agreement that there was not then a 5-year supply whilst the 2019 Inspector noted that

there was such a level of supply but was unsure of the reliability and longevity of the situation. The situation now is of a significant lack of supply.

29. The intended occupiers do not have a lawful site and have been 'doubling up' on other sites. They have young children and such a lifestyle would not, if continued, be conducive to their health or education prospects. That continuation would not be in the best interest of the child, which is a primary consideration and no other consideration can be more important. The prospective occupiers are not able to identify a suitable, acceptable and affordable alternative site.
30. In the planning balance, and even taking account of the latest requirement and supply situation, there would be a risk of unacceptable harm through the grant of an unrestricted permission for the use of the appeal site by travellers unconnected with the appellant, through greater vehicle use and the possibility of noise, disturbance and additional activity. However, that risk would be sufficiently mitigated by restricting the use to the stated family members.
31. Consideration also needs to be given to the grant of a temporary permission, as was the case at Plot 2, but the harm identified by the rearward extension of Plot 1 is not so great as was found to be the case on the adjoining plot, and in view of the supply situation, there is no reason to restrict the grant of permission on this site pending the future supply of sites on the publication of the Development Plan Document. There is no reason why the family members should not make the site their permanent home.

Conditions

32. The Council had suggested conditions, and the appellant agreed to all except the last one on landscaping, the view being that the site had already been landscaped. Addressing that first, it is the fact that the hedging to the south boundary is in good condition and the screening or filtering has been considered in the reasoning to this Decision. However, the planting recently put in place along the east boundary is not suitable indigenous species and should be replaced in the interest of the character and appearance of the area. That again has been considered in this Decision.
33. Fundamental to this Decision is the assertion that the site would be occupied by the nephew of the appellant and his family, and that would need to be controlled by condition. Whilst details of their nomadic way of life have been given, a gypsy and traveller condition would be required, and it is noted that this was added to the 2019 temporary permission on Plot 2 even though that was a personal permission.
34. The suggested condition concerning any material change to the location of the static caravan is not required, the layout would be controlled by the last phrase in the condition controlling numbers, and any change would require a fresh application. The findings on the visual effect are based on the locations shown on the drawing.
35. The other conditions suggested, preventing commercial activities and controlling the size of vehicles, together with the numbers of caravans and the site layout are necessary and reasonable in order to limit the effects. A condition naming the 'as proposed' drawings is required for the avoidance of doubt.

Conclusions

36. The visual effect of the proposed single additional pitch could be sufficiently mitigated through landscaping and would occupy a site to the rear of existing sites and hence not appearing as an extension of development along the lane; a failing identified in the 2019 appeal. However, were the site to be an open-market provision there would be an unacceptable risk of the totality of pitches in the area dominating the nearest settled community in terms of activity and vehicle movements, the latter consideration being contrary to the aims of policies at national and local level which seek sustainable development.
37. That objection can be sufficiently overcome by restricting the occupation of the site to named persons who are relatives of the appellant who occupies another pitch on Plot 1. The 5-year supply situation and the lack of alternatives for the family add weight to this finding. For the reasons given above, it is concluded that both appeals should be allowed.

S J Papworth

INSPECTOR

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

K Smith	Principal Planning Officer Wychavon District Council
D Duggan	Policy Officer Wychavon District Council

FOR THE APPELLANT:

D Addison	Addisonrees Planning Consultancy Ltd
R Jones	Appellant accompanied by spouse

INTERESTED PERSONS:

Cllr C Day	Ombersley Ward Councillor
R Essex	Local resident
G Painter	Local resident

DOCUMENTS

Document	1	Update on Table 1 Rolling Five-Year Requirement for Traveller Pitches in Wychavon from 1 April 2014 submitted by Council
Document	2	Local development Scheme 2019 – 2022 October 2019 Update submitted by Council

Document	3	2019 Village Facilities and Rural Transport Study submitted by Council
Document	4	' <i>South Worcestershire Gypsy and Traveller Accommodation Assessment – Final Report October 2019</i> ' and ' <i>Maintaining a Five Year Supply of Traveller Pitches in Wychavon</i> ' submitted by Council (updates and supersedes Document 1)
Document	5	Appellant's response to Document 4

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall be begun before the expiration of three years from the date of this permission.
- 2) The site shall not be occupied by any persons other than gypsies and travellers as defined in Annex 1 of the Planning Policy for Traveller Sites.
- 3) The use hereby permitted shall be carried on only by the following: Henry Loveridge and Jemima Loveridge, and their dependent children.
- 4) When the premises cease to be occupied those named in condition 3) above, the use hereby permitted shall cease and all caravans, buildings, structures, materials and equipment brought on to the land, or works undertaken to it in connection with the use, shall be removed and the land restored to its condition before the development took place.
- 5) The development hereby permitted shall be carried out in accordance with the following approved plans: 1 The Paddocks, Comhampton Lane – Proposed Site Layout Scale 1:500 and drawing 04 Utility Block Scale 1:100
- 6) 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 the approved site plan reference 1 The Paddocks, Comhampton Lane – Proposed Site Layout Scale 1:500.
- 7) No commercial activities shall take place on the land, including the storage of materials.
- 8) No vehicle over 3.5 tonnes shall be stationed, parked or stored on this site
- 9) Prior to any 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.