



Appeal Decision

Hearing Held on 22 January 2020

Site visit made on 22 January 2020

by David Wyborn BSc(Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 February 2020

Appeal Ref: APP/Y3940/W/19/3225487

Land to the rear of The Paddock, Heath Lane, Startley, Chippenham, Wiltshire SN15 5HH.

- 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 MacDonald against the decision of Wiltshire Council.
 - The application Ref 18/03524/FUL, dated 12 April 2018, was refused by notice dated 31 October 2018.
 - The development proposed is the change of use of land to a private gypsy and traveller caravan site consisting of three pitches each of which would contain one no. mobile home, one no. utility dayroom and one no. touring caravan and associated works.
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Decision

1. The appeal is allowed and planning permission granted for the change of use of land to a private gypsy and traveller caravan site consisting of three pitches each of which would contain one no. mobile home, one no. utility dayroom and one no. touring caravan and associated works at Land to the rear of The Paddock, Heath Lane, Startley, Chippenham, Wiltshire SN15 5HH in accordance with the terms of the application, Ref 18/03524/FUL, dated 12 April 2018, and subject to the conditions set out in the schedule.

Application for Costs

2. At the Hearing an application for costs was made by Mrs McDonald against Wiltshire Council. This application is the subject of a separate Decision.

Procedural Matters

3. The evidence indicates that the appellant is a Romany Gypsy. The proposal is advanced on the basis of the change of use of the land to a private gypsy and traveller site.
4. The 3 pitches are proposed for members of the appellant's immediate family. It is accepted that two of the pitches would be occupied by those who have a nomadic habit of life travelling for work purposes and would meet the definition of a gypsy and traveller as set out in Annex 1 of the Planning Policy for Traveller Sites (the PPTS).
5. The other pitch would be occupied by a person who until recently travelled for work, although because of illness this has ceased. At the hearing I heard evidence that the intention is that in the future this proposed occupant would again return to a nomadic way of life and travel to find work. In these

circumstances, I am satisfied that this proposed occupant would also meet the definition of a gypsy and traveller as set out in Annex 1 of the PPTS.

Main Issues

6. Core Policy 47 of the Wiltshire Core Strategy (adopted January 2015) (the Core Strategy) includes criteria against which gypsy and traveller sites will be judged. The Council has identified two criteria from the policy that it is argued the proposal conflicts with and this forms a key part of the reason for refusal. While both criteria make reference to the character of the landscape and surroundings and there is some overlap, I have framed the main issues based on the separate policy criteria, which the Council has identified.
7. The main issues are:
 - the effect of the development on the character and appearance of the area, and
 - whether the size of the site, in conjunction with the existing site, would be appropriate to the scale and character of its surroundings and existing nearby settlements.

Reasons

The effect of the development on the character and appearance of the area

8. Adjoining Heath Lane is a gypsy and traveller site that was permitted following an appeal in 2008¹. The site includes 2 pitches and dayroom, stables, parking area, paddocks and the side boundaries are fairly well screened by vegetation.
9. The appeal site adjoins and would be accessed via the existing gypsy site. The proposed site is reasonably level and generally bounded by a mix of reasonably mature and well established trees and hedges on three sides and by the existing gypsy site on the other.
10. The wider area is predominantly gently undulating mixed pastoral and arable farmland, with a pattern of large fields bounded by hedgerows and hedgerow trees, and copses of trees. This landscape appears to be fairly typical of the location of the site within Character Area 16A – Malmesbury- Corsham Limestone Lowlands (within the Limestone Lowland Landscape Type 16) as set out in the Wiltshire Landscape Character Assessment (December 2005) (the LCA).
11. The LCA highlights one of the forces for change within this Character Area as pressure for new development along rural lanes and around existing settlements. In this case, the site is accessed via Heath Lane, a rural single width and no through road which becomes a bridleway near the site. Heath Lane has a gently curving form, often bounded by hedges, with a rural character including a scattering of dwellings and farm buildings. The existing gypsy site is evident from the road, particularly from around the vehicular entrance, and the character of the area is also formed by the reasonably large poultry sheds and silos, and the storage area in association with a construction business.

¹ APP/J3910/A/07/2014910 – The Paddock, Heath Lane, Startley, Chippenham, Wilts SN15 5HH dated 14 February 2008.

12. Within the site itself, the introduction of three pitches, each with a mobile home, dayroom, touring caravan, parking and related domestic paraphernalia would alter the character of the site, which is presently considered by the Council to be agricultural. However, the reasonably generous land available would allow for a fairly spacious layout and the ability to introduce a comprehensive landscaping scheme that would supplement the already well established landscaping along the three outer boundaries.
13. From the surrounding countryside, the existing boundary planting and any further landscaping would largely filter views of the proposed mobile homes and other features such that the change in the character of the land and alterations to its visual appearance would be very minor in these wider views.
14. From the bridleway, alongside the site, there would be glimpsed views through the established hedge boundary. The presence of the proposed mobile homes and other features associated with the residential occupation would be perceptible, especially as the close boarded fence would be removed. The presence of the site would be in addition to the existing gypsy site and therefore there would be sequential views of development alongside this part of the bridleway. However, the existing boundary hedge and other vegetation alongside the proposed site would reduce, in my view, to a significant extent the effect of the proposed gypsy site would have on the character and appearance of Heath Lane. During those periods of the year when the leaves were on the hedging the inter-visibility would be reduced even further. The site would be well contained and this would be assisted by the vehicular access coming via the existing site.
15. The access in the corner of the site is proposed to be closed and the space available in this area would allow a comprehensive landscaping scheme to soften any views into the site from the bridleway in this general location. The presence of the grass verge along this section of the bridleway, together with the pitches which would be either set towards the boundary of the existing gypsy site or would be set towards those parts of the site away from the bridleway, would further reduce any impact of the site and its use. Overall the rural character of the bridleway would not be unduly affected and the visual surroundings experienced by users of the right of way, including walkers and horse riders, would not be diminished to an unacceptable extent.
16. I have carefully considered the landscape evidence presented by the Council and, in particular, the Landscape and Visual Appraisal (November 2019) (the LVA). At the hearing, I also heard landscape evidence from the appellant that the effects of the development on the components of landscape character that had been identified should not be as high as categorised. In my judgement, having regard to the rural nature of the area, and also that it includes a scattering of dwellings, other buildings, including the poultry farm and the construction store, and taking into account the landscape mitigation that is proposed, the impact on the character and visual appearance of the area would not be as harmful as the level articulated in the LVA.
17. While the site may be detached from the more concentrated ribbon development of Startley, it is in a location where there is a presence of other buildings and dwellings. The development alongside Heath Lane, in the circumstances of this case, would not unduly undermine the rural character of the area, be at odds with the scattered pattern of built form in Heath Lane or

markedly erode the approach to the protection of this Character Area within the LCA.

18. In this case, the site would be perceptible in some limited and filtered views from an adjoining short section of the bridleway, it follows that there would be some minor and very localised impact to the character and appearance of the area from the introduction of the proposed development on this enclosed field. However, I also consider that the proposal has been sensitively designed to mitigate the impact on its surroundings.
19. Taking all these matters into account, I conclude that the scheme would meet the policy test set out in criterion (vi) of Core Policy 47 of the Core Strategy as the proposal would not have an unacceptable impact on the character and appearance of the landscape or area.
20. However, the detailed requirements of Core Policy 51 of the Core Strategy set a higher policy test than the criteria of Core Policy 47, as Policy 51 requires that development should protect, conserve and where possible enhance landscape character. Also, criterion (i) of the Core Policy 57 requires that development enhances local distinctiveness by responding to the value of the natural and historic environment, relating positively to its landscape setting and the existing pattern of development. While the scheme would meet many of the elements of these policies, including that the proposal has been mitigated as far as possible through sensitive design and landscape measures, I consider that the proposal would not meet the higher policy test requirements of Core Policies 51 and 57 to ensure landscape character protection and/or enhancement from proposals.

Whether the size of the site, in conjunction with the existing site, would be appropriate to the scale and character of its surroundings and existing nearby settlements.

21. While Startley is not designated even as a small village in the Core Strategy it does have a reasonable presence of housing running in a linear pattern along the main road. The proposed gypsy site, while in the broad vicinity of the settlement area, would be sited away from the main area of housing and would be fairly discreetly located in terms of the effect that the site would have on the settlement.
22. The combined site would be reasonably generous in area and this would allow for landscaped areas and the retention of the boundary vegetation. The overall mix of open space, landscaping and with the accommodation spaced across the combined site, the resulting pattern and intensity of residential development would not be at odds with the broad form of some of the other well landscaped and detached properties in the wider area.
23. The scheme proposes 3 pitches in addition to the 2 on the present site. Two of the additional pitches would accommodate family members who are already living on the existing site and the third pitch would accommodate immediate relatives of the appellant. I have noted the comments from some local residents that the accommodation would account for about 10% of the housing in Startley, nevertheless, in this case the site would accommodate a single extended gypsy family.

24. Taking all these matters into account, I consider that the site would not be unduly large in relation to the existing settlement, in particular in terms of the size and layout of the site, the number of units and overall presence. I have already concluded that the proposal would not have an unacceptable visual impact on the character and appearance of the landscape. The proposal, taken as a whole with the existing site, would respect the scale of, and would not dominate, the nearest settled community of Startley, and therefore would comply with the requirements of the PPTS in this respect.
25. In the light of the above analysis, I conclude that the size of the site, in conjunction with the existing site, would be appropriate to the scale and character of its surroundings and the existing settlement of Startley. The proposal would therefore, in this respect, comply with Core Policy 47 of the Core Strategy.

Other Matters

26. The Council do not object to the countryside location of the site in the sustainability terms as set out in Core Policy 47 of the Core Strategy. Having regard to the findings of the Inspector when he considered this matter in the appeal for 2 pitches at The Paddock in 2008, my assessment of the location of the site in relation to services and facilities in the area and the policies in the PPTS, I have found no reason to disagree with the Council on this issue.
27. Furthermore, it terms of very strictly limiting new traveller site development in open countryside as set out in Policy H of the PPTS, I consider the site would not be at odds with the scattered pattern of development along Heath Lane and not sited away from Startley as a whole such that it would fail the requirement of the PPTS in this respect.
28. The Great Somerford (incorporating Startley) Neighbourhood Plan 2016-2026 (the NP) forms part of the development plan for the area. The NP does not seek to address gypsy and traveller site issues. While Startley is not defined as a settlement in the NP, and lies in countryside for planning purposes, as the location of the site does not conflict with the approach in the Core Strategy for gypsy sites, I find no overall conflict with the development plan in this respect.
29. The Council has set out information to show that the pitch provision requirements of Core Policy 47 of the Core Strategy and in the Gypsy and Traveller Accommodation Assessment (2014) have been met elsewhere and exceeded. I heard contrary evidence, however, that sought to demonstrate that these figures were out-of-date and that the Council, in the absence of the planned Development Plan Document and up-to-date information, could not demonstrate a supply of specific deliverable sites sufficient to provide 5 years' worth of gypsy and traveller sites against locally set targets.
30. Even if I were to accept the case made by the Council in terms of meeting identified need, the PPTS states that, nevertheless, where applications come forward in these circumstances they should be judged against criteria based policies. In this case, Core Policy 47 of the Core Strategy provides a criteria based policy specific to gypsy and traveller sites. For the reasons explained above, the proposal would comply with this policy. Consequently, it is not necessary for me to consider matters of wider need and supply.

31. I also heard evidence and have taken into account the human rights issues, the duty to have regard to the Public Sector Equality Duty as set out in the Equality Act 2010 and that the best interests of the child on the site should be a primary consideration². However, in the light of my overall conclusion I do not need to consider these matters further.
32. Local residents and the Parish Council have raised a range of objections in respect of the proposal, some of which I have considered above. I have noted all the matters, including it is said the business uses taking place at the existing gypsy site and the related noise, burning of materials, disturbance and traffic movements, some involving large vehicles. These matters were also raised and discussed at the hearing. I heard information from all parties including from the appellant who gave an explanation of the activities on the site and provided information of lorry movements within Heath Lane which were explained to be associated with the storage use opposite the entrance to the existing gypsy and traveller site.
33. While I have noted these issues, any such activities on and compliance with the conditions attached to the existing site are matters for the Council to investigate. While I have taken into account the representations regarding the use of the present site, I attach them limited weight in my considerations regarding the proposal on the adjoining land, because I need to consider the appeal proposal on its merits, based on the details before me.
34. The application is made on the basis of residential use of the site which would not incorporate business use. The appellant has indicated that were I minded to allow the appeal a condition could be attached to any permission to require that the site would be used solely for residential purposes. This would be a standard type of condition in these circumstances.
35. I note that the Highway Officer did not raise objection to the proposal and traffic movements and amenity issues do not form part of the reason for refusal. Based on the evidence before me and my site visit, I have found no reason to disagree with the Council on these matters.
36. I understand that the site is able to be supplied by mains water and that subject to a condition in relation to foul water disposal this matter should be able to be dealt with appropriately on the appeal site. Any loss of productive agricultural land resulting from the scheme would be minor because the site is small in farming terms and is not part of a holding at the present time. I therefore attach this matter limited weight in the overall considerations.
37. I have also noted the submissions that the boundary along the broadly north eastern side of the site falls beyond the appellant's ownership and therefore it would not be possible to undertake the proposed landscaping in this area. While I do not have definitive evidence on this matter, and given the general submissions from the Council regarding the potential to successfully plant under the canopy of the trees, to address these matters it would be possible to attach a condition in any approval that would require the submission and agreement to a landscaping scheme. There is otherwise space within the site, including along the boundary in dispute, for suitable landscaping and the

² Article 3(1) of the United Nations Convention on the Rights of the Child provides that the best interests of the child shall be a primary consideration in all actions by public authorities concerning children.

submission of a revised scheme would address the question regarding the precise alignment of the boundary.

38. Concerns are raised in relation to precedent were the appeal to be allowed. However, I have considered the proposal on its own merits based on the size and impacts of the scheme and the policies of the development plan. Other proposals, were they to come forward, would have their individual circumstances and impacts, and would be required to be considered on their merits at that time. I therefore attach the concerns with respect to precedent little weight.

Conditions

39. I have had regard to the conditions recommended by the Council, were I minded to allow the appeal, and also the conditions which the appellant has included as examples of what would be appropriate. I have taken into account the advice in the Planning Practice Guidance and amended the conditions as necessary in the interests of precision and clarity. The statutory time limit and a condition listing the approved plans are necessary in the interests of certainty. I am not satisfied that reducing the standard 3 year commencement period to a shorter period is necessary or reasonable in this case, given the that the Council argue that it can demonstrate a sufficient supply of sites.
40. It is necessary to attach a condition to ensure that the site is occupied by those who meet the definition of gypsies and travellers as the proposal is only acceptable in these terms in accordance with the policies of the development plan and the PPTS. Condition 4 is necessary to limit the number of pitches, related caravans and to confirm the precise siting of caravans in the interests of the character and appearance of the area.
41. A condition to exclude commercial and industrial activities, and any related stationing, parking or storage of vehicles over 3.5 tonnes, is necessary in the interests of the living conditions of the residents in the area. Conditions are necessary requiring the submission and approval of external lighting in the interests of protecting the character and appearance of the area, and foul and surface water drainage in the interests of pollution control and flood risk.
42. The submission and agreement of a comprehensive landscaping scheme, together with a maintenance regime, is necessary to ensure in accordance with policy that the impact of the proposal on the character and appearance of the area is mitigated. This does not need to be a pre-commencement condition but should be agreed prior to the use of the site commencing. The closing of the access in the corner of the site is necessary in the interests of the character and appearance of the area. In terms of this permission, this can only be required on commencement and I have updated the suggested condition accordingly.
43. A condition removing permitted development rights for the erection of means of enclosure has been proposed by the appellant. Exceptionally this is necessary, in particular, to ensure that the close boarded fence that is proposed to be removed as part of the scheme could not be replaced in the future thereby protecting the rural character and appearance of the area. As I consider that it is only those means of enclosure in proximity to the boundaries that it is necessary to control I have amended the condition to ensure that any means of enclosure on or within 3m of any boundary are controlled, which I

consider would meet the tests of precision and reasonableness in the circumstances of the site.

Conclusion

44. The proposal would provide a gypsy and traveller site in a location that I consider would accord with the general approach to the location of such sites as set out in the PPTS and Core Policy 47 of the Core Strategy. The scheme would meet the test in Core Policy 47 that there would not be an unacceptable impact on the character and appearance of the landscape and the scheme is sensitively designed to mitigate any impact on its surroundings. While the scheme would not meet with the stricter policy tests set out in Core Policies 51 and 57 of the Core Strategy I give greatest weight to the compliance with Core Policy 47 as this is specific to assessing gypsy and traveller sites and I consider is in accordance with the PPTS. It is such that the proposal complies with the development plan when considered as a whole. I have considered and taken into account all the other issues raised including those by local residents and the Parish Council, however, these matters afford limited weight and do not outweigh the scheme's compliance with the development plan.
45. For the reasons given above, the scheme would comply with the development plan when considered as a whole and other material considerations do not indicate that a decision should be made other than in accordance with the development plan. Accordingly, I conclude that, subject to the specified conditions, the appeal should be allowed.

David Wyborn

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Dr Angus Murdoch	Murdoch Planning Limited
Mr Rhodri Crandon	TDA Landscape Consultancy
Mrs Rose Marie McDonald	Appellant
Mrs Whitney Rossiter	Appellant's daughter

FOR THE LOCAL PLANNING AUTHORITY:

Ms Catherine Tetlow	LPC (Trull) Ltd instructed by Wiltshire Council
Mr Henning Totz	Wiltshire Council
Mr Mark Goodwin	Wiltshire Council

INTERESTED PERSONS

Cllr Toby Sturgis	Wiltshire Council
Mr James Beasley	Local resident
Mr Alistair Collingborn	Local resident

Documents submitted at the hearing:

- 1) Written statement from Cllr Sturgis.
- 2) Judgement in *London Borough of Bromley v Persons Unknown and Ors* [2020] EWCA Civ 12.
- 3) Three photographs submitted by Dr Murdoch.
- 4) Updated annotations to aerial photograph submitted by Ms Tetlow.
- 5) Appeal decision APP/J3910/A/07/2014910 – The Paddock, Heath Lane, Startley, Chippenham, Wilts SN15 5HH dated 14 February 2008.
- 6) Report, plans and decision notice for Application 16/07388/FUL – Retrospective change of use of land from agricultural to storage use in association with construction business and formation of access – Angrove View, Heath Lane, Startley, Chippenham, Wiltshire SN15 5HH.

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 approved plans: Site Location Plan TDA.2270.01 Rev A, Proposed Site Layout and Detailed Landscape Scheme TDA.2266.03 Rev B and Proposed Day Room (plans and elevations) TDA.2266.04.
- 3) 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).
- 4) At no time shall the site be subdivided into more than 3 separate pitches, and on each of those pitches no more than two caravans shall be stationed at any one time, of which only one shall be a static caravan or mobile home. The caravans shall be sited in accordance with Plan TDA.2266.03 Rev B.
- 5) No commercial or industrial activities shall take place on the land, including the storage of materials, and no vehicles exceeding 3.5 tonnes shall be stationed, parked or stored on the land.
- 6) Prior to the occupation of any of the pitches hereby permitted, a scheme for the external lighting of the site shall be submitted to and approved in writing by the local planning authority. The lighting for each pitch shall be implemented in accordance with the approved details prior to the occupation of that pitch. No other external lighting shall be installed without the written consent of the local planning authority.
- 7) Prior to commencement of the use of the land hereby permitted, a scheme for the foul drainage of the site shall be submitted to and approved in writing by the local planning authority. The foul drainage works for each pitch shall be implemented in accordance with the approved details prior to the occupation of that pitch and shall be retained thereafter.
- 8) Prior to commencement of the use of the land hereby permitted, details of surface water drainage works for the site shall be submitted to and approved in writing by the local planning authority. The surface water drainage for each pitch shall be implemented in accordance with the approved details prior to the occupation of that pitch, and shall be retained thereafter.
- 9) Notwithstanding the landscaping shown on the submitted drawing TDA.2266.03 Rev B - Proposed Site Layout & Detailed Landscaping Scheme, prior to commencement of the use of the site a comprehensive landscaping scheme shall be submitted to and approved in writing by the local planning authority. The scheme shall show the location, size and condition of all existing trees and hedgerows on and adjoining the site, and identify those to be retained, together with measures for their protection during construction. The scheme shall show details of all planting areas, including plant species, numbers and sizes. The proposed means of enclosure, any mounding, and details of hard surfaces must

also be shown. The entire landscaping scheme shall have been completed as approved by the end of the first planting season immediately following the site first being brought into use.

- 10) Any trees or plants which form part of the approved landscaping scheme for the site which within a period of 5 years of their 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.
- 11) Before any pitch is first occupied a schedule of landscape maintenance for a period of 5 years shall be submitted to and approved in writing by the local planning authority. The schedule shall include details of the arrangements for its implementation. Maintenance shall be carried out in accordance with the approved schedule.
- 12) Within 1 month of the date of the commencement of this permission, the existing access to Bridleway GSOM19 at the north east corner of the site shall have been stopped up and its use permanently ceased. At no time shall any vehicles, plant or machinery be brought onto the site or leave the site via this access. For the avoidance of doubt all vehicles, plant and machinery shall use the approved access through the adjacent gypsy and traveller site, as shown on the approved plans.
- 13) 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 fences, gates or walls shall be erected on or within 3m of any boundary of the site, other than those shown on the approved landscaping scheme.

End of schedule