
Appeal Decision

Site visit made on 16 July 2020

by Mr JP Sargent BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4 August 2020

Appeal Ref: APP/H1840/W/20/3245737

The Caravan, Radford Road, Rous Lench, Evesham WR11 4UL

- 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 S Lee against the decision of Wychavon District Council.
 - The application Ref 19/00458/CU, dated 22 February 2019, was refused by notice dated 9 August 2019.
 - The development proposed is the change of use from disused orchard to provide 4 Gypsy/Traveller pitches, each pitch to contain one static caravan, one touring caravan and parking. One dayroom is to be provided for the whole site, and a new driveway.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues with this case are
 - a) whether the site is suitably located with regard to proximity to services;
 - b) the effect on the character and appearance of the area;
 - c) the impact on highway safety and
 - d) if any harm would result from the above, whether this is outweighed by other material considerations.

Reasons

Background

3. This appeal has been made on the basis that the intended residents fell under the definition of gypsies and travellers given in *Planning policy for traveller sites* (PPTS). Despite this, I have little to show that the stated occupiers would be maintaining a nomadic habit of life or have ceased to travel temporarily because of educational or health needs. Consequently, it has not been demonstrated that each of the 4 households would comply with the definition given in the PPTS. Whilst there may well be touring caravans on the pitches, that in itself is neither certain nor decisive.
4. However, planning permission normally runs with the land and so it is not necessary for the appellant to meet the PPTS definition in order to apply for the change of use to a gypsy or traveller site, and indeed any individual may do so.

As such, uncertainty over the status of the stated occupiers does not prevent me from assessing the appeal or considering it against the PPTS.

(a) Siting

5. Policy SWDP17C in the *South Worcestershire Development Plan* says the suitability of planning proposals for new traveller sites will be assessed against a number of criteria. Of these, criterion (i), is whether the site is within or on the edge of a town or Category 1, 2 or 3 settlement. This reflects paragraph 25 in the PPTS, which says

'[local] planning authorities should very strictly limit new traveller site development in open countryside that is away from existing settlements'.

The precise reason for criterion (i) in Policy SWDP17C is not given, but it is reasonable to assume it concerns, at least in part, access to services.

6. This site is in the open countryside and, whilst I noted the location of the road sign announcing entry to Rous Lench, it is nonetheless some 870m from the village's development boundary and well away from that cluster of buildings. Although Rous Lench may well be vibrant, it is nonetheless a Category 4B settlement, which is the designation for settlements in the development plan with fewest services and facilities.
7. The nearest settlement that falls within those listed in Policy SWDP17C(i) is Inkberrow, which is roughly 3-4km away. I do not see this as being close, and certainly, given this distance, the site is not *'on the edge'* of that village.
8. A bus service passes the site but the value of that is likely to be limited as it is relatively infrequent, and the nature of the roads and the distances involved mean that walking or cycling to Inkberrow is unlikely. As a result, I consider it is reasonable to assume the proposal would result in the residents having a reliance on the private motor vehicle for even the most basic of daily needs, thereby conflicting with the aims of achieving development in sustainable locations.
9. In coming to this view, other gypsy and traveller sites might have been recommended for approval that have been 2km from settlements. However, I have insufficient evidence to show those decisions were not a consequence of other considerations weighing in their favour. It was also said that the definition of being *'on the edge'* of settlements has been relaxed in the search for new sites to meet the stated need, but I have nothing to show any relaxation has occurred to the extent necessary to encompass the appeal site.
10. The appellant contends that this one criterion in Policy SWDP17C should not be taken in isolation, but rather any failing in this regard should be weighed against compliance with the other criteria in the policy. I accept the policy does not state explicitly that a proposal needs to comply with each criterion listed, but neither does it say otherwise. To my mind, the nature of the criteria means it is reasonable to assume there should be compliance with each and, given its importance, a failure to comply with this particular one constitutes a policy conflict.
11. I have noted that the criteria in Policy SWDP17C should also be used for proposals to intensify authorised sites. Although there is another gypsy and traveller pitch (the existing pitch) in the grassed area on which the proposal

would be sited, that is some distance away. As a result, I consider this is not an intensification of that site but rather a fresh scheme in its own right, albeit with a common use of the access. In any event, reference in Policy SWDP17C to the intensification of sites does not achieve anything more than confirm the policy's criteria should be applied in such an instance.

12. Accordingly, I conclude the development would not be in, on the edge of or well-connected to a town or a category 1, 2 or 3 settlement, and so would result in undue reliance on the private motor vehicle to access even the most basic services. As such, the development would be contrary to Development Plan Policy SWDP17C(i), advice in the PPTS and guidance in the *National Planning Policy Framework* (the Framework).

(b) Character and appearance

13. Although not cited as a reason for refusal by the Council, this nonetheless was a concern raised by the local residents in their submissions in relation to both the application and the appeal.
14. The site lies in attractive and pleasing countryside, albeit with no specific landscape designation. The proposed pitches would be set back some way from the road on a large area of grass, next to a complex of old sheds and an orchard. At this point the highway is currently bounded by a tall hedge with fencing behind, and so from the road the appeal site is only visible through the existing gateway.
15. The development would comprise 4 static caravans, each possibly with a touring caravan and parking adjacent. There would also be a communal day room block and the entirety would be bounded by fencing.
16. In my opinion the nature and scale of the caravans and the day room mean the proposal would stand as a stark, isolated and discordant feature in this grassed area, even if the indicative landscaping shown on the drawings had some softening effect. As a result, it would harmfully erode the pleasing rural character of the surroundings. Whilst it is accepted that views from the highway are limited, they would still be possible. In any event, there is no reason to consider that the intrinsic character and beauty of the countryside should be recognised only from the public domain.
17. Buildings are adjacent, but these are low, muted in colour and very much agricultural in nature. Moreover, whilst a Certificate of Lawful Use exists for a caravan among these buildings, the impact of that is not as extensive as what is now proposed. As such, neither of these points lead me to different findings.
18. I have also taken into account the existing pitch. That though is well away from the caravans before me, behind the roadside hedging, and is more limited in its nature. Consequently, the presence of that does not mitigate the effect of the development.
19. Finally, the PPTS accepts that there may be instances where such development is acceptable in the countryside. In the light of my reasoning above though, I am not satisfied that this is such an occasion.
20. Accordingly, I conclude that the development would detract harmfully from the character and appearance of the countryside, thereby eroding its intrinsic character and beauty and so conflicting with Development Plan Policies

SWDP17C(v) and SWDP21A, which seek high quality development integrated into its surroundings with visual impacts being mitigated, as well as advice and guidance in the Framework and the PPTS.

(c) Highway safety

21. The proposal is to use the gateway that serves the existing pitch, orchard and sheds. This allows access to and from a country lane. At this point, although having no centre markings, the carriageway is wide enough for 2 cars to pass and the lane has relatively deep verges.
22. I had no evidence concerning the numbers or speeds of vehicles using the lane. However, based on my observations when I made my visit traffic flow is light, and I have no reason to consider it would be materially heavier at other times. With regard to speed, the national limit applies here, and so traffic could be travelling at up to 60mph. However, given the nature of the road I consider that is unlikely. Indeed, despite the good driving conditions while I was at the site, I estimated that the passing cars were travelling appreciably slower. The accesspoint is near to a slight crest that I anticipate may slow approaching traffic, while bends would affect the speed of north-bound vehicles.
23. Finally, I have little evidence concerning actual traffic flows connected with the orchard and buildings, or to show how they would be affected by this appeal being allowed or dismissed. To my mind though the additional movements arising from the scheme itself would be modest, being about 24 to 28 vehicles a day. Although touring caravans would be entering and leaving, it is reasonable to assume that would be relatively occasional and would be in the context of a road network on which drivers were mindful of the possibility of sizeable slow-moving agricultural traffic. Moreover, if the scheme were to be permitted the entrance gates could be set back to allow a car and tourer to pull clear of the carriageway whilst a suitable area for bin storage could be addressed.
24. There was some debate about the extent of the sight lines, with the consultant for local residents identifying them as being 86m to the south and 136m to the north. Both these figures fall below the recommended sight splays in the national guidance *Manual for Streets 2*. However, that document also says

'unless there is local evidence to the contrary a reduction in visibility below recommended levels will not necessarily lead to a significant problem' (para 10.5.9).

I have noted the reasons offered by the consultant to support his view that this clause should not justify a reduction in this instance, but I see no reason why it cannot be applied to a rural lane of this nature. Given the character of Radford Road, the amount of traffic likely to be using the lane and the site entrance, the horizontal and vertical variations of the carriageway, and the absence of any further local evidence to the contrary, to my mind sight splays could be achieved that would be adequate to allow traffic to enter and leave the site safely without the undue loss of hedging.

25. Accordingly, I conclude the development would not have an unacceptable impact on highway safety, and so would not conflict with Development Plan Policy SWDP17C(viii), which seeks safe access to such schemes, and advice in the Framework.

Other matters

26. The Council confirmed no trees subject of a Tree Preservation Order are on the site and no protected species are to be affected, while it has not said there would be an impact on any veteran trees. On the evidence before me I am not satisfied that the effect of the scheme on the local infrastructure, the ecology of the orchard or drainage would be unacceptable given the use of appropriate conditions. I also consider that the size of the development, even including the existing pitch, would not dominate the adjacent settled community.

Conclusions on issues (a), (b) & (c)

27. I therefore conclude the siting of the development away from services would be harmful and it would also unacceptably harm the character and appearance of the area. However, it would not adversely affect highway safety.

(d) Material considerations

28. Section 38(6) of the Planning and Compulsory Purchase Act 2004 says

'the determination [of planning proposals]... must be made in accordance with the [development] plan unless material considerations indicate otherwise'.

With this in mind a number of factors have been cited by the appellant as being material considerations to be balanced against any development plan conflict.

Need

29. The PPTS says local planning authorities should identify and annually update a supply of specific deliverable sites sufficient to provide 5 years' worth of sites against their locally set targets.
30. The appellant contends there is an acknowledgement that the Council was unable to provide this 5-year supply, with there being a 'vast' shortage of gypsy and traveller pitches in the District. In contrast the Council considers its need under the PPTS to be met.
31. The Council's evidence shows it has an excess of pitches over the number it currently needs. The appellant has submitted little firm evidence to refute this. Whilst he says that the anticipated *Traveller and Travelling Showpeople Site Allocations Supplementary Planning Document*, has not come forward to adoption, that does not mean the supply now is inadequate. Moreover, he contends that having looked at possible sites across the County (which no doubt included sites outside of the District) the number of possible traveller sites has been reduced from 37 to 3, one of which has already been refused permission. Again, the link to the current situation has not been shown, and the reference to sites does not clarify the position concerning pitches. There may well be long waiting lists for Council-owned sites, but that could include applicants who are not gypsies and travellers under the PPTS definition, people could apply in more than one district, and not all those on the lists may still be in need.
32. Accordingly, based on the evidence before me I have no reason to consider the Council cannot identify a supply of specific deliverable sites sufficient to provide 5 years' worth of sites against its locally set targets. However, the

levels of stated need are a minimum figure and so I consider there is a benefit from providing pitches over and above this level.

Personal needs of the adults

33. For the purposes of this balancing, I shall assume all the residents comply with the definition of gypsies and travellers given in the PPTS. However, even if they do not, I accept that they could well be in an ethnic group whose needs should be considered under the Public Sector Equality Duty. In either instance, a settled base would bring stability to a family, facilitate access to health services and similar, and avoid the stress of a roadside existence. Such benefits though would be common to many gypsies and travellers.
34. The appellant has supplied information about the households to occupy each pitch. In regard to Pitches 2, 3 and 4, there is little further support given for the adults needing settled accommodation beyond the general benefits outlined above.
35. The final household on Pitch 1 would include an adult with medical needs that are being addressed at a hospital some distance away. While they seem to be getting care at the moment, I accept their situation would no doubt benefit from a settled base, and so I give their needs significant weight.

Best interests of the children

36. At the outset I have regarded no other consideration as inherently more important than the best interests of the children and, in advance of the subsequent assessment of the individual circumstances, I have given none greater weight. However, these best interests will not always outweigh other considerations including those that impact negatively on the environment. I have nonetheless kept the best interests of the children at the forefront of my mind in reaching my decision.
37. The appellant has identified 4 children living on the site. I was told of no specific needs in relation to 3 of these. I accept though that a settled base such as this could well be in their best interests as it would allow them security, access to consistent health care, engagement with social groups, and a stable education. However, these benefits apply to most if not all Gypsy and Traveller children.
38. The fourth child has health needs that would no doubt benefit from them being settled as access to medical care would be easier, and so I afford their needs substantial weight.
39. I was not told that children would be living on Pitches 2 or 4. On Pitch 2 though the residents would help in caring for the child with health needs, and so I afford significant weight to their presence. No weight is attached to the best interests of the child in relation to Pitch 4.

Balancing of the other considerations against the harm

40. In the light of the above, and on the evidence before me, I find there is no shortfall in deliverable sites for gypsies and travellers in the District.

41. However, I accept there would be moderate weight attached to the benefits from the additional pitches. Moreover, I attach weight as outlined above for the adult residents, while the needs of the children are given substantial weight. However, even if these considerations are taken together, in my opinion they do not outweigh the harm I have identified.
42. I have also had regard to whether a temporary planning permission could be granted, but I am not convinced that there would be a material change in the circumstances in the near future that would justify such a decision.
43. I therefore conclude the appeal should be dismissed.

JP Sargent

INSPECTOR