The Planning Inspectorate

# Appeal Decision

Site visit made on 30 July 2020

**by Mr JP Sargent BA(Hons) MA MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 10 September 2020**

**Appeal Ref: APP/G1630/W/20/3247145**
**Three Ways, Claydon, Tewkesbury GL20 7BH**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
- The appeal is made by Mr H Rogers against Tewkesbury Borough Council.
- The application Ref 19/00388/FUL is dated 10 April 2019.
- The development proposed is the use of land at established residential Gypsy and Traveller site for 3 additional mobile home pitches with associated parking; erection of extended acoustic fence adjacent to railway line; use of existing building for low key Use Class B8 (storage or distribution) purposes; formation of enclosed overspill car parking area and comprehensive landscaping.

## Decision

1. The appeal is dismissed.

## Application for costs

2. An application for costs was made by Mr Rogers against the Council, and that is the subject of a separate decision.

## Main Issues

3. The appeal arises because of the non-determination of the application. However, based on the Council's putative reasons for refusal, and having regard to a previous appeal decision on the site, the main issues in 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 any of the above, whether this is outweighed by other material considerations.

## Reasons

### *Background*

4. This application is made with no specific future occupiers identified. The appellant has nonetheless suggested controls should be imposed restricting occupancy to those within the definition of gypsies and travellers contained in Annex 1 of *Planning policy for traveller sites* (PPTS). I shall therefore

determine the appeal on the basis that any future occupiers would fall within the PPTS definition.

5. It has not been said that the appeal seeks permission for the specific use of vehicle storage. I have therefore assumed that all vehicles to be on site, whether in the dedicated spaces near the pitches, in the curtilage of the storage unit or on the overspill car park would be reasonably ancillary to the Class B8 use and/or the use of the land for the stationing of caravans.

***The appeal site and the proposal***

6. This triangular site is bounded on its west side by the main railway line and to its east by fields. To the north, and separated by a small parcel of land outside the appellant's ownership, lies Claydon Lane providing access to the site.

7. In 2012 an appeal was dismissed for the siting of 8 pitches here following the removal of the existing small storage building (the 2012 appeal). However, in 2014 planning permission was granted for the southern part of the site to be used for the stationing of 2 static caravans for travellers with the small commercial building being retained as ancillary storage (the 2014 permission). It seems to be accepted that the 2014 permission was implemented although I understand there to be non-compliance with some of the conditions.

8. It is now proposed to retain the 2 static caravans on site in their current positions, to continue using the storage building for purposes within Class B8, and to allow 3 more pitches, partly on the site subject of the 2014 permission and partly on land that fell outside that site to the north. A welfare block would also be provided and, while I have no details of the appearance of this, I assume it would be a single storey, brick structure with a pitched roof.

***Issue (a): Location***

9. Three Ways is in the open countryside, some 2.2km from the nearest services with Tewkesbury a few kilometres beyond. Given the character and nature of the intervening lanes, walking and cycling such distances is likely to be unattractive to most residents. Therefore, there will, in all probability, be a heavy reliance on the use of the private car for accessing even the most basic day-to-day services, and access to and from the site for those who do not have private motorised transport will be limited. Although new developments may be occurring that would bring services closer to the site, I have no information as to the nature of those or when and where they would occur.

10. In my opinion, such a location runs contrary to advice in the PPTS that says, when planning for traveller sites, that they should be environmentally sustainable among other things.

11. I understand that the location was not necessarily considered acceptable in this regard when the 2014 permission was granted. Rather, it was found harm from that issue was outweighed by the benefits, as there was a shortfall in the provision of sites at that time. I am also aware that the scheme before me is introducing more pitches on site than were permitted in 2014. Consequently, the fact that the 2 pitches have been allowed here in the past does not mean this issue is not a valid concern when considering a further intensification.

12. With regard to the cited appeals, the decision for the 2012 appeal said '*it is a disadvantage for the appeal site with respect to its sustainability that residents*

*would be reliant mainly on car transport to reach community facilities well over a mile away'*, with harm from this being identified in the overall balance and weighed against the proposal. In contrast, a 2018 appeal decision at Badgeworth for 7 mobile homes (the Badgeworth appeal) found that development, which was to be 850m from services, would not lead to unsustainable patterns of travel, as the Inspector considered the distance could be easily cycled and the site was not remote but in the Cheltenham hinterland.

13. The *National Planning Policy Framework* (the Framework) recognises a difference in relation to access to services between urban and rural areas, but at the same time the judgement about this issue is made very much on the circumstances of each individual case. Three Ways is appreciably further from services than in the site in the Badgeworth appeal. Moreover, what could be defined as the hinterland of towns such as Cheltenham or Tewkesbury is extensive, and it cannot be assumed that any location within those hinterlands would be suitable with regard to access to services. As a result, and as I am aware of no material change in circumstances over time, I share the views quoted above from the decision for the 2012 appeal and see no reason to come to different findings in the light of the Badgeworth appeal.

14. As this is not a new residential Gypsy and Traveller site but rather an extension to an existing one, I would question the applicability of Policy SD13(2) in the *Gloucester, Cheltenham and Tewkesbury Joint Core Strategy*. Having said that, I have no reason to consider this development is necessary to 'protect' the existing site, and note some of the appeal site lies outside of that of the 2014 permission.

15. Accordingly, I conclude this to be a location that would result in an undue reliance on the private motor vehicle to access even the most basic of services. As such, it conflicts with Policy INF1(1)(ii) & (iii) of the *Joint Core Strategy*, and guidance in the Framework and the PPTS, all of which encourage residential development to have appropriate access to services.

***Issue (b): Character and appearance***

16. The site is in an area of countryside that, although not subject to any specific designation, is nonetheless pleasing in appearance. The surrounding landscape is generally flat with a strong sense of openness. Three Ways is bounded by fencing to the railway, and intermittent hedging and trees on the eastern side, although as the lane to the north goes over the railway bridge it allows clear views into the site.

17. Caravans are not precluded from the countryside by national policy, and so their impact need not be unacceptable in principle. However, by introducing 3 further pitches onto an area of hardstanding at the northern end of the site the proposal would appreciably extend the area covered by development of this nature. To my mind the resultant caravans with their angular forms and bright colours, together with their associated fencing, paraphernalia, and proposed welfare block, would undermine the open rural character of the site and its locality, and this concern would not be mitigated even if the caravans were clad in timber. Consequently, they would fail to recognise the intrinsic character and beauty of this part of the countryside, particularly when seen from the road to the north.

18. Although 2 caravans are now on site that does not mean that further intensification will not cause visual harm. Indeed, and as acknowledged by the appellant ,when granting the 2014 permission the Council identified some harm in this regard. There are numerous vehicles parked across the site now, but it has not been shown that these would be removed if the appeal were to be allowed and, in any event, I consider the caravans would be larger and bulkier. There is also an extensive area of hardcore laid but, in my opinion, the proposed caravans would be more noticeable. While the site is to be landscaped, given the depth of the proposed planting around the boundaries I have little to show that this would be sufficient to allay my concerns. A coppice is to be planted to the north, but the elevated nature of the lane means again I am not confident that would screen the site to any appreciable degree.

19. Accordingly, I conclude that the development would detract unacceptably from the character and appearance of the area, in conflict with Policy SD6 in the *Joint Core Strategy*, which seeks to protect landscape character for its own intrinsic beauty among other things.

***Issue (c): Highway safety***

20. Although not raised by the Council in this appeal, the 2012 appeal was dismissed partly on grounds of highway safety. In that decision there were concerns about, firstly, a conflict between traffic coming over the railway bridge and vehicles turning left out of the site, and secondly the inadequacy of passing places along the lane given it would be used regularly by vehicles towing caravans. I am aware that the 2012 scheme was materially different to the one before me, and consider that the development of 8 pitches that would have resulted would have generated greater traffic flows when compared to the 5 pitches plus a storage unit that would result if this scheme was allowed.

21. Claydon Lane is a single-track rural no-through road that I anticipate is lightly trafficked, although it does serve a number of houses and businesses as well as agricultural land. Looking to the east of the proposed access visibility is good. To the west the road bends and rises as it goes over the humpback railway bridge. Although drivers leaving the site can see a reasonable distance at present, this is dependent to a great extent upon visibility across land and through a fence that I have not been told are under the appellant's control. As such, those splays could be reduced if the intervening land was poorly maintained or the fence replaced with one that was more solid, although I have no reason to consider that is to occur.

22. Whilst I note the findings of the 2012 appeal, in my opinion the nature of the bridge and the narrowness of the lane mean it is unlikely that traffic will approach the site's access from the west at above-average speed. Mindful of this, and taking account of the limited flows on the lane, even if the western sight splay is reduced by changes to the land outside the appellant's control this would not compromise highway safety unacceptably.

23. Turning to the issue of passing places, and assuming touring caravans will be on site as a necessary response to the occupiers having a nomadic lifestyle, I have no reason to consider there would be a regular use of the lane by vehicles towing caravans, as I understand that gypsies and travellers can be 'on the road' for many weeks. The lane is also relatively straight with good forward visibility to the west of the bridge, and a passing place exists at its foot. Again,

on the evidence before me I am not satisfied that the use by vehicles towing caravans would cause an unacceptable conflict with other users of the lane.

24. Accordingly, I conclude that the proposal would not have an unacceptable effect on highway safety and so in relation to this issue it would not conflict with Policy INF1(1)(i) in the *Joint Core Strategy* and paragraph 109 in the Framework, which seek to ensure safe accesses for development.

***Issue (d): Planning balance***

25. I have identified a conflict with the development plan in relation to the first 2 issues. However, section 38(6) of the *Planning and Compulsory Purchase Act 2004* says any determination must be made in accordance with the development plan unless material considerations indicate otherwise.

26. No specific future residents have been identified. Consequently, the personal circumstances of individuals are not a matter to which I can attribute any appreciable weight. In this regard the proposal is materially different to the Badgeworth appeal, where the pitches were already present and occupied, and so the Inspector had to have regard to the personal circumstances of their residents in coming to his decision.

27. Turning to the level of the provision of gypsy and traveller pitches in the Borough, this is obviously a situation that will vary over time, and could well change from one year to the next. Indeed, there was a shortfall in this regard when the 2014 application was considered, and this seemed to weigh heavily in the determination of that case. Now though the Council has contended that there is not a shortfall in such provision, and it has submitted evidence in support of this, including the Badgeworth appeal.

28. In contrast, the appellant argues a shortfall nonetheless exists, and has supported his view by saying he had Officer encouragement for the proposal in the light of a shortfall, by saying Council staff actually asked him if further pitches could be sited here, and by him being regularly approached by people from the Gypsy and Traveller community seeking accommodation. Moreover, he also considers the very fact he is applying shows a need. Overall, although I note these points of the appellant's, to my mind they are general nature. In particular, there are many reasons applications may be put forward and they do not, of themselves, demonstrate a need, while it is also possible that the situation has changed from when this development was being conceived through to now.

29. I accept that the assessment of need for pitches is a complex calculation, taking into account those who fall within or outside of the definition in the PPTS, as well as also making an allowance for those whose compliance with that definition is unknown. I appreciate too that the future residents would be part of a community that falls under the protected characteristics within the Public Sector Equality Duty. However, I anticipate such judgements have been factored into the Council's stated position, and I have no firm evidence to lead me to refute that. Additional site allocations may well be required to meet need going forward, but that does not necessarily mean a need exists now. As a result, and on the evidence before me, the appellant's points are not sufficient to outweigh the more quantified evidence offered by the Council.

30. The Council's identified figure for the provision of gypsy and traveller sites should not be treated a cap, and sites over-and-above that figure may well be acceptable. The scheme would also no doubt bring some limited economic and social benefits from the introduction of 3 more pitches and a settled base for their occupiers, who, as stated, would be part of the Gypsy and Traveller community. However, even taking account of my responsibilities under the Public Sector Equality Duty, I consider these points, whether taken by themselves or together with the others above, do not justify the additional pitches in the face of the identified development plan conflict.

31. Indeed, even if there was in fact a slight shortfall in the provision of pitches for gypsy and traveller development, given the impact on the area and the distance from services I am not satisfied that the benefit of these 3 extra pitches would outweigh this harm.

32. Finally, the nature of my concerns means I have no reason to consider a temporary permission would be appropriate.

**Conclusions**

33. Accordingly, I conclude the proposal would cause harm by reason of its distance to services and its impact on the character and appearance of the area, resulting in a development plan conflict, and, in the absence of any material considerations to indicate otherwise, the appeal should be dismissed.

*JP Sargent*

INSPECTOR