



Appeal Decision

Site visit made on 29 June 2020

by David Cross BA(Hons) PgDip(Dist) TechIOA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 December 2020

Appeal Ref: APP/G2713/W/20/3252056

Rosies Ranch, Busby Lane, Great Busby TS9 7AS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr J Stephenson against the decision of Hambleton District Council.
 - The application Ref 19/02559/MRC, dated 2 December 2019, was refused by notice dated 9 April 2020.
 - The application sought planning permission for use of land as a private gypsy site for one family without complying with a condition attached to planning permission Ref APP/G2713/W/16/3164515, dated 14 December 2017.
 - The condition in dispute is No 1 which states that: The use hereby permitted shall be for a limited period being the period of two (2) years from the date of this decision.
 - The reason given for the condition is: Bearing in mind the need to allow sufficient time to find an alternative site with planning permission, and the local planning process to take its course, I consider two years is justified and reasonable.
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Decision

1. The appeal is allowed and temporary planning permission is granted for two years for use of land as a private gypsy site for one family at Rosies Ranch, Busby Lane, Great Busby TS9 7AS in accordance with application Ref 19/02559/MRC without compliance with condition number 1 previously imposed on planning permission ref APP/G2713/W/16/3164515, dated 14 December 2017, but subject to the following conditions:
 - 1) The use hereby permitted shall be for a limited period being the period of two (2) years from the date of this decision.
 - 2) The occupation of the site hereby permitted shall be carried on only by Mr Jonathan Stephenson and his resident dependants only. When the land ceases to be occupied by Mr Jonathan Stephenson and his resident dependants, or at the end of 2 years, whichever shall first occur, 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, in accordance with a scheme and timetable of works that shall first have been submitted to and approved in writing by the local planning authority.

- 3) There shall be no more than one (1) pitch on the site and on the pitch hereby approved no more than two (2) caravans whatsoever shall be stationed at any time of which only one (1) caravan shall be a static caravan as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 as amended.
- 4) The static caravan shall be sited in accordance with site plan 1:500 at A4 N Ref-GB2. The caravan shall only be positioned in the approved location.
- 5) No more than one commercial vehicle shall be kept on the land for use by the occupiers of the caravans hereby permitted, and it shall not exceed 3.5 tonnes in weight. No commercial activities shall take place on the land, including the storage of materials.

Procedural Matters

2. Planning permission was granted for the use of the land as a private gypsy site on appeal on 14 December 2017, and this was granted for a two year temporary period. The application which has led to the appeal before me was made before the expiry of that permission. I have dealt with this appeal on the basis that the appellant is seeking to vary Condition No 1 of the original permission which limited the period of the permission, with the intention that the site can then be occupied on a permanent basis.
3. There is some variation in the wording of the location of the development on the application form, decision notice and subsequent appeal documents. I have used the wording as given on the previous appeal decision in the interests of consistency.
4. During the course of this appeal the Council published a new Gypsy and Traveller Accommodation Assessment (GTAA) in October 2020. The appellant has been provided with the opportunity to comment on this and I have had regard to the comments raised.

Main Issues

5. The main issues are:
 - The effect of the proposal on the character and appearance of this area of countryside;
 - Whether any harm is outweighed by other considerations including the level of need for gypsy and traveller sites, personal circumstances, alternative provision and human rights; and
 - Whether a further temporary planning permission would be reasonable or necessary.

Reasons

Character and Appearance

6. The appeal site is located to the east of the hamlet of Great Busby which contains a mixture of dwellings and agricultural buildings. Although the previous Inspector described the site as having an "edge of settlement location", I saw that the site is distinctly separate from the scattering of buildings which make up the hamlet. The area in which the site is located has

- a rural character and in that regard my observations of the area reflect those of the previous Inspector.
7. Within this rural context, the appeal proposal appears as an obviously residential feature projecting into the countryside. This is exacerbated by the location of the mobile home on the crest of a small ridge which means that this is a prominent feature in views from the surrounding area, including from a road to the north west. The access road to the site also enables views of the mobile home and associated domestic paraphernalia from the road to the south. The design of the entrance to the site is also of a domestic scale and appearance, which emphasises the projection of this residential development beyond the extent of the hamlet.
 8. I am also mindful that should permission be granted on a permanent basis, there may be pressure for further facilities on the site such as a day room. This would cause further harm to the character and appearance of this area of countryside due to the introduction of further development in this obtrusive location. This reflects similar concerns expressed by the previous Inspector.
 9. The appellant contends that the circumstances of the site have changed due to the introduction of landscaping and built development in the area. However, I saw the landscaping was of limited effect in screening the site, although I acknowledge that this will take time to mature. However, even once the landscaping is established, I consider that the residential use of the site would still be apparent in this area of countryside.
 10. An agricultural building of a significant size has been erected to the north east of the site, and I have had regard to the plans provided by the appellant which show the construction of further agricultural buildings. However, these buildings are in a more appropriate location set lower within the landscape and do not justify the appeal proposal in a more prominent location. Furthermore, the appeal site is distinctly separate from the recent and proposed agricultural buildings, and these do not integrate the appeal site into a wider area of development.
 11. Reference has been made to a replacement mobile home on a site nearby and this was apparent on my site visit. However, I have not been provided with full details as to the background of this development. In any event, the mobile home I observed served to demonstrate the incongruous appearance of this form of residential development in this location.
 12. For the reasons stated above, I conclude that due to its prominent and obtrusive location, the proposal would lead to significant harm to the character and appearance of this area of countryside. The proposal would be contrary to the National Planning Policy Framework (the Framework) with regard to ensuring well-designed places as well as conserving the natural environment including recognising the intrinsic character and beauty of the countryside. The proposal would also conflict with the Planning Policy for Traveller Sites with regard to positively enhancing the environment and increasing its openness.
 13. In its reason for refusal, the council has made general reference to Development Plan policies but has not specified which policies it considers apply to this main issue. However, the previous appeal decision identified policies CP1, CP2 and CP4 of the Council's Core Strategy 2007 as well as policy DP14 of the Development Policies 2008 as being relevant to the consideration

of character and appearance. For the reasons stated previously, I conclude that the proposal would conflict with the landscape and natural environment requirements of policies CP1 and CP4 of the Core Strategy and DP14 of the Development Policies.

14. I find no conflict with policy CP2 of the Core Strategy on this main issue as this relates to access to services rather than character and appearance. However, this does not negate my conclusions regarding the other policies of the adopted development plan.
15. The Council Officers report also refers to policies S3 and HG6 of the emerging Hambleton Local Plan (the emerging Local Plan) which is currently undergoing examination and is anticipated for adoption by mid-2021. The appeal proposal is not supported by policy S3 which sets out the spatial distribution of development and identifies Great Busby as being a Small Village where no housing sites are allocated. The proposal would also conflict with policy HG6 due to the identified harm to landscape character. However, given the stage of preparation of the emerging Local Plan I give these policies limited weight and they are not a determinative consideration in this appeal.

Other Considerations

16. The circumstances of the appellant's family were considered in detail as part of the previous appeal relating to the site, including the particular needs of one of his children. Those circumstances have not fundamentally changed since that decision, although the family has become more established in the area in respect of access to facilities and support services, including education and healthcare. As such, the benefits identified in the previous appeal continue to apply in this case, with the added weight to be given to the length of time the family has had a settled base in this area.
17. Based on the evidence before me, there are no suitable alternative pitches that are available to the family, either on public sites or privately owned land. This lack of sites is reflected in the recent GTAA which identifies a need for 57 pitches for gypsy and traveller households up to 2035, with 39 of those being required by 2024. There is a real possibility that should the family be required to move then they would need suitable accommodation and there is nothing before me to demonstrate that a site would be available in the short to medium term. That said, there is also no substantive evidence that the appellant has been actively seeking to identify alternative sites which are better located in respect of character and appearance or planning policy.
18. There are children living on the site and their best interests are a primary consideration for me. I understand that the children have become more settled at their schools and that there is family support in the area. If the appellant and his family are required to move then this may be disruptive to the childrens' progress at school and the support that is in place, and I am mindful of the particular circumstances of one of the appellant's children. It would therefore be in the best interests of the children to continue to have access to education and health services as well as family support. Ideally this should be at the same education and health facilities that they access at present and are familiar with.
19. However, access to these facilities is not only available from the appeal site. It may therefore be that similar access could be provided at another site in the

area which does not raise the same issues regarding character and appearance. The adoption of the emerging Local Plan would provide more certainty regarding site selection and in that regard the best interests of the children only carry limited weight in favour of a permanent planning permission in this location at this time. Furthermore, whilst a further temporary permission may require the family to relocate to another site, it is not uncommon for families to move home even if that requires children to change school and support facilities.

20. I am mindful of the rights under the Human Rights Act 1998, which are qualified and interference with them may be justified where in the public interest. The appellant and his family are gypsies who are a protected group for the purposes of the Equality Act 2010. The requirements of the Public Sector Equality Duty are to eliminate discrimination and to promote equality and good relations between those with protected characteristics and those without. The concept of proportionality is crucial. In this case such interference with the appellant and his family's rights would be in accordance with the law and in pursuit of a well-established and legitimate aim, the protection of the character and appearance of the countryside. In the context of this case, the harm to character and appearance which would arise from the permanent use of the site outweighs the human rights of the appellant's family.

Planning Balance

21. I have concluded that the development to which this appeal relates causes significant harm to the character and appearance of this area of countryside, despite development in the area since the previous appeal. It conflicts with policies CP1 and CP4 of the Council's Core Strategy as well as policy DP14 of the Development Policies and I attach very significant weight to this harm.
22. I am mindful of the considerations in support of the proposal. The GTAA identifies a significant need for gypsy and traveller sites. Although the proposal is for a single pitch, it would contribute to meeting that need and this carries moderate weight in favour of this appeal, at least in the short to medium term. However, the matter of need will be a consideration in the examination into the emerging Local Plan and subsequent decisions based on that plan. It has not been demonstrated that the identified need cannot be met through proposals assessed against future development plan policy, and on that basis this matter carries limited weight in favour of a permanent permission for this site.
23. On the basis of the evidence before me, there are currently no alternative sites for the appellant in this area, which may lead to a risk of roadside encampment should the appellant be required to leave the site in the near future. The circumstances of the family could also carry significant weight, including their human rights and the best interests of the children. However, in the longer term, the adoption of the emerging Local Plan would give the appellant more certainty in identifying a suitable site which complies with planning policy. On that basis, the lack of suitable alternative sites carries limited weight in favour of the permanent occupation of the appeal site at this moment in time.

Temporary Planning Permission

24. Planning permission was granted for a 2 year period by the previous appeal decision as at that time there was a reasonable expectation of a change in

planning circumstances in the very near future, because of progress made with the emerging Local Plan. This included addressing uncertainties in the GTAA as well as a new criteria-based gypsy and traveller policy. The emerging Local Plan has not progressed towards adoption within the timescale originally envisaged, although it is now at the examination stage and there is a reasonable degree of certainty that a new Local Plan and relevant policies will be adopted in 2021. Furthermore, the Council has published a new GTAA which provides further evidence for the examination of the emerging plan as well as consideration of future proposals for gypsy and traveller sites.

25. The appellant has requested a longer period of permission were I to grant planning permission on a temporary basis, as this would enable his children to complete their progression through local schools. However, this would not address the fundamental concerns regarding the harm to the character and appearance of this area of open countryside as well as the timescale for changes in planning circumstances. I am also mindful that the adoption of the emerging Local Plan may enable a site to be identified which would address the concerns relating to education and other support. I consider that a further 2 year permission is appropriate to allow for the adoption of the emerging Local Plan, as well as enabling the appellant to identify alternative accommodation with planning permission in this area based on future adopted policies and the evidence of the GTAA.
26. The Council has requested a shorter temporary period of permission due to the timescales associated with enforcement action. However, I consider that this would not give the appellant and his family an appropriate degree of certainty regarding the potential to identify alternative accommodation based on emerging development plan policy.
27. The Planning Practice Guidance states that it will rarely be justifiable to grant a second temporary permission. However, the changing circumstances of planning policy identified in the previous decision have not been addressed within the period of that planning permission. On the basis of the evidence before me, and exceptionally, the changing circumstances of planning policy provide a clear rationale for a further temporary permission for a 2 year period.

Conclusion

28. For the reasons given above, I conclude that the permanent use of the land as a private gypsy site would lead to significant harm to the character and appearance of this area of countryside. However, my concerns regarding character and appearance are outweighed by the circumstances of the appellant's family and the emerging Local Plan, provided that planning permission is limited to a period of 2 years from the date of this decision.
29. Having regard to the conditions on the previous permission for the site, a condition limiting occupation to the appellant and his resident dependants is necessary as it is the circumstances of the appellant's family which are a crucial consideration in my decision on this appeal. A condition specifying the maximum number of caravans and pitches is necessary to control the scale of the development. Conditions regarding the siting of caravans as well as commercial activity and the type of vehicles are required in the interests of character and appearance. I have not imposed a condition limiting the occupation of the site to gypsies and travellers as permission has been granted

on a personal basis to Mr Stephenson and his dependants, and it has previously been determined that they have gypsy and traveller status.

David Cross

INSPECTOR