

---

## Appeal Decision

Hearing held on 7 April 2021

Site visit made on 9 April 2021

**by Darren Hendley BA(Hons) MA MRTPI**

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

**Decision date: 29th April 2021**

---

**Appeal Ref: APP/H1840/W/19/3244056**

**Land south of Ox Orchard, Dough Bank, Ombersley, Droitwich, Worcestershire WR9 0HN**

- 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 Patrick Doran against the decision of Wychavon District Council.
  - The application Ref: 19/00235/FUL, dated 28 January 2019, was refused by notice dated 25 September 2019.
  - The proposed development is a change of use of land to use as a residential caravan site for one gypsy family, including laying of hardstanding, erection of amenity building and improvement of access.
- 

### Decision

1. The appeal is allowed and planning permission is granted for a change of use of land to use as a residential caravan site for one gypsy family, including laying of hardstanding, erection of amenity building and improvement of access at land south of Ox Orchard, Dough Bank, Ombersley, Droitwich, Worcestershire WR9 0HN in accordance with the terms of the application, Ref: 19/00235/FUL, dated 28 January 2019, subject to the conditions in the attached schedule.

### Procedural Matters

2. Planning permission has been previously granted on appeal<sup>1</sup> on the site for the material change of use of the land to use as a residential caravan site for one gypsy family, including the laying of hardstanding, the erection of an amenity building and the improvement of the access. The development subject of that permission had begun at the time of the appeal decision. The permission included details of various measures by condition that needed to be submitted to and agreed in writing by the local planning authority in accordance with the timescale set out in the condition.
3. Subsequent to that permission, the condition was not complied with and the benefit of the permission was therefore lost. This has led to the submission of the application for the development that is now the subject of this appeal.
4. It was agreed at the hearing by the main parties that the development which is the subject of my appeal decision had commenced. Reference was made to works consisting of a retaining wall and a hardstanding area. On the site visit,

---

<sup>1</sup> Appeal ref: APP/H1840/W/16/3154453

I also observed a touring caravan, although not sited in a position that related to the submitted plans, as well as mounds of building materials, sections of fencing and vegetation. The development is still essentially a proposal in the sense that it is far from being completed. What is for my consideration is as shown on the submitted plans and not any alternative development which has, or has alleged, to have taken place. Accordingly, I have considered the appeal on this basis.

5. The Council's Statement of Case raises matters in relation to the accessibility of the site. This is not referred to in the reason for refusal, which concerns the living conditions of the settled community. Nevertheless, as it is a matter of dispute between the main parties, it forms one of the main issues in this case. It is also an issue that has been raised by interested parties. The appellant has also commented on this matter in the appeal submissions and had the opportunity to further respond at the hearing to my questions. Hence, there is no possible prejudice.

### **Main Issues**

6. Taking into account the above, the main issues are (i) the effect of the proposal on the living conditions of the settled community; and (ii) whether it would be in a suitable location with regard to the accessibility of services.

### **Reasons**

#### *Living Conditions*

7. The appeal site consists of a corner plot of land that is split over two levels. It lies within a small area of dwellings known as Dough Bank. A private road separates the site from properties known as Castle View, Hillcrest and Bumble Bee. On one side, it is bordered by a property known as Snowdown. Compared to these properties, the site is elevated. The property known as Ox Orchard lies on higher ground to the rear of the site and mature trees protected by a Tree Preservation Order lie close to the raised common boundary. The private road that accesses Dough Bank leads off Powers Lane, which joins onto the A4133 after a short distance.
8. There is no dispute between the main parties that the appellant and his family meet the definition of gypsy and traveller, under the Planning Policy for Traveller Sites (2015) (PPTS). Dough Bank comprises dwellings that are occupied by the settled community.
9. Policy SWDP 17 of the South Worcestershire Development Plan (2016) (SWDP) is the main development plan policy that concerns gypsy and traveller development. Part C of the policy sets out the criteria against which the suitability of proposals and planning applications will be assessed. Criterion vi. concerns whether there is any significant impact on privacy and residential amenity for both site residents and neighbouring properties.
10. The Council and in particular the Dough Bank Action Group have detailed a history of events and incidents that are said to have occurred in relation to the site. Such events have no doubt disturbed members of the settled community, as they would also have caused some distress to the appellant and his family. Apportioning blame, though, is not a matter for my decision.

11. A planning permission normally runs with the land, rather than being personally tied to an appellant. It has not been suggested that a planning permission in this case should be of a personal nature. There is also not a reasonable basis to assume that a gypsy and traveller site, in itself, would inherently create an environment of fear related to crime and anti-social behaviour. Where incidents are said to have arisen on the site, these concern the actions of individuals and the particulars of certain events.
12. I have considered the submitted written statements by members of the settled community and I am not unsympathetic to the concerns that have been expressed over the effects that these incidents are said to have had on safety and well-being. However, they are not matters which run with the use of the land and so, in this sense, they cannot be said to dominate the settled community. The same applies when the scale of the proposal for one gypsy and traveller family is considered. It would accord with paragraph 25 of the PPTS in this respect.
13. It has been suggested that the appellant and his family would be better residing on a larger gypsy and traveller dedicated site, for their own safety and security. Such a segregated approach would, in my view, lead to isolation between the settled and gypsy and traveller communities, and be contrary to where paragraph 13 of the PPTS seeks to promote peaceful and integrated co-existence.
14. The Council refer to the potential interaction that would take place due to what it describes as the site's unique position at the entrance to Dough Bank. It is not evident how this would discernibly contribute towards the concerns of the settled community, compared to if it was found further away from the entrance where more dwellings would have to be passed for such a site to be reached. Ox Orchard is also located before the site is arrived at along the private road. As a result, the site's position does not alter my view.
15. Interested parties have also raised other living conditions matters. The main structures would be single storey and separated from the properties opposite by the private road. Hence, the resulting relationship would not be unduly imposing. The windows in the amenity building would not relate to main habitable rooms. Boundary enclosure and planting are also proposed, and there are not insignificant levels of enclosure on the boundaries of the properties opposite. The proposal would also be well separated from the dwellings at Ox Orchard and Snowdown and the respective common boundaries are also well screened. When these considerations are taken together, the potential for overlooking would be of a limited nature and an undue loss of privacy would not arise.
16. Matters in relation to disruption during construction, including deliveries and materials associated with the alteration to the ground levels would be likely to be for a short period only due to the fairly modest nature of the proposal. This would not render it unacceptable.
17. I conclude that the proposal would not have an unacceptable effect on the living conditions of the settled community. As such, it would comply with Policy SWDP 17 C. criterion vi. because there would not be any significant impact on privacy and residential amenity for both site residents and neighbouring properties.

### *Accessibility of Services*

18. Policy SWDP 2 sets out the plan's development strategy, and seeks to bring land use, development and infrastructure considerations together. A settlement hierarchy approach is set out. The site lies outside any development boundary and so is defined as open countryside. Under C., development is to be strictly controlled and limited to, amongst other types of development, that specifically permitted by other SWDP policies. These include Policy SWDP 17.
19. Policy SWDP 17 C. criterion i. is concerned with whether the site is within, or on the edge of, a town or Category 1, 2 or 3 settlement. The nearest such settlement to the appeal site is Ombersley, which lies approximately 1600 metres (m) away from the site. In between is countryside with the occasional building. The proposal, due to its location, would not be within or on the edge of this settlement. Holt Fleet is located considerably closer to the site, but it is not a town or Category 1, 2 or 3 settlement for the purposes of the SWDP.
20. I was also referred at the hearing to where paragraph 25 of the PPTS 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.
21. Paragraph 25 does not though prevent a new site in a rural area and with the proposal's juxtaposition to the existing dwellings at Dough Bank, it would not constitute a new traveller site development in open countryside that is away from existing settlements. How criterion i. deals with the location of such a site in relation to towns and categorised settlements is not the same as the PPTS, which more simply refers to existing settlements. Dough Bank can be considered as such, for the purposes of the PPTS. However, this does not address that the location of the proposal would be at odds with criterion i.
22. Policy SWDP 17 C. criterion x. relates to whether the site has reasonable access to health services, schools and employment. Holt Fleet contains a number of local services, including a convenience store that lies around 650m from the site. There is also a farm shop nearby, a public house and a restaurant. Holt Fleet is accessed via an unlit footway that runs alongside the A4133. Whilst the footway is fairly narrow, it permits segregation of pedestrians from traffic using this road. These services are within reasonably convenient walking distances, as well as for cycling. I am less persuaded that the use of a nearby public right of way would permit ready access because it is less direct and as parts of it are not surfaced. Nonetheless, this would not diminish from the accessibility through using the footway.
23. Ombersley contains a broader range of services, including a school, doctor's surgery and shops, amongst other facilities. As it is more distant and as there is a lack of a regular bus service, there would be more reliance on the use of the private car by the occupiers of the proposal and so this would likely be the primary mode of transport to access these services. The school which the appellant's children would attend is further afield and would also necessitate the use of the car.
24. Overall, the location of the site provides some opportunities for modes of transport other than the car by way of the local services in Holt Fleet, whilst necessitating some use of the car to access the broader range of services in

Ombersley and beyond. This is not untypical for a rural locality where opportunities for the use of modes of transport other than the car may vary from urban areas, as is recognised by paragraph 103 of the National Planning Policy Framework. Thus, it is a location that would have a reasonable level of accessibility to local services for a site found outside an urban area. It would not constitute an isolated location.

25. Nor does the PPTS rule out new gypsy and traveller sites in such locations due to the accessibility to services. Under paragraph 13, it would enable access to appropriate health services and ensure that children can attend school on a regular basis. The modest scale of the proposal would also avoid placing undue pressure on local infrastructure and services.
26. In addition, the proposal would allow the appellant and his family to have a settled base. This would be likely to lessen the requirement for travel, than if the appellant and his family were having to move from site to site. As the appellant's work requires travel in order to carry it out over a broad area, access to employment would be unlikely to be better served from a different location.
27. I have been referred to appeal and planning decisions on other sites in the submissions and at the hearing concerning the accessibility to local services. These have a limited bearing because whether or not a site is accessible in this manner is dependent on a particular consideration of the location and the site circumstances.
28. I conclude that the proposal would be in a suitable location with regard to the accessibility of services. There would be conflict with Policy SWDP 17 C. criterion i. because of the location of the site in relation to a town or categorised settlement. It would however accord with criterion x. as it would have reasonable access to services and, similarly, as regards the PPTS.

### **Other Matters**

29. Whether or not other types of housing development would be permitted in such a location also has a limited bearing. Due to the considerations that arise from a proposed gypsy and traveller site, a particular policy framework applies by way of Policy SWDP 17 and the PPTS. That a site lies outside a defined development boundary does not mean that the proposal under this policy framework is unacceptable. Consequently, I have considered the proposal on this basis.
30. The Full Statement of Case of the Dough Bank Action Group refers to a number of other criteria that are contained in Policy SWDP 17 C. There would not be conflict with criterion v. because the modest nature of the proposal would not cause significant visual impact on the landscape. Landscaping is also proposed, which can be ably addressed through the imposition of a planning condition. Nor is there substantive evidence before me that the amenity value of the protected trees would be adversely affected. It would also not conflict with criterion vii. due to the size of the site and as one pitch is proposed. It would be at an appropriate scale in these surroundings.
31. Criterion viii. concerns highway safety related matters. Whilst both the private road and Powers Lane are narrow, the appellant explained at the hearing that twin units of a smaller size could be utilised for delivery that would then be

assembled on site. This would seem to minimise the potential for damage. The traffic generation from the one proposed pitch would in all likelihood be low and so not dominate the access. The proposal would not be unacceptable in highway safety terms.

32. Criterion xi. relates to good practice on designing such sites. The supporting text to the policy acknowledges that the former national guidance<sup>2</sup> has been cancelled. With regard to the PPTS, the proposal would be in broad accordance with its design aspirations and caravan related developments are not unusual in rural areas. There is also not persuasive evidence that it would cause land stability or biodiversity concerns. Drainage issues would be adequately addressed through adherence with the Water Management Strategy, including the operation of the proposed sewage treatment, amongst other measures.
33. The criteria that are set out in Policy SWDP 17 C. are expressed as those against which the suitability of proposals and planning applications are to be assessed. This part of the policy is not restrictive in the sense that if one or more of the criteria are not met, the policy does not then state that a proposal is to be refused. The main parties agreed at the hearing that a view needs to be taken against the policy, as a whole.
34. The proposal would be in compliance with the criteria that are set out in C., apart from criterion i. When the criteria are taken together, the proposal would comply with part C. because it would accord with the broad thrust of what the policy is seeking to achieve in terms of the suitability of sites. In terms of the remaining parts of the policy, as part A. concerns the constituent local planning authorities' responsibilities in minimum requirements for pitches, B. relates to sites in Worcester and D. involves the occupancy restriction, they have a limited bearing in terms of whether the proposal itself would be in accordance. The proposal would comply with Policy SWDP 17, as a whole.
35. It follows that the proposal would also comply with Policy SWDP 2 because this policy defers consideration under C. for the type of development proposed to Policy SWDP 17. It is these development plan policies that are central to my decision. As the proposal complies with these policies it also complies with the development plan, when taken as a whole.
36. Whilst the PPTS is not referred to in the reason for refusal, it was the subject of much discussion at the hearing. Having regard to my findings above, the proposal would also accord with the PPTS.
37. Whether the Council can demonstrate a 5 year supply of gypsy and traveller sites is a matter of dispute, based on the South Worcestershire Gypsy and Traveller Accommodation Assessment, Final Report, October 2019 and the most recent Authorities Monitoring Report, March 2021. The Council also considers that it is seeking to meet the future need for pitches through the Traveller and Travelling Showpeople Site Allocations Development Plan Document, albeit this emerging plan has not yet been subject to Examination and there was agreement between the main parties at the hearing that it should attract minimal weight. However, as I have found the proposal to be in accordance with the development plan, I do not have cause to consider these matters further.

---

<sup>2</sup> Department of Communities and Local Government (2008) Good Practice Guide on Designing Gypsy and Traveller Sites

38. I have been made aware of the long planning history of the site and the court proceedings. With regard to the previously allowed appeal decision, and whilst my overall conclusion is the same, I have considered the appeal before me on its own merits in light of the more up-to-date evidence that has been presented. Issues which have been raised over the compliance with conditions on that planning permission and why the benefit of that permission was lost are not for my consideration. My decision solely concerns the proposal which is the subject of this appeal, even if it is of a similar nature.
39. The submitted plans provide sufficient detail in order for me to come to a decision based on what is proposed. In terms of landownership and access rights, an appellant does not have to own all the land in question to seek planning permission, even if this did apply in this case. In relation to the appellant's reported attempt to sell the site, a planning permission would in any event run with the land rather than the individual. Private legal rights regarding land ownership are also not for my consideration.
40. Article 8 of the Human Rights Act 1998 (Article 8) bestows the right to private and family life and for the home. With regard to the settled community, the particular public or community interest lies in the effect on their living conditions. For the reasons that I have set out above, this would not be unacceptable and it would accord with the relevant planning policy objectives. It would not constitute an excessive or disproportionate effect on the interest of the affected persons. Granting planning permission would not therefore conflict with Article 8. As the proposal would accord with the development plan, the personal and family circumstances of the appellant, and human rights issues concerning the best interests of children, do not require further consideration.

### **Conditions**

41. In the interests of certainty, I have imposed a condition concerning the approved plans. I have also imposed conditions by way of the occupancy of the site and the number of caravans for reasons of, respectively, meeting the needs of gypsy and travellers, and in the interests of protecting the character and appearance of the area.
42. As the development has commenced, a condition with regard to the statutory timescale for implementation is not necessary. However, a condition requiring a scheme is necessary so that a number of matters are dealt with satisfactorily. The condition requires the appellant to adhere to a timetable for dealing with these matters in order to make the development acceptable in planning terms. As development has commenced, a negatively worded condition to secure approval and implementation of these matters would not be enforceable. In the event that the matters are not submitted for approval in the timescale set by the condition, approved and then implemented in accordance with the approved timetable, the benefit of the planning permission would then be lost.
43. The matters under the scheme comprise sewage and surface water disposal in accordance with the Water Management Strategy, in the interests of satisfactory drainage; external lighting details, in the interests of protecting the character and appearance of the area, and biodiversity interests; the slab level, in the interests of protecting the character and appearance of the area; and, landscaping related matters, also in the interests of protecting the character and appearance of the area. The condition also provides for replacement

- planting in the event that trees or plants die, are removed or become seriously damaged or diseased.
44. I have also imposed conditions over the ancillary use of the proposed amenity block building, preventing commercial activities taking place on the site and a vehicle weight limit. These are all imposed in the interests of protecting the character and appearance of the area. A condition is also imposed by way of the access, in the interests of highway safety.
45. I have not imposed a condition concerning a temporary permission as I have found that the proposal complies with the development plan as a whole and the PPTS. Whilst compliance related matters were raised in the discussion on conditions at the hearing, in the event that this arises, it is a matter for the Council and the appellant.
46. Even if permitted development rights exist for external lighting and the type of development proposed, the Planning Practice Guidance: Use of planning conditions cautions against the use of conditions to restrict such rights. No compelling justification was put to me in this regard.
47. Where I have altered the wording of the remaining conditions put forward by the Council, I have done so in the interests of precision and without changing their overall intention.

### **Conclusion**

48. I have found that the proposal would not cause unacceptable harm to the living conditions of the settled community. Furthermore, it would be in a suitable location with regard to the accessibility to local services. The proposal would comply with the development plan, when considered as a whole, and the PPTS. There are no material considerations which indicate that a decision should be taken other than in accordance with the development plan. For the reasons set out above and having regard to all matters that have been raised, the appeal should be allowed subject to the conditions.

*Darren Hendley*

INSPECTOR

## **APPEARANCES**

### **FOR THE APPELLANT:**

Philip Brown BA (Hons) MRTPI

Patrick Doran

Philip Brown Associates

Appellant

### **FOR THE LOCAL PLANNING AUTHORITY:**

Nina Pindham

Councillor Tony Rowley

Emma Worley BA (Hons) Dip EP MRTPI

Counsel

Wychavon District Council

Wychavon and Malvern Hills  
District Councils

### **INTERESTED PARTIES:**

Councillor Christopher Day

Howard Robinson

Richard Jones

Emma Richards

Wychavon District Council

Local Resident

Local Resident

Local Resident

## **DOCUMENTS SUBMITTED AT THE HEARING**

1 Policy SWDP 2 of the SWDP

2 South Worcestershire Gypsy and Traveller Accommodation Assessment, Final Report, October 2019

3 South Worcestershire Development Plan Review, Authorities Monitoring Report, March 2021

4 Denise Duggan, Explanatory note on 5 year land supply position, 22/03/2021

## **Schedule of Conditions**

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans: Site Location Plan Scale 1:1250, Site Layout Plan Scale 1:200, Proposed Amenity Block Elevations and Floor Plan Scale 1:50, Dough Bank Original & Proposed Levels Horizontal Scale 1:200 Vertical Scale 1:100, Dough Bank Cross-Section C-D Horizontal Scale 1:200 Vertical Scale 1:100, Site Layout Plans showing ground levels and tree root protection zones, Fence Detail Scale 1:20, Drawing No. PBA 2 Post & Rail Fence Scale 1:20.
- 2) 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).
- 3) No more than 2 caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 as amended (of which no more than one shall be a static caravan) shall be stationed on the site at any time.
- 4) The use hereby permitted shall cease and all caravans, structures, equipment and materials brought onto the land for the purposes of such use shall be removed within 28 days of the date of failure to meet any one of the requirements set out in i) to iv) below:
  - i) Within 3 months of the date of this decision a scheme for: the disposal of sewage and drainage of surface water in accordance with the submitted Water Management Statement; details of any proposed external lighting; the slab level for the static caravan and hardstanding areas relative to the existing development on the boundary of the site; boundary treatments in accordance with the approved plans as set out in condition 1; and details of tree, hedge and shrub planting and where appropriate earth mounding including details of species, plant sizes and proposed numbers and densities (hereto referred to thereafter as the scheme) shall have been submitted for the written approval of the local planning authority and the scheme shall include a timetable for its implementation.
  - ii) If within 11 months of the date of this decision the local planning authority refuse to approve the scheme or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
  - iii) If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.
  - iv) The approved scheme shall have been carried out and completed in accordance with the approved timetable.

Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter be maintained.

Any trees or plants under the approved scheme which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the

time limits specified in this condition will be suspended until that legal challenge has been finally determined.

- 5) The amenity block building hereby permitted shall not be occupied at any time other than for purposes ancillary to the residential use of the site as a residential caravan site for one gypsy traveller family and not as a separate residential unit.
- 6) No commercial activities shall take place on the land, including the storage of materials.
- 7) No vehicle over 3.5 tonnes shall be stationed, parked or stored on this site.
- 8) The development hereby permitted shall not be occupied until the first 5 metres of the access into the development measured from the edge of the carriageway has been surfaced in a bound material.