

Appeal Decisions

Hearing Held on 8 June 2021

Site visit made on 11 June 2021

by Paul Dignan MSc PhD

an Inspector appointed by the Secretary of State

Decision date: 25 June 2021

Appeal A: APP/Y3940/W/19/3225854

Land west of Bushton Road, Hilmarton, Calne, SN11 8TA.

- 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 John Johnstone against the decision of Wiltshire Council.
 - The application Ref 18/08571/FUL, dated 7 September 2018, was refused by notice dated 20 March 2019.
 - The development proposed is Change of use of land to use as a residential caravan site for one gypsy family with 5 caravans, including no more than one static caravan/mobile home, together with laying of hardstanding, improvement of access and, erection of ancillary amenity building.
-

Appeal B: APP/Y3940/C/18/3218851

Land west of Bushton Road, Hilmarton, Calne, SN11 8TA.

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr John Johnstone against an enforcement notice issued by Wiltshire Council.
 - The enforcement notice, numbered 18/00819/ENF, was issued on 5 October 2018.
 - The breach of planning control as alleged in the notice is without planning permission, the unauthorised material change of use of Land for the stationing and residential occupation of caravans.
 - The requirements of the notice are: a) Permanently cease the use of the Land for residential purposes; b) Permanently remove the caravans from the Land; c) Permanently remove all ancillary residential items and paraphernalia which facilitate the unauthorised use of the Land; Permanently remove from the Land all material used to create the unauthorised hard surface; e) Reinstate the excavated areas of the Land to their original form and levels using soil; and f) Permanently remove all the fencing and gates from the Land.
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(f) and (g) of the Town and Country Planning Act 1990 as amended.
-

Decisions

Appeal A

1. The appeal is allowed and planning permission is granted for Change of use of land to use as a residential caravan site for one gypsy family with 5 caravans, including no more than one static caravan/mobile home, together with laying of hardstanding, improvement of access and, erection of ancillary amenity building at Land west of Bushton Road, Hilmarton, Calne, SN11 8TA in accordance with the terms of the application Ref. 18/08571/FUL, dated 7 September 2018, and subject to the conditions in the Schedule of Conditions attached to this decision.

Appeal B

2. No further action is taken.

Appeal A

3. This appeal is against the refusal of Wiltshire Council to grant planning permission for what is, in effect, the development the subject of the enforcement notice appeal, Appeal B. The appeal is therefore retrospective, insofar as the site is already being occupied as a Gypsy/traveller pitch, albeit the layout differs from that shown on the application plans.
4. The main issues are whether the site location is acceptable in terms of safe and convenient access and access to services and facilities, and the effect on landscape character and the character and appearance of the area.

Policy context

5. The development plan includes the Wiltshire Core Strategy (CS), adopted in January 2015. CS Policies CP1 and CP2 direct the majority of new residential development to existing settlements, with strict control advocated outside of the identified settlements. However, the CS recognises that gypsy and traveller pitches can form an exception to this principle. CS Policy CP47 is concerned with meeting the needs of gypsies and travellers. It is essentially a permissive policy, setting out criteria against which applications would be assessed. Amongst these are that sites should be in or near to existing settlements within reasonable distance of a range of services, be served by safe and convenient vehicular and pedestrian access, and not have an unacceptable impact on the character and appearance of the landscape, also a requirement of CS Policy CP51. It set out the assessed needs that would be met over the plan period (2011-2021). It seems that these were met, but the situation has now changed such that there is a considerable current unmet need, as identified by a recent Gypsy and Traveller Accommodation Assessment.
6. National planning policy is a material consideration. Planning Policy for Traveller Sites (PPTS) is aimed at ensuring fair and equal treatment for travellers in a way that facilitates the traditional and nomadic way of life of travellers while respecting the interests of the settled community. Amongst other things, it expects local planning authorities to increase the number of traveller sites in appropriate locations to address under provision and maintain an appropriate level of supply. PPTS requires local planning authorities to make their own assessment of need for the purposes of planning, to set pitch targets for travellers which address the likely needs, and to identify a supply of specific deliverable sites sufficient to provide 5 years' worth of sites against their locally set targets. As noted above, CS Policy CP47 aims to meet the identified need, but it was prepared in the light of a now superseded assessment. The most recent Wiltshire Gypsy and Traveller Accommodation Assessment (GTAA), completed in June 2020 covers the plan period 2019 to 2036 for the emerging Wiltshire Local Plan. It found that 132 pitches would be needed up to 2036, including 76 for the period 2019 to 2023. It seems likely that much of this need will have to be met from unallocated sites.
7. The Council accepts that the appellants meet the PPTS definition of gypsies and travellers, and on the basis of the evidence submitted I see no reason to come to a different view.

Reasons

8. The appeal site is an area of 0.21ha abutting Bushton Road. It is enclosed by hedgerows, the surrounding land being agricultural fields. There is some evidence that it was previously used for horticulture, but it had clearly been unused for some time and had become overgrown before Mr Johnstone cleared it and moved on. The site is served by a vehicular access that provides satisfactory highway visibility on to what is a relatively lightly trafficked rural road that is of good width and alignment in the vicinity of the site.
9. In terms of location, while PPTS advises strictly limiting new sites in the open countryside away from existing settlements, CS Policy CP47 seeks to ensure that sites are near to existing settlements within reasonable distance of a range of services. The site is some 2.8km from Hilmarton by road, a small settlement which has a primary school, a church, village hall and public house, but limited facilities otherwise. This is where the younger children on the site go to school. In rural areas school trips of this length will usually be by car or bicycle, but there are shorter pedestrian routes using short sections of Bushton Road, then mostly bridleways or public footpaths, the shortest being 1.9km, using 600m of road, and another is 2.7km, including 300m of road. This is a reasonable walking distance, and the road sections are amenable to walking in daylight, having good forward visibility and wide grass verges. Bushton Road is also a designated cycling route.
10. The wider area itself is well served in terms of services and facilities. Calne, some 6.9 km away, is classed as a Market Town and provides an extensive range of key facilities and services. There is a large supermarket about 5km away on the edge of Calne and a bus stop about 2.2km away which is a strategic bus route providing regular services to Swindon and Calne.
11. In PPTS terms the site can be considered as one of those which is physically away from existing settlements, but it is not remote, being accessible from the nearest settlement by foot or cycle, with reasonable access to the major road network for those who need to travel widely to look for work, and from which access to many services and facilities would only involve short journeys. There is also some evidence of integration with the local settled community, including the children's attendance at the local school, with school friends coming to the site to play. Hence, although away from an existing settlement, the site is not in a location that would lead to unsustainable patterns of travel or significant difficulties in accessing services or social integration, and it would not dominate the nearest settled community or place undue pressure on the local infrastructure.
12. On balance, and having regard to the substantial need for traveller sites in Wiltshire, I consider that the site's location would not be contrary to the guidance in PPTS paragraph 25. So far as the locational aspects of CS Policy CP47 are concerned, it satisfies criteria ii and v insofar as it is served by a safe and convenient access, is reasonably proximate to the nearest settlement which can be accessed by means other than private car, and there is a good range of facilities and services in the wider locality.
13. In landscape terms, the site has little in the way of visual impact, being enclosed by dense hedgerows with limited views into the site itself, mainly through the access. The roadside hedgerow is tightly pruned giving it a somewhat domestic appearance, but there are other examples of this along Bushton Road. Bushton

Road itself has only a few well dispersed dwellings along it, but the appeal site fits reasonably well with the established character.

14. The wider landscape is gently rolling terrain characterised by open agricultural fields, but it is evident from the physical and vegetative characteristics of the site that the enclosure as it remains is a well established feature, such that there is little impact on the wider landscape. Again, so far as CS Policy CP47 is concerned, there is no conflict with criterion vi in that the development does not have an unacceptable impact on the character and appearance of the landscape, and it is also in accordance with CS Policy CP51 in that, by substantially retaining the established boundary vegetation, it maintains landscape character.

Other considerations

15. It is now government planning policy that intentional unauthorised development is a material consideration that should be weighed in the determination of planning applications and appeals. The written ministerial statement announcing this policy stated that it applied to all new planning applications and appeals received since 31 August 2015. The change of use of the land was clearly done in the knowledge that planning permission was required, and its development in advance of obtaining permission denied the Council the opportunity to properly assess matters such as ecological impact. It was intentional unauthorised development to which I attach some weight against the grant of planning permission. This is offset to an extent by the weight that I attach to the contribution that the site can make to reducing the unmet need for traveller sites in the county.

Overall balance

16. The development complies with the most relevant policies, CS Policies CP47 and 51, and I find no conflict with the development plan read as a whole. The unauthorised nature of the development is a material consideration that weighs against it, but it is not sufficient in my view to displace the presumption in favour of sustainable development, which for decision taking means approving development proposals that accord with the development plan. The appeal on ground (a) succeeds accordingly, and planning permission will be granted on the deemed planning application
17. In view of the relevant planning policy considerations, and the nature of the development, I shall impose a condition restricting occupation of the site to travellers. In the interests of the character and appearance of the site and surrounding area, and to safeguard residential and visual amenity, and notwithstanding the layout and amenity building details shown on the application plans, I shall impose a condition requiring the submission of a Site Development Scheme which will enable outstanding details to be confirmed and ensure that the site layout and associated works respect the environment and local character. The nature and terms of this condition are necessary because the site has already been developed. The Site Development Scheme will cover the internal layout of the site, including the position of the caravans and the extent of hardstanding, parking and amenity areas, ensure the appropriate positioning of entrance gates to enable vehicles entering the site to leave the highway safely, external lighting, surface water and foul sewage disposal, landscaping and boundary treatment. For the same reasons I shall limit the number of caravans using the site, preclude commercial activities and limit vehicle size.

Appeal B

18. The appeal against the enforcement notice is limited to grounds (f) and (g), respectively that lesser steps than those set out in the notice would suffice to remedy the breach, and that the compliance period should be extended. In view of the success on Appeal A, which results in a grant of conditional planning permission, these grounds do not need to be considered. The notice will remain, but section 180 of the 1990 Act provides that it will cease to have effect so far as inconsistent with that permission. Accordingly I take no further action on Appeal B.

Paul Dignan

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Philip Brown	Planning Consultant
John Johnstone	Appellant
Stacey Johnstone	Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Ben Pearce	Planning Consultant
------------	---------------------

SCHEDULE OF CONDITIONS: Appeal A: APP/Y3940/W/19/3225854

1. 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).
2. No more than 5 caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 (of which no more than 1 shall be a static caravan) shall be stationed on the site at any time.
3. 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 56 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, hereafter referred to as the Site Development Scheme, including details of: proposed and existing external lighting on the boundary of and within the site; the internal layout of the site, including the siting of caravans; areas for vehicular access and turning and manoeuvring; the means of foul and surface water drainage of the site; areas of hardstanding; fencing and other means of enclosure; details of proposed landscaping and existing boundary trees and shrubs and measures for their protection and retention; and details for the provision of a site access, including surfacing, that enables all vehicles using the site to enter the site without stopping on the public highway, shall have been submitted for the written approval of the local planning authority and the said scheme shall include a timetable for its implementation.
 - ii) within 6 months of the date of this decision the Site Development Scheme shall have been approved by the local planning authority or, if 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 Site Development 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, and works comprised in the scheme shall be thereafter retained for the duration of the development.
4. All new shrub, tree and hedge planting required as part of the Site Development Scheme shall be maintained free from weeds and shall be protected from damage. Any plants including existing trees, shrubs and hedges which, within a period of 5 years, die, are removed, or become seriously damaged or diseased, shall be replaced in the next planting season with others of an appropriate size and species.
5. No commercial activities shall take place on the land, including the storage of materials.
6. No vehicle over 3.5 tonnes shall be stationed, parked or stored on this site.