



Appeal Decision

Site visit made on 17 November 2021

by David Smith BA(Hons) DMS MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2 December 2021

Appeal Ref: APP/C1760/W/20/3263132

Land adjacent to the recreation ground, Newton Lane, Barton Stacey, SO21 3RR

- 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 Maurice Stokes against Test Valley Borough Council.
 - The application Ref 20/00466/FULLN is dated 24 February 2020.
 - The development proposed is the change of use of land with associated ancillary development to one gypsy and traveller pitch.
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs has been made by the appellant against the Council and this is the subject of a separate decision.

Main Issues

3. The main issues are:-
 - The effect of the proposed use on the character and appearance of the area;
 - Having regard to local development plan policy, whether the location of the proposed use in the Borough is justified;
 - Whether the proposed use would adversely affect the integrity of the internationally designated nature conservation sites in the Solent; and
 - Whether suitable provision would be made for wastewater disposal.

Reasons

Character and appearance of the area

4. The appeal site is part of a small plot of land to the west of the village of Barton Stacey. The proposal includes the siting of a static timber lodge and the construction of a timber clad dayroom. The layout plan shows an area for storing a touring caravan and a gravel parking area would also be laid out. The area immediately to the east owned by the appellant is shown as grassed and to remain in agricultural use. There is mature vegetation along and beyond the external site boundaries and a native hedge has been planted on the frontage to Newton Lane.

5. The proposed use would be separated from the main core of the village by the recreation ground. There are allotments opposite and open countryside to the west including the military firing range. It would be within the Leckford and Chilbolton Chalk Downs Landscape Character Area which is valued for its open views and big skies. The site is also located at one of the entrances to the village which is identified as a key view in the Village Design Statement (VDS). In its undeveloped state the site contributes to the largely rural character that exists on the fringes of Barton Stacey as it merges into an unspoilt landscape rising away to the west.
6. The static home, dayroom, caravan, hardstanding and vehicles that are part of the proposal would be urbanising features that would detract from the inherent qualities of the land. These features of the proposed use would be particularly apparent from the lane directly in front of the site and from the end of Bransbury Lane close to the junction. The planting that has been undertaken along the front boundary will take some time to provide any meaningful 'softening' of the outlines of the caravans and building. Other close views would be possible from the permissive path that runs alongside and to the south of the site but these would be filtered by existing trees as well as new planting to the rear once it takes hold.
7. There is reference to a comprehensive network of public rights of way that surrounds the site providing long distance views. A key view from the south west is highlighted in the VDS. The site is in a low-lying position with higher land around it. In general, therefore, the proposed use would be appreciated from further afield against the backdrop of the hills, fields and buildings that lie behind it. In addition, the proposal would be screened to a significant degree in longer views by existing vegetation. Whilst not all of this is within the appeal site there is no reason to suppose that it would be removed. The manifestations of the proposed pitch would be glimpsed from the recreation ground but it would not be unduly prominent in the wider landscape.
8. There is a field maple along the front boundary which adds to the local scene by its presence as a valuable stand-alone feature. However, the proposed cesspit would be located close to it. Whether this would compromise the root system has not been investigated and therefore the health of this specimen might be threatened. Its loss would be a negative aspect of the proposal.
9. Before concluding on this issue, the context provided by the Planning Policy for Traveller Sites (PPTS) is relevant. This does not preclude gypsy and traveller sites in rural areas. Furthermore, it implies that sites should not be so enclosed that their occupants appear to be deliberately isolated from the rest of the community. The upshot of this is that traveller sites in the countryside are bound to be, and should be, visible to some extent.
10. If the appeal were dismissed and the site became overgrown then this would give a more natural appearance than at present. It is not obvious that it would then become a dumping ground. In any event, the suggestion that it might be misused in future should not colour this assessment. Similar arguments could be applied to many parts of the countryside which the National Planning Policy Framework recognises for its intrinsic character and beauty.
11. Nevertheless, given that sites are likely to be found in the countryside as well as the small scale of the proposal, the harm to the character and appearance of the area would be limited and localised. The proposal would not, however,

integrate well with its surroundings and so would be contrary to Policy E1 of the Test Valley Borough Revised Local Plan which seeks high quality development. As it would have a detrimental impact on the appearance of the immediate area the proposed use would also conflict with Policy E2 which is concerned with landscape character.

Whether the location of the proposed use in the Borough is justified

12. Local Plan Policy COM13 establishes that development to accommodate gypsies and travellers will be permitted provided certain criteria are met. One of these is that evidence should be provided to justify the reason for the proposal to be located in the Borough. The supporting text indicates that this might include the lack of availability of alternative accommodation, a local connection or employment requirements.
13. The appellant and his wife are the intended occupiers of the site. They have been living to the rear of a house in the Sholing area of Southampton but that property has been sold. The intention is to set up a more permanent home so that Mr Stokes can pursue a traditional gypsy lifestyle. He has family roots in Hampshire which can be traced back over 200 years and was christened in Overton. There are no pitches available in the remaining public site to the north of the county. However, there is no indication that private sites have been sought outside of the Borough especially around Southampton where the appellant has spent most of his life. Neither is there evidence that current family members live in Test Valley. Given his intention to travel for economic purposes there are no particular employment requirements.
14. Whilst family links are important to the gypsy and traveller community, the justification for having a pitch within the Borough is primarily historic and is not sufficiently strong to meet criterion d). However, the PPTS makes clear that local planning authorities should determine applications for sites from any travellers and not just those with local connections. As such, national policy confirms that the consideration of proposals should not be constrained by geography. Consequently there is no objection on this ground even though it does not comply with this part of Policy COM13.

Integrity of the internationally designated nature conservation sites in the Solent

15. The Solent water environment is internationally important. However, there are high levels of nitrogen and phosphorous nutrients which are causing eutrophication and hence depleting oxygen. In turn this is impacting on protected habitats and bird species.
16. The proposed cesspit would be emptied periodically by tanker and the effluent taken to a public wastewater treatment plant for processing and subsequent discharge of treated effluent. It has been calculated that the proposal would lead to a net nitrogen increase and as the site lies within the catchment of the River Test there would be a clear pathway to the Solent. As such, a risk to its interest features and conservation objectives cannot be excluded.
17. The advice of Natural England is that development should achieve nutrient neutrality. The scheme has been registered with the Hampshire and Isle of Wight Wildlife Trust (HIWWT) for the provision of an equivalent amount of nitrogen mitigation. However, this is described as in its infancy. There is also no information about how the situation is being addressed more generally in

Test Valley. The appellant is confident that the Trust's scheme will be able to provide mitigation at the Lower Test site but there is nothing to indicate whether this is realistic or what, if any, progress has been made.

18. It is suggested that a pre-commencement condition could be imposed. However, no detailed mitigation is put forward and there is uncertainty about the delivery of the HIWWT scheme. The advice in the Planning Practice Guidance on *Appropriate Assessment* in relation to construction phases indicates that the competent authority should be certain that the conditions are strict enough to guarantee that the integrity of the site will not be adversely affected. The circumstances of this case do not entirely tally with that scenario but the principle behind that guidance is relevant.
19. To sum up, the effect of one additional traveller site would be small but, in combination with other development, the evidence points to it having a likely significant effect on the habitats sites in the Solent. No specific mitigation is proposed to achieve nutrient neutrality and there is insufficient assurance that this could be secured by condition. Therefore, following an appropriate assessment, the proposal would adversely affect the integrity of the internationally designated nature conservation sites in the Solent. As a result, it would not accord with Local Plan Policy E5 on biodiversity.
20. The appellant maintains that objecting to the proposal for this reason would potentially be discriminatory given that most gypsy sites are located away from mains sewers. However, similar considerations and the same precautionary approach under the Conservation of Habitats and Species Regulations 2017 would be required for any additional residential development with a likely significant effect on the Solent.

Wastewater disposal

21. Connection to mains drainage is not feasible. The proposal includes a cesspit as a package treatment plant was discounted. Reference is made to the Environment Agency's hierarchy of non-mains alternatives but that approach is not incorporated into the Planning Practice Guidance on *Water supply, wastewater and water quality*. Paragraph 020 does not advise that either septic tanks or sewage treatment plants are to be preferred over the other. Neither does Local Plan Policy E7 preclude the use of cesspits per se.
22. Whatever form of non-mains drainage is utilised adequate safeguards would need to be in place. To this end, the position of the cesspit has been adjusted and confirmation given that warning signals would be triggered if the unit is about to reach its prescribed limit. Indeed, notwithstanding the objection on habitats grounds, there is no clear evidence that a cesspit would be unsuitable as a means of dealing with wastewater and no policy requirement for a different method.

Other Considerations

23. The proposed site would be well located in relation to the services and facilities at Barton Stacey which would be accessible on foot. Based on the interview with the Gypsy Liaison Officer (GLO) the appellant meets the definition of a gypsy and traveller at Annex 1 of the PPTS. It is accepted that there is a need for pitches for gypsies and travellers which the proposal would help to meet. The site is of sufficient size to provide for accommodation, parking and turning.

These provisions of Policy COM13 which is directly concerned with gypsies and travellers would therefore be met.

24. Adequate visibility splays would be provided and there would be no unacceptable impact on highway safety arising from the limited traffic generated by a single pitch.
25. The site has previously been cleared of scrub and in view of its current condition there is no evidence that wildlife habitats or species would be adversely affected. Biodiversity enhancements could be secured by condition although the planting undertaken to date effectively compensates for what was lost and this qualifies the benefits that it will provide.
26. The appeal site is in flood zone 1 although the land owned by the appellant to the east is in flood zones 2 and 3. There are ditches around some of this land but the proposal would be in an area at low risk of flooding.
27. The proposed use would be separated by distance and topography from the nearby conservation area and listed buildings including the grade II* listed All Saints Church and Church Farmhouse. As such, it would not have an adverse impact on their settings so there would be no harm caused to the significance of these designated heritage assets.
28. The Framework recognises that the housing needs of different groups in the community should be assessed. The Gypsy and Traveller Accommodation Assessment to 2036 identifies a need in Test Valley for 3 additional pitches for those who meet the PPTS definition. The Assessment also refers to 6 households who do not meet the definition and 11 unknown households. Whilst, as previously observed, the proposed pitch would contribute towards meeting those needs there is no information about whether and how they are being addressed. As such, only limited positive weight can be given to the general contribution of the proposal to increasing the number of private sites.
29. Following the sale of the house in Southampton the appellant is now homeless and "back out on the road". However, the GLO reported that Mr Stokes has always previously lived with family on private land. There is no up-to-date information about his living arrangements although there is no reason to suppose that he has now found a permanent and authorised base. Moving onto a public site is not feasible and the appellant has never lived on Council sites before. That said, there is no evidence about what the alternatives might reasonably be for him. No particular personal circumstances have been highlighted which might weigh in favour of the proposal.
30. Paragraph 24 of the PPTS indicates that consideration should be given to the above matters. In general terms the PPTS seeks to increase the number of traveller sites with planning permission and the site would accord with many of the criteria set out in paragraph 13 which are aimed at ensuring that sites are sustainable. However, the detailed evidence in support of this proposal to set against the objections identified is not strong.
31. Dismissing the appeal would represent an interference with the potential home of the appellant and his wife and with their family life such that Article 8 of the Human Rights Act is engaged. There is also a positive obligation imposed by Article 8 to facilitate the gypsy way of life.

32. The appellant has a relevant protected characteristic and so, as required by section 149(1) of the Equality Act 2010, the public sector equality duty is applicable. There is therefore a need to have due regard to eliminating discrimination, advancing equality of opportunity and fostering good relations.

Overall balance

33. The proposal would cause harm to the character and appearance of the area although that harm would be limited and localised. Because of his limited current connections with the Borough, the appellant does not fall within one of the criteria of Policy COM13 which requires this to be justified. However, given the approach advocated by the PPTS this is not objectionable. As mitigation to achieve nutrient neutrality cannot be assured the proposal would adversely affect the integrity of the internationally designated nature conservation sites in the Solent.
34. Set against these findings the case for allowing the appeal because of the level of local provision and need, the availability of any alternatives and the personal circumstances of the appellant is not strong. Although the proposal would be in line with most of the criteria of Policy COM13 it would be contrary to the development plan as a whole.
35. By virtue of the Habitats Regulations, agreement cannot be given to the project because the integrity of a European site would be adversely affected. This is an overriding consideration and means that that proposed development cannot be allowed to proceed.
36. The human rights interference associated with this conclusion is in accordance with the law and is necessary in a democratic society to protect environmental interests which is a legitimate objective. The public interest cannot be achieved by means that cause less interference with the appellant's rights. Therefore dismissing the appeal is a proportionate response in all the circumstances and a violation of rights under Article 8 would not occur.
37. In accordance with the public sector equality duty, due regard has been paid to minimising the disadvantages suffered by the appellant as someone without a permanent home and to meeting his needs as a gypsy and traveller in so far as they are different to those without a relevant protected characteristic. Whilst ultimately the appeal is to be dismissed, these considerations have been at the forefront of the decision-making process. Because of the significant objections identified the outcome is a proportionate one.
38. There is no indication that the planning circumstances would change in the foreseeable future and therefore no justification for a temporary permission.

Conclusion

39. The proposal would not accord with the development plan and there are no other material considerations to outweigh that finding. Therefore, for the reasons given, it would be unacceptable and the appeal should not succeed.

David Smith

INSPECTOR