



Appeal Decisions

Hearing Held on 23 November 2021

Site visit made on 23 November 2021

by Paul Dignan MSc PhD

an Inspector appointed by the Secretary of State

Decision date: 22 December 2021

Appeal A: APP/P1615/W/18/3215543

Land adjacent the old Railway Cutting, Hawthorne Hill, Oxenhall, Newent, GL18 1RH.

- 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 Mrs T Richards against the decision of Forest of Dean District Council.
 - The application Ref P0738/18/FUL, dated 11 May 2018, was refused by notice dated 28 September 2018.
 - The development proposed is the change of use of land to 2 Gypsy / Traveller pitches, comprising 2 no. mobile homes, 2 no. touring caravans, 2 no. dayrooms, hardstanding and foul drainage.
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Appeal B: APP/P1615/C/18/3215553

Land adjacent the old Railway Cutting, Hawthorne Hill, Oxenhall, Newent, GL18 1RH.

- 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 Mrs T Richards against an enforcement notice issued by Forest of Dean District Council
 - The enforcement notice, numbered EN/0131/18, was issued on 2 October 2018.
 - The breach of planning control as alleged in the notice is without planning permission, the material change of use of the land to a gypsy site with associated facilities and paraphernalia, raised hardstanding and day room.
 - The requirements of the notice are: 1) Cease using the land edged red on the attached site location plan for residential purposes; 2) Remove from the land the static mobile home, touring caravan and all associated drainage and porta loo located within the approximate location hatched blue on the associated site location; 3) Remove from the land the hardstanding and regrade the land evenly within the approximate location hatched blue on the attached site location plan; 4) Seed the regraded land with similar grasses on the existing adjacent land within 6 months from the date the Notice takes effect, or the first planting season, whichever is the earliest; and 5) Remove from the land all other associated residential paraphernalia.
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (b) and (g) of the Town and Country Planning Act 1990 as amended. The application for planning permission deemed to have been made under section 177(5) of the Act as amended also falls to be considered.
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Decisions

Appeal A

1. The appeal is allowed and planning permission is granted for change of use of land to 2 Gypsy / Traveller pitches, comprising 2 no. mobile homes, 2 no. touring

caravans, 2 no. dayrooms, hardstanding and foul drainage at Land adjacent the old Railway Cutting, Hawthorne Hill, Oxenhall, Newent, GL18 1RH in accordance with the terms of the application Ref. P0738/18/FUL, dated 11 May 2018, including revised layout plan Drawing No. 20154/02, and subject to the conditions in the Schedule of Conditions attached to this decision.

Appeal B

2. It is directed that the notice be corrected by the deletion in Section 3 of the description of the breach alleged and its replacement with the words "Without planning permission the material change of use of the land to a mixed use for agriculture and use as a gypsy site with associated facilities and paraphernalia, and raised hardstanding". Subject to this correction the enforcement notice is upheld and planning permission is refused on the planning application deemed to have been made under section 177(5) of the Act as amended.

Appeal A

3. This appeal is against the refusal 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 existing layout differs from that shown on the application plans.
4. The Council accepts that the appellants meet the definition of gypsies and travellers set out in Planning Policy for Traveller Sites (PPTS). On the basis of the evidence submitted I see no reason to come to a different view.
5. The reasons for refusing the application included a failure to demonstrate an acceptable means of access, a failure to demonstrate that the development would not adversely affect biodiversity, and a failure to demonstrate that it would not harm trees. These reasons for refusal have been addressed through the submission of a revised site layout plan, additional ecological information, and a Tree Survey and Arboricultural Constraints Report. The Council no longer contest the appeal on these matters.
6. The application plan showing the site layout (Drawing No. 1080/02) proposed a vehicular access towards the western end of the application site, whereas the revised layout (Drawing No. 20154/02) shows the access taken from an existing field gate further to the west, beyond the site itself but within the appellant's ownership. In both cases the current access at the eastern end is shown as being replaced by native hedgerow. The revised access provides far better highway visibility and avoids any potential for damage to protected trees from construction and use of the access.
7. Revisions such as this may only be taken into account where to do so does not deprive those who should have been consulted on the changed development of the opportunity of such consultation, a principle established in the case of *Bernard Wheatcroft Ltd v SSE* [JPL 1982 P37]. The Council have had the opportunity to consider the revision and raise no objection to its adoption as a revised plan, and I consider that no other party's interests would be realistically or genuinely prejudiced by my considering the appeals on that basis. It does not, in my view, change the development so much that those who should be consulted have been deprived of a proper opportunity to be consulted. I consider

therefore that it is appropriate to consider this appeal on the basis of the revised layout submitted.

Reasons

8. 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.
9. The appeal development is in the countryside about 1.5km from the edge of Newent. Policy CSP.4 of the Forest of Dean Core Strategy (CS), part of the development plan, expects new development to contribute to reinforcing the existing settlement pattern, emphasising the importance of the towns, one of which is Newent, with most changes within towns and villages expected to take place within settlement boundaries. However, Policy CS CSP.6, which is concerned with traveller sites, clearly envisages that traveller sites may be acceptable in the countryside, preferring locations that are reasonably close to or within settlements with local services and community facilities. This approach is consistent with national planning policy on traveller site provision which 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.
10. While there is no dispute that Newent provides an appropriate range of services, along with access to public transport, the Council is concerned that most journeys will be by private motor car, in part because the initial part of the route to Newent would be along Hawthorn Hill, a single lane road without footways or lighting. However, during daylight hours I consider that accessing Newent by foot would not be unduly challenging, certainly it is walking distance and the route is generally pleasant and attractive. The narrowness of Hawthorn Hill and its alignment is likely to make drivers take particular care, and the very light traffic that I saw using the road seemed to be driving at speeds appropriate to the road conditions. As such I do not consider that the relatively short walk to Horsefair Lane leading to Newent, about 500m, would be so intimidating as to discourage walking or cycling to Newent. Indeed it is evident from some of the submissions that Hawthorn Hill is attractive to walkers and is used recreationally as such.
11. But even if most journeys were to be by private car, these would, in the main, be short trips, and the National Planning Policy Framework (NPPF) acknowledges that opportunities to maximise sustainable transport solutions will vary between urban and rural areas. In a situation where there is an acknowledged shortfall¹ of traveller sites within the Forest of Dean, and there are not any identified alternative sites within or adjoining settlements in the district, I consider that the site should not be considered as unsuitable by virtue of its location. The children living on the site are able to access education, all of the occupiers have good access to health care, and there is some evidence of integration with the local settled community. As such I am satisfied that the proposal does not conflict with CS Policy CSP.4 by reason of its location outside of a settlement boundary.

¹ PPTS 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. Local planning authorities are required to identify a supply of specific deliverable sites sufficient to provide 5 years' worth of sites against their locally set targets.

12. The proposed access to the site from the existing field access has highway visibility sight lines that fall below what would normally be regarded as appropriate for roads subject to the national speed limit, but as noted above the character of the road is one which serves to encourage more moderate speeds and a high degree of caution. In this contest I consider the access as proposed to be safe for the level of use that would be likely to be generated by a proposal of this scale, providing reasonable visibility in both directions.
13. In terms of local character and appearance, using the proposed access would enable replanting of the hedgerow section removed to provide the existing unauthorised access, which in turn would see the character of the lane return to that of a hedgerow and tree-lined rural lane without what at present appears as an unexpected and discordant break that detracts from its particular attractive qualities. The existing access also makes the site appear unduly prominent by virtue of proximity to the laneway. Traveller sites are not in themselves uncharacteristic development in the countryside and need not be screened, but the proximity to the highway does cause some visual harm. However, I consider that the hedgerow planting and enhancement proposed, which can be secured by condition, would filter views and satisfactorily soften the impact of development close to the laneway which might otherwise be detrimental to its character.
14. So far as the wider landscape is concerned, there is encroachment into the countryside, but the limited harm in this respect is acceptable in the context of a pressing need for sites in sustainable locations. Subject to the hedgerow re-instatement works, the site would not be a prominent feature, there being few public viewpoints from the relatively enclosed valley topography on the southern side of Hawthorn Hill. With appropriate landscaping and restrictions on the use of external lighting, I consider that the proposed development can be satisfactorily integrated into its surroundings in a way that would preserve landscape character and the character and appearance of the area generally.
15. Overall, I consider that the proposal accords with the criteria for traveller sites set out in CS Policy CSP.6, along with more strategic policies promoting good design and sustainable communities, CS Policies CSP.1, CSP.2 and CSP4 and Policies AP.1 and AP.4 of the Allocations Plan (AP). As such, subject to appropriate conditions I consider that the proposal accords with the development plan read as a whole.
16. The unauthorised nature of the development to date has meant that the Council has been deprived of the opportunity to consider in advance such matters as the effect on trees and ecology. The development in advance of seeking planning permission has also resulted in friction with some of the local community. Notwithstanding that reports have subsequently been provided that address the trees and ecology matters, and provide some reassurance, the timing of the development must be accorded adverse weight. However, in the circumstances I consider that this weight should be limited and, on balance, does not indicate determination of the appeal other than in accordance with the development plan.

Conditions

17. In view of the planning policy context, a condition restricting occupancy to travellers meeting the PPTS definition is necessary, but since my decision has not turned on personal circumstances a personal condition is not necessary or appropriate.

18. As discussed at the hearing, the proposal is for a 2-pitch site for an extended family. It is normal practice to restrict the stationing of caravans on traveller sites to 2 caravans per pitch, but since the site is a family site I shall restrict the overall number of caravans to 4, no more than 2 of which should be a static caravan or mobile home. I shall also require adherence to the approved plans in the interests of local character and highway safety, taking into account the retrospective nature of the development. The approval of full details of the proposed access is also necessary to ensure that it is in keeping with the character of Hawthorn Hill. Further details of landscaping and boundary treatment, including the provision of new hedgerow planting, along with maintenance requirements and tree protection, are also necessary to protect local character and the environment, as are conditions requiring approval for external lighting, details of foul and surface water drainage, and restrictions on the parking of commercial vehicle and the carrying out of commercial activities. Conditions requiring a construction ecological management plan and biodiversity enhancement are necessary to secure biodiversity benefits. For practical purposes I have made some minor changes to the agreed conditions.

Appeal B

Ground (b)

19. This appeal is against the enforcement notice. Dealing first with the appeal on ground (b), which is that the matters enforced against have not occurred, this is solely concerned with the inclusion in the description of reference to a day room, which has not in fact been built. This is a matter that can simply be corrected by deleting the reference to a day room without causing any injustice. A further correction to the description of the breach of planning control is also required. The land the subject of the notice was previously paddocks used for grazing horses, an agricultural use. When the notice was issued a corner of the land was in use as a traveller site, the remainder being in its previous use. The use of the land then was in for a mixed use of agriculture and residential purposes, the residential land being that identified on the notice plan as hatched in blue. An allegation of a material change of use should have regard to the planning unit as a whole, and the use of the planning unit should be described in full. In this case I consider that the appropriate planning unit is the land outlined in red on the notice plan, so the description of the change of use should encompass all components of what is a mixed use. I shall therefore correct the notice to refer to the material change of use of the land to a mixed use for agriculture and use as a gypsy site. This does not cause injustice to the parties.

Ground (a)

20. Ground (a) is that planning permission should be granted for the matters stated as the breach of planning control, but while ostensibly similar to the Appeal A development, the deemed planning application in this case is restricted to that which has already taken place, with some, though limited, flexibility to consider proposed changes. However, I consider that that does not extend to consideration of the revised plan Drawing No. 20154/02, which involves development well away from the developed land the subject of the enforcement notice. I have therefore determined this appeal on the basis of revised layout plan, Drawing No. 18080/02C, all proposed works being confined to the land already developed and falling within the terms of the breach of planning control described in the notice, as corrected. Drawing No. 20154/02C shows a new

access to be constructed to the east of a group of protected trees towards the western end of the site, with the existing access to be closed up and planted. For clarity, highway visibility from the access proposed in Drawing No. 20154/02C is on par with that from the access considered in Appeal A, and my conclusion is that it would also be acceptable in highway safety terms.

21. As with Appeal A, the main issues are the suitability of the site in terms of location, and the effect on the character and appearance of the area. My conclusion on the first main issue follows that on the same issue in Appeal A above, the considerations being the same. The impact on the character of Hawthorn Hill differs, however. Rather than use an existing lawful access, the proposed scheme would see an additional access created in the roadside hedgerow, itself involving the loss of a stretch of hedgerow and limiting the extent to which harm caused by the close proximity of development to the narrow laneway could be mitigated.
22. The loss of established mature hedgerow and the creation of the gap would detract significantly from the established hedgerow-lined rural character of the lane, while the creation of a new tarmac entrance has the potential to cause root damage to the adjoining protected ash tree, which might in turn reduce the contribution that it makes to public amenity and the character and appearance of the area. For this reason I find that the development does not comply with CS CSP.6, or indeed with CS Policy CSP.1 and AP Policy AP4 in that it would not preserve the landscape and local distinctiveness.
23. The shortfall of traveller site provision in the District does not weigh in favour of this appeal given that planning permission has been granted on Appeal A, and similarly, other material considerations such as the appellant's personal need for a site, the availability of alternative sites, the best interests of the children or equality and human rights considerations do not arise. I find therefore that the development enforced against conflicts with the development plan read as a whole, and that the appeal on ground (a) should be dismissed and planning refused on the deemed planning application. This means that the enforcement notice will be upheld, but it ceases to have effect so far as is inconsistent with the planning permission granted² on Appeal A. This has the effect of allowing full implementation of the planning permission on the planning application site, confined to the currently developed area (essentially the blue-hatched land) and the proposed access from the field gate, but precluding any domestic or residential use of the wider enforcement notice land comprising the paddocks. Any such use would be a breach of requirements 1 and 5 of the enforcement notice.

Ground (g)

24. The compliance period of 6 months is more than adequate to cease the use of any of the land outside of the Appeal A application site for residential purposes and to remove the associated paraphernalia. The appeal on ground (g) which is that the time for compliance should be extended, does not therefore succeed.

Paul Dignan

INSPECTOR

² Section 180(1) of the 1990 Act

APPEARANCES

FOR THE APPELLANT:

Dr Simon Ruston	Planning Consultant
Tina Richards	Appellant
Henry Jones	Occupant

FOR THE LOCAL PLANNING AUTHORITY:

Jon Hurley	Planning Consultant
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SCHEDULE OF CONDITIONS: Appeal A: APP/P1615/W/18/3215543

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. There shall be no more than 2 pitches on the site. No more than four caravans (of which no more than two shall be a static caravans), as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 shall be stationed on the site at any time.
3. The development hereby permitted shall be carried out in accordance with the location plan Drawing No TR18-SLP, Survey Drawing No 18080/01, revised Site Layout Drawing No 20154/02, and Dayroom Elevations Drawing No 18080/03.
4. Within 3 months of the date of this decision the details of an external lighting scheme shall have been submitted to the local planning authority for approval in writing. Development shall be carried out in accordance with the approved details, which shall include a timescale for their delivery, and retained for the duration of the development.
5. Within 3 months of the date of this decision details of the means of foul and surface water drainage shall have been submitted to the local planning authority for approval in writing. Development shall be carried out in accordance with the approved details, which shall include a timescale for their construction, and retained for the duration of the development.
6. Within 3 months of the date of this decision details of the proposed vehicular access shall have been submitted to the local planning authority for approval in writing. Development shall be carried out in accordance with the approved details, which shall include a timescale for their construction, and retained for the duration of the development.
7. Within 3 months of the date of this decision details of all proposed fencing and other means of enclosure, details of proposed soft landscaping, including new hedge planting to close the existing unauthorised access and thicken the existing hedges, and measures for the protection of the existing boundary trees in line with the submitted Tree Survey and Arboricultural Constraints Report dated 4 September 2020, shall have been submitted to the local planning authority for approval in writing. Development shall be carried out in accordance with the approved details, which shall include a timescale for their implementation.
8. Any trees or other plants planted in accordance with condition 7 above 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, unless the local planning authority gives written approval to any variation.
9. No further development shall take place until a construction ecological management plan has been submitted to, and approved in writing by, the Local Planning Authority. The scheme shall include detailed methodology for avoiding construction impacts on amphibians, details of the location and timing of works to avoid harm to biodiversity features, arrangements for the supervision of development works by an ecological or environmental specialist, details of ongoing monitoring, including compliance checks by an ecological or environmental specialist during the construction period, and

immediately after the completion of the development. The approved construction ecological management plan shall be adhered to throughout the construction period.

10. No further development shall take place until a small-scale biodiversity enhancement scheme has been submitted to, and approved in writing by, the Local Planning Authority. The approved small-scale biodiversity enhancement scheme shall be fully implemented in accordance with the approved details, which shall include a timescale for its implementation, and it shall be maintained thereafter.
11. No commercial activities shall take place on the land, including the storage of materials.
12. No vehicle over 3.5 tonnes shall be stationed, parked or stored on this site.