
Appeal Decision

Hearing held on 25 January 2022

Site visit made on 25 January 2022

by Martin Allen BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 March 2022

Appeal Ref: APP/Y3940/W/20/3258466

Land on the south west side of Black Dog Hill, Chapmanslade, Westbury BA13 4AD.

- 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 George Hughes against the decision of Wiltshire Council.
 - The application Ref 19/11575/FUL, dated 3 December 2019, was refused by notice dated 18 March 2020.
 - The development proposed is the change of use of land to 2 no. Gypsy pitches and associated works including, 2 no. mobile homes, 2 no. touring caravans, 2 no. day rooms, and associated works.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. At the outset of the hearing, the appellant relayed that the proposed development as shown on the submitted plans was not the development which he would like to construct on site. However, as the scheme detailed on the submitted plans corresponds to that set out in the description of development on the planning application form and is the development that was subject to consultation and publicity, I have made my decision on the basis of the development as applied for.

Main Issues

3. The main issues raised are:
 - The effect of the proposal on highway safety,
 - Whether occupiers would experience satisfactory living conditions, with particular regard to noise,
 - The effect of the proposal on the character and appearance of the area,
 - Whether the development would be served by adequate services, and
 - The effect of other considerations, including the need for gypsy and traveller accommodation, on the overall planning balance.

Reasons

Highway safety

4. Access to the appeal site is gained via a single width lane that leads off the A36 Trunk Road, known as Black Dog Hill. At the junction of the two roads, the A36 comprises two lanes of traffic travelling south-east, with a single lane travelling north-west. There are double white lines separating the two opposing flows of traffic, indicating that no overtaking is permissible to vehicles travelling north-west. The two lanes for south-east travelling traffic allow vehicles to overtake others, due to there being an incline along this stretch of road which can slow larger vehicles.
5. The highways authority for this trunk road, National Highways (NH), indicated that this is a busy part of the trunk road network, with approximately 14,000 vehicles a day using this stretch of road. I observed this also to be the case, with a considerable flow of traffic along the road. Speed survey data from 2018 has been provided, which outlines that the 85th percentile speed was higher than the speed limit of 60mph, being 64mph northbound and 63mph southbound. Whilst I was driving along the road at the speed limit, I was conscious of vehicles overtaking me and thereby travelling in excess of this speed. This reflects comments made by NH, that traffic speeds are at a "high-end".
6. While accepting that the junction exists, its current usage would be limited in that it only serves a single dwelling, as well as providing access to the appeal site which the appellant confirms has been in agricultural use. I accept that the appellant currently has unrestricted access to the site and has confirmed that he does use the junction. However, I am also conscious that in permitting a new residential use, comprising of two pitches, that vehicular trips to and from the development would likely increase substantially over the vehicular movements that take place at this time, notwithstanding the appellants comments that he would only leave and enter the site once each day, leaving in the morning and returning later in the afternoon.
7. When seeking to enter the site, when travelling south-east, it would be necessary to turn left from the trunk road onto the minor road directly serving the site. This would involve slowing on what is a fast and busy section of road, with no advance signage of the turning, potentially resulting in following vehicles having to slow also, or seeking to pull into the outer lane to pass. Given the apparent speeds I observed, this is likely in my view to result in potentially dangerous vehicle movements. When seeking to enter when travelling north-west, while there are double white lines which do not prevent vehicles turning into side roads, it would nonetheless result in traffic slowing and potentially coming to a stop in a single lane on a fast-moving road and crossing two further lanes of traffic, moving at speed. I am also conscious that to avoid this, it would be necessary to travel further along the road to turn and then enter from the opposite direction. Even if this were to occur, it would result in the risk to safety I identify above. All of these situations lead me to find that an increase in the number of vehicles entering the site would result in an increased risk to highway safety.
8. When leaving the site, it is likely that traffic would come to a stop at the junction in order to see whether there was traffic approaching. Vehicles would consequently start from a stationary position entering a road with vehicles travelling at speed. There would therefore be a significant "speed differential" between the traffic entering the trunk road and that travelling along it. In my view, this is also likely to lead to traffic having to move to the outer lane,

- possibly at short notice, or to brake harshly in order to avoid vehicles. This again would present a risk to highway safety.
9. I have also been provided with accident data for the stretch of road within the vicinity of the appeal site. The most recent five-year dataset shows a cluster of six collisions along Black Dog Hill, within close proximity to the site access, with two of these being fatal accidents, two serious and two slight. The two fatal accidents involved vehicles overtaking on the north-west bound carriageway, one crossing the double white lines. The two serious accidents involved a collision with a motorcycle and a collision involving a vehicle making a right turn when travelling north-west. These details only serve to reinforce that the road, from which the appeal site would be accessed, is of a nature where accidents can and do occur. The speed survey data, as well as my own observations, bear out that vehicles also travel the road in excess of the applied speed limit.
 10. I am conscious of the points made in respect of the current usage of the access point by the one existing property and associated vehicles, such as bin lorries, postal delivery vehicles, and the like, as well as the possibility of farm machinery being able to currently use the access. However, these are the existing circumstances, which would in my view already present some risk to highway safety. Nonetheless, I consider that the likely traffic movements associated with the establishment of two pitches of accommodation would be significantly greater than the current level of usage thereby further increasing the risk.
 11. I have had regard to the examples of other development put to me by the appellant, in terms of the increase in traffic that has resulted from the development of new residential properties nearby, as well as reference to other gypsy traveller pitches which utilise substandard accesses. However, there is nothing before me that establishes that these are directly comparable to the appeal scheme and, as such, these examples do not convince me of the acceptability of the proposed access arrangements.
 12. In light of the above, I find that the appeal scheme would result in a severe risk to highway safety at this location. Accordingly, the proposal conflicts with Core Policies 47 and 61 of the Wiltshire Core Strategy (adopted 2015) (the Core Strategy), insofar as they seek to ensure that development has a safe vehicular access. The scheme would also conflict with paragraph 111 of the National Planning Policy Framework (the Framework), in that it would have an unacceptable impact on highway safety.

Living conditions

13. The appeal site lies in close proximity to the A36 Trunk Road, albeit that it lies at an elevated position above the level of the road. At the time of my visit, I observed that there was clearly audible traffic noise that was constant. This appeared to me to be from the fast-moving traffic along this stretch of road. I am also conscious that the road is used by HGV traffic, and this is likely to be at all times of the day and night. Thus, there would be no respite from the traffic noise. Moreover, given the incline in the road at this location, HGV traffic is likely to be slow moving and revving to climb the hill, resulting in a greater level of motor noise.

14. I acknowledge that the difference in levels between the site and the road, together with the presence of some trees along the intervening embankment would temper traffic noise to some degree. However, as I mentioned above, I was very much aware of traffic noise when visiting the site. In the absence of an assessment of the current noise levels, together with the effectiveness of any mitigation, I cannot be satisfied that noise levels would be acceptable for the proposed residential occupation of the site. This is particularly so given the nature of the noise and its likely continuous duration throughout the day.
15. I have had regard to the appellants comments that the site at which he currently resides is directly alongside a main train line and while this is noted, it does not convince me that noise levels at the appeal site would be acceptable.
16. According, I find that on the basis of the evidence before me in this case, I am not satisfied that the occupiers of the site would experience satisfactory living conditions, with particular regard to noise. Thus, the proposal conflicts with Core Policies 47 and 57 of the Core Strategy, which seek to ensure that appropriate amenity is achieved through development, in respect of this issue.

Character and appearance

17. The appeal site comprises part of a parcel of land on the north-eastern side of the A36 Trunk Road. The site is currently occupied for the storage of some materials, as well as there being an unoccupied static caravan present. It is generally well enclosed by the presence of mature trees, albeit that there are some gaps in the boundary enclosure. The site lies within the Corsley Heath to Chapmanslade Greensand Ridge Special Landscape Area (SLA), and more specifically within the Upton Scudamore Greensand and Chalk Terrace Character Area.
18. The key characteristics of this Character Area are identified as including a distinct pattern of medium and large sized, mainly regular shaped fields enclosed by hedgerows with mature trees, while one of the management strategies and objectives is to conserve and enhance the current pattern of fields.
19. While the SLA was designated after the construction of the realigned A36 Trunk Road, the distinctive field pattern of the area is not reflected in the appeal site, which comprises part of a smaller parcel of land, rather than being a medium or large field parcel. In this respect, it is not reflective of the field pattern that is a component of the value of the SLA in the surrounding area. Notwithstanding the Council's concern over the subdivision of the field into smaller parcels, the submitted details show that there would be some separation provided through the erection of fencing, albeit that much of this would comprise 1.2m post and rail fencing. This would allow the existing size of the parcel of land to remain appreciable and it would not appear as an artificially smaller field than it currently is.
20. In terms of the existing boundary features, as outlined above it is generally well enclosed by trees. This could be further reenforced through the securing of an appropriate landscaping scheme by planning condition. This would align with the objective to enhance the current pattern of fields within the character area.

21. I note that it is contended that the introduction of the mobile homes, dayrooms and other associated elements of the scheme would have an urbanising effect on the landscape. However, I am also conscious that the development of Gypsy Traveller sites in the countryside is acceptable in principle, with paragraph 25 of the Planning policy for traveller sites (PPTS) advising that traveller sites in the countryside should be strictly limited but does not prevent them entirely. Thus, it is inevitable that there would be some effect resulting from such development.
22. In terms of its visual effect, the site is well-contained within the wider landscape and there are limited vantage points from where the development would be visible. The principal view would be from the bridleway which terminates to the north-east of the appeal site and extends east towards Short Street. From this location, there are views towards the site, which lies at an elevated position, and towards the proposed location of the mobile home on Pitch 2. However, the appearance of the mobile home could be softened and mitigated through additional planting along the boundary of the site, and the Council agreed with this view at the hearing. As such, subject to appropriate landscaping, I find that there would be no undue visual effect arising from the proposed development.
23. Accordingly, I find that the effect on the character and appearance of the area would be acceptable. Thus, there would be no conflict with Core Policies 47 and 57 of the Core Strategy or saved Policy C3 of the West Wiltshire District Plan, insofar as they seek to ensure development does not have an unacceptable effect on the character and appearance of the landscape.

Services

24. Core Policy 47 of the Core Strategy requires at criterion iii that the site can be properly serviced and is supplied with essential services, such as water, power, sewerage and drainage, and waste disposal. The appellant confirmed at the hearing that contact has been made with water and electricity suppliers that have confirmed that supplies can be made available to serve the proposed development. Following the close of the hearing, evidence of the enquiries with the suppliers has been provided and I am satisfied that this demonstrates that appropriate connections can be achieved. The appellant has also confirmed that he is able to bear the cost of the installation of the connections.
25. In respect of drainage, septic tanks are proposed and are shown on the submitted site layout drawing. The Council confirmed at the hearing that there is no reason to think that the installation of the septic tanks is not possible and there is nothing that would lead me to conclude otherwise. In addition, the appellant stated that there is a good mobile phone signal at the site.
26. On the basis of the above, I find that the development would be served by adequate services and thus the proposal accords with Core Policy 47 in this regard.

Other considerations

Need for sites

27. The Council undertook to produce a Gypsies and Traveller Accommodation Assessment (GTAA) in the spring of 2019, with the document being published in June 2020. This GTAA was produced to cover the period 2019-2036. This

most recent GTAA identifies that there is a need for 239 pitches during the period until 2036. This need includes 132 pitches for persons complying with the definition of gypsies and travellers as contained within PPTS, 29 pitches for persons who may meet the PPTS definition and 78 pitches for persons who do not meet the PPTS definition. The Council has stated that against this most recent identified need, there is no published five-year land supply position.

28. During the hearing, the Council also confirmed that there are currently no allocations within the development plan to provide new pitches, instead it is relying on private sites coming forward to be assessed under the criteria-based policies. While the Council is currently preparing a Gypsies and Travellers Development Plan Document, this is not envisaged to be published until quarter 2 of 2023. On the basis of the above, it is clear that there is currently a substantial, unmet need for gypsy traveller pitches within the Council area. This matter carries substantial weight in favour of the appeal scheme.

Personal circumstances

29. The appellant currently occupies an authorised pitch on an existing gypsy traveller site. However, I heard that while this used to be a local authority site, it has been sold by the Council and is now run by a private company. Since this time, the costs of living at the site have increased for the appellant, who is finding it increasingly difficult to afford to remain on this pitch. There are also concerns in respect of safety, in respect of remaining on his existing pitch, together with some uncertainty over the operation of the site by the private company. I consider that the current personal circumstances of the appellant therefore carry moderate weight in support of the proposal.

Best interests of the child

30. The appellant's daughter resides with him and as such the best interests of the child is a primary consideration in my determination of this appeal. The appellant's daughter currently attends school and will continue to do so, albeit moving schools, if I were to allow the appeal. The appellant and the child currently benefit from occupying a pitch on an authorised site. However, from the submissions at the hearing, I am particularly conscious that given the increasing financial burden it is likely that the appellant will not remain at the current pitch in the long term. I am therefore mindful of the benefits that a secure, private, settled base would afford to the child in this case and this matter carries significant weight in favour of the appeal.

Planning Balance

31. The scheme would not result in harm to the character and appearance of the area and services can be provided adequately to provide for the needs of the proposed occupiers; these are neutral factors in consideration of the appeal.
32. I am mindful of the significant, unmet need for pitches and the personal circumstances of the appellant; these factors carry considerable weight in favour of allowing the appeal. There are also the needs of the child that are applicable in this case, and this is a primary consideration, that carries significant weight.
33. However, I have identified that in addition to the fact that I cannot be satisfied that the occupiers of the site would experience satisfactory living conditions, there would be harm to highway safety, which in my view would be severe. I

therefore attach the fullest possible weight to this harm, due to the seriousness of the potential consequences associated with harming road safety along this stretch of road, as have been evidenced by the previous fatal accidents that have occurred within the vicinity of the appeal site. Therefore, this matter is decisive.

34. I have considered the possibility of a temporary permission. However, I remain mindful of the living conditions issue, as well as that even a temporary permission would result in additional usage of the junction with the trunk road. As such, I do not consider it appropriate to grant permission for a temporary period.
35. I am mindful that in dismissing the appeal there would be interference with the appellant's rights under Article 8 of the European Convention on Human Rights, as it would deny him and his family the opportunity to establish a home on this site. However, this is not an unqualified right and I consider that any interference would be proportionate in the interests of public safety, due to the highway safety concerns that I have set out above.
36. In exercising my function on behalf of a public authority I am also aware of my duties under the Public Sector Equality Duty (PSED), contained in the Equality Act 2010, which sets out the need to eliminate unlawful discrimination, harassment and victimisation, and to advance equality of opportunity and foster good relations between people who share a protected characteristic and people who do not share it. Since the appeal involves the use of land as a Gypsy site and the appellant is a Gypsy, he has a protected characteristic for the purposes of the PSED. However, having due regard to this, and the need to eliminate discrimination and promote equality, in this case the harm resulting from the proposal to highway safety, would outweigh this requirement.

Conclusion

37. For the reasons given above, I conclude that the appeal should be dismissed.

Martin Allen

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Liz Smith	Appellant's sister
George Hughes	Appellant
Derek Smith	Appellant's Brother-in-law
Rev Jonathan Herbert	Chaplain for Gypsy Travellers, Church of England

FOR THE LOCAL PLANNING AUTHORITY:

David Cox BSc, MSc, MRTPI	Senior Planning Officer, Wiltshire Council
George Harley BA (Hons), MA, CMLI	Principal Landscape Architect, WH Landscape Consultancy Ltd.
Simon Day	Wiltshire Council
<i>Attending virtually were:</i>	
Henning Totz MSc	Senior Planning Officer (Spatial Plans), Wiltshire Council
Marcus Anning HND, IHE(AMIHE)	National Highways
Glen Strongitham CEng, MICE, MCIHT	WSP

DOCUMENTS SUBMITTED FOLLOWING CLOSE OF HEARING

1. Copies of documents from appellant regarding water and electricity connections
2. Copy of Planning Statement submitted with planning application
3. Written agreement from appellant to additions to suggested conditions
4. Details of current waiting lists for Council managed Gypsy Traveller Sites