



Appeal Decision

Site visit made on 1 February 2022

by K A Taylor MSC URP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 May 2022

Appeal Ref: APP/N1350/W/21/3266635

Land Opposite Sovereign House, Hurworth Moor, Darlington DL2 1PZ

- 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 R Cunningham against the decision of Darlington Borough Council.
 - The application Ref 20/00889/FUL, dated 29 September 2020, was refused by notice dated 22 December 2020.
 - The development proposed was originally described as 'application for the creation of five Gypsy-Traveller units'.
-

Decision

1. The appeal is dismissed.

Procedural Matters

2. The site address on the application form refers to '*land to the east of Neasham Road, Hurworth Moor*'. Therefore, for precision I have taken the site address from the Council's decision notice, which is the same as Section D on the appeal form.
3. Notwithstanding the description of development set out above, which is taken from the application form, it is clear from the plans and accompanying details that the development comprises '*change of use of land to Gypsy/Traveller site including erection of 5 no. amenity buildings, siting of 5 no. mobile homes, 5 no. touring pitches with car parking, access road and associated works*'. The Council dealt with the proposal on this basis and so shall I.
4. The existing plan shows the stationing of a static caravan within the site. At the time of the site visit, the site was vacant. I shall therefore deal with the proposal on this basis.
5. s70(2) of the TCPA 1990¹ and s38(6) of the Planning and Compulsory Act 2004, requires that the determination must be made in accordance with the development plan unless material considerations indicate otherwise. Since the appeal was lodged, the Council have adopted the Darlington Local Plan (2016-2036), adopted 17 February 2022, (DLP) which replaces policies cited on the original decision notice. In the interests of natural justice, the main parties have had the opportunity to make representation. Therefore, I have determined the appeal on this basis.

¹ The Town and Country Planning Act 1990 (as amended)

6. A revised version of the National Planning Policy Framework (the Framework) was published on 20 July 2021. In reaching my decision I have had regard to the revised Framework.
7. Following the appeal submissions, a Written Ministerial Statement (WMS) on river basin catchments and relevant watercourses beyond those previously identified as being in 'unfavourable' condition due to high nutrient levels, and protected sites under the Habitat Regulations² was issued on 16 March 2022. Natural England updated the conservation status of the Teesmouth & Cleveland Coast Special Protection Area (SPA) / Ramsar in the Borough of Darlington, in regard to unfavourable nutrient levels. In the interests of natural justice, both main parties have had the opportunity to make representation. In coming to my conclusion, I have had regard to those.

Main Issues

8. The main issues are (i) whether the appeal site is a suitable location for the proposed development; (ii) the effect of the proposal on the character and appearance of the area; and (iii) whether the proposed use would adversely affect the integrity of the European designated nature conservation sites.

Reasons

Suitability of Location

9. The Government's Planning Policy for Traveller Sites (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 in the development plan. The appellant has referred to ODPM Circular 01/2006, however this has been superseded by the PPTS.
10. Policy H9 of the DLP allows new gypsy and traveller sites where the site has satisfactory access to local schools and other amenities. Policy DC1 sets out the sustainable design principles, including that good design will help to reduce carbon emissions and increase the resilience of developments to the effects of climate change. Policy IN1 focuses on delivering a sustainable transport network, encourages greater use of sustainable modes, identifying priorities and actions that all new developments will provide permeability and connectivity for pedestrians and cyclists being the first choice for short journeys.
11. The appeal site lies outside of any defined settlement boundary. The nearest villages would be Hurworth or Neasham. The DLP identifies the settlement hierarchy including that Hurworth is a service village that offers a range of essential facilities and services and the rural village of Neasham, which offers limited-service provision.
12. There is an absence of formal footways linking the site with the wider area along Neasham Road, with the highway being devoid of any street lighting. The site is near to an advisory cycle route with connectivity to a wider cycle network. There is a bus stop further along Neasham Road, which operates during the daytime and includes Saturday and Sundays, serving Hurworth.

² The Conservation of Habitats and Species Regulations 2017

13. I acknowledge the appellant's accessibility map and that there is a public footpath linking through to Hurworth village and a bridleway to Darlington. Despite this, access and navigation would be difficult by either walking or cycling, given the road conditions, distances and that this would be unrealistic throughout the year, particularly in winter months. Neither am I satisfied that the Tees Flex Service would be readily available to future occupants.
14. As such, the opportunities to use sustainable modes of transport are restricted. I consider that most journeys to and from the appeal site for either employment or to reach essential services would be made by private motor vehicles, whether to nearby villages of Hurworth or Neasham, or to the larger urban centres of Darlington. However, these journeys to reach facilities and services within the nearby villages would not be unduly long and Hurworth offers a range of facilities including shops and schools.
15. I am mindful that paragraph 105 of the Framework explains that opportunities to maximise sustainable transport solutions will vary between urban and rural areas. In any event, the provision of a settled base for 5 gypsy households would facilitate access to local facilities, services and schooling, and reduce the likely extent of long-distance travelling, in line with paragraph 13 of PPTS.
16. The appeal site is not in a location away from settlements where traveller sites should be very strictly limited in accordance with PPTS, and it would enable reasonable and satisfactory access to local schools and other amenities. Necessary utilities are capable of provision within the appeal site. On this basis, I conclude that the appeal site is a suitable location for gypsy and traveller accommodation and would accord with DLP policies H9, DC1 and IN4, in locational terms.

Character & Appearance

17. DLP Policy DC1, requires proposals to reflect the local environment and create an individual sense of place with distinctive character, and is supported by Policy ENV3. The policy seeks to protect the character and local distinctiveness of villages and rural areas, and states that development should positively respond to the landscape setting and protect and enhance the natural quality of the rural landscape.
18. DLP Policy H9 allows new sites to be provided for gypsy and traveller sites where, amongst other things, the site is clearly demarcated with pitch boundaries using appropriate boundary treatment and landscaping sympathetic to, and in keeping with the surrounding area.
19. The appeal site comprises of a small parcel of land some 0.37ha to the east of Neasham Road with an existing access point to the west. The land was former grazing land and is relatively flat, enclosed by existing fencing. The appellant confirms the site has been previously subject to unauthorised residential occupation prior to them purchasing the land in 2020, and it was evident from the site visit that fly tipping had previously taken place.
20. There were large quantities of building materials, rubble and other commercial and domestic paraphernalia, which offered little visual merit to the sites existing appearance in the landscape. Towards the northern boundary is an existing gypsy and traveller site and to the south is an agricultural paddock

with grazing animals. I acknowledge that one of the existing sites is unauthorised, but this is not determinative to this appeal.

21. Nevertheless, the appeal site is currently free from built form, open in nature and it adjoins extensive areas of open fields and the wider countryside to which the site relates closely to it. As such, I consider the site's open nature makes a minor contribution to the overall rural setting.
22. The proposal would alter the character of the area through the introduction of mobile homes. In contrast with the existing site use, it would introduce residential use with a new shared private access road and provision of five plots each with a static unit and associated parking / hardstanding. Each of the plots would have its own supporting utility / amenity building constructed of brick, and the site would feature a secure cycle store. However, the site layout is relatively compact, and the plots would be demarcated. Additional planting is proposed, and it is not unusual to see caravans in the countryside, and mobile homes are stationed nearby.
23. In support of the proposal, the appellant has provided a 'Landscape Appraisal' (LA). This acknowledges that there are short distance views of the appeal site, including when approaching by foot on Neasham Road. Medium views were unachievable where vegetation would be at its highest in the summer months, and there were no long-distance views. The LA concludes that the site would be seen in context with the existing gypsy traveller pitches within the surrounding area and would have a negligible impact. Mitigation is put forward which would see new buffer planting around the boundaries and would provide effective screening with management of vegetation at the access/egress point for visibility.
24. Although the site would be screened to some degree, when viewed in combination with the existing sites it would result in further intrusion, creating some negative cumulative impact on this part of the rural landscape. The site would still be viewed from immediate public views along Neasham Road and the layout would result in some erosion of this open part of the countryside between Darlington and the outlying villages. Nevertheless, it would be seen as a relatively small development, in context to the sporadic development within the wider landscape, with limited wider views. Moreover, the additional landscaping, and retention of the front hedges would go some way to further screen the site, and could be secured by condition.
25. For the reasons given above, I conclude that the proposal would cause some limited harm to the character and appearance of the area. This would be in conflict with Policies DC1, ENV3 and H9 of the DLP, as I have already set out.

Nature Conservation

26. Nutrient neutrality requires that competent authorities under the Habitat Regulations carefully consider the nutrient impacts of projects on Habitats sites, and whether those impacts may have an adverse effect on the integrity of a Habitats site that requires mitigation. The appeal site falls within the catchment of the Teesmouth and Cleveland Coast Special Protection Area (SPA)/Ramsar site.
27. The proposal for new residential accommodation has the potential to lead to an increase in additional nutrients reaching the SPA due to the requirement for

foul and surface water drainage systems. Consequently, based on the evidence before me, it is likely that, in the absence of mitigation measures, the proposal would have a significant adverse effect on the integrity of the SPA.

Accordingly, therefore, I have carried out an Appropriate Assessment, including consultation with Natural England.

28. The Appellant has set out that they currently own and operate a number of existing gypsy and traveller sites similar to the proposals. They have a good track record of managing the disposal of both foul and surface water from sites where it is not possible to connect to the existing sewerage network due to the often semi-rural location of gypsy and traveller sites.
29. The appeal site does not adjoin or contain any existing watercourse, and the appellant intends to install cess pits. One cess pit would collect all household and foul waste, with the second collecting all surface water. Both cess pits would be emptied on a regular basis by a professional registered water and foul sewerage management company via tanker and driven out of the area to a treatment plant for full processing.
30. I have taken into consideration all the representations of the main parties, NE and that the appeal should be determined in a timely manner in response to achieving nutrient neutrality within the catchment. However, while a double cess pit, with one collecting household and foul waste, and a second collecting surface water could assist with addressing additional nutrients reaching the Habitats sites. I do not have certainty on this matter, and there are no final designs. It may be that other schemes or processes would be necessary to ensure, for example, that the cess pit would be maintained and emptied by a suitably qualified contractor, or that the collected foul sewage would be treated and discharged at a water treatment works located outside of the River Tees catchment.
31. Given the lack of clarity as to what may be required and uncertainty on the time it may take to have a strategy or contracts in place with practical solutions to resolve this matter long term and for the lifetime of the development, I am not satisfied that it would be reasonable to impose a Grampian condition.
32. The details of the mitigation proposed do not provide sufficient certainty to ensure nutrient neutrality would be achieved and there is insufficient assurance that this could be secured by condition. Therefore, following an Appropriate Assessment, there is insufficient information or certainty to enable adverse effects on the integrity of the European designated nature conservation site to be ruled out. As a result, it would not accord with Policy ENV7 of the DLP, which ensures that sites and features of biodiversity and geodiversity importance are given full and appropriate recognition and protection. Moreover, it would also be at odds with the Framework, in regard to conserving and enhancing the natural environment.

Other Considerations

33. The DLP makes provision for travelling groups at the existing larger council owned sites together with other smaller sites in the Borough to accommodate gypsy and travelling groups. The Gypsy and Traveller Accommodation Needs Assessment (2017) and addendum (2020), (GTAA) was carried out and identified in total 162 pitches. The GTAA concluded that the Borough was well

catered for with an annual need of 1 pitch per annum between 2017-2022. Further need for pitches between 2022-2037 has a calculated projection of 46 pitches, with an annual need of 3 pitches.

34. The DLP sets out there are three existing larger council owned sites at Honeypot Lane and Rowan East & West, which are safeguarded to provide for accommodation needs. In addition, there are a significant number of unimplemented planning permissions on private land within the Borough.
35. The Council have set out they have a 5-year rolling supply, including the supply of 25 pitches coming from the Rowan East extension, and recent developments. There are still transit pitch availability on Honeypot Lane, with the caravan count due to take place again within the year. I have also had regard to a recent appeal decision³ that the Council has drawn my attention to, which relates to an additional pitch on the nearby site.
36. The appellant disagrees with the Council's assessment, and contends that it has a shortfall but that the site is a windfall site. The proposal would provide a settled base for future occupants with 5 pitches. Limited evidence has been provided on where these individuals currently reside and whether their needs would be addressed by any alternative sites. Nonetheless, the proposal would contribute to the supply of gypsy and traveller pitches, which I attach weight to. The proposal is also likely to improve the current general untidy site appearance.
37. From the evidence before me, the five-year requirement is 13 pitches, which can be met at the current time through opportunities to use vacant and allocated pitches on existing sites. Nevertheless, the proposal would make a material contribution to the future supply of pitches that weighs in favour of the appeal. It would also not be of a scale that would dominate the settled community, including in combination with other nearby sites.
38. I note that nearby residents and third parties have raised additional concerns regarding the development. The proposal would not cause any harm to highway safety, and the site layout would allow sufficient space to enable a vehicle to enter and exit in a forward gear safely. I further note that the Highway Authority has not objected to the development on safety grounds. In respect of flooding, the site is within flood zone 1 and would not increase flooding elsewhere. The matter of present unauthorised sites in the Borough, does not justify withholding permission in this case.

Planning Balance

39. I have found harm would be caused by the development to the character and appearance of the area, however this would be limited in my view. I attach substantial weight to my finding that mitigation cannot be assured to achieve nutrient neutrality and that consequently there is no certainty that the proposal would not adversely affect the integrity of the European designated nature conservation site. The proposal would be contrary to the development plan in these respects.

³ APP/N1350/C/21/3266271

40. In the overall planning balance, the benefits of the proposal, including the development would contribute to the supply of gypsy and traveller pitches in the Borough, and would provide a settled base for 5 additional households, are not sufficient in this case by virtue of the Habitat Regulations to outweigh the adverse effects on the integrity of the Teesmouth and Cleveland Coast Special Protection Area (SPA)/Ramsar site. This on its own is sufficient for me to conclude that the proposed development is unacceptable.
41. In coming to that view, I have had due regard to the Human Rights Act 1998 (HRA) and the Public Sector Equality Duty (PSED) under the Equality Act 2010. The appellants and extended family, who intend to occupy the site have protected characteristics for the purposes of the PSED. However, after having regard to all material considerations, I am satisfied that the aim of avoiding adverse effects to the European designated nature conservation site can only be adequately addressed by dismissal of the appeal, which is therefore necessary and proportionate.

Conclusion

42. There are no other material considerations that would indicate that the proposed development should be determined other than in accordance with the development plan.
43. For the reasons set out above, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

KA Taylor

INSPECTOR