



Appeal Decision

Hearing held on 8 June 2022

Site visit made on 8 June 2022

by Helen Hockenhull BA (Hons) B.PI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14th July 2022

Appeal Ref: APP/D3505/W/20/3256118

Land north of Second Pits, Highlands Road, Monks Eleigh, Ipswich, Suffolk, IP7 7QQ.

- 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 D Penfold against the decision of Babergh District Council.
 - The application Ref DC/19/04923, dated 16 October 2019, was refused by notice dated 26 February 2020.
 - The development proposed is change of use of land to 1 no. Gypsy/Traveller family pitch comprising 1 no. mobile home, 2 no. touring caravans, 1 no. dayroom, and associated works.
-

Decision

1. The appeal is allowed, and planning permission is granted for change of use of land to 1 no. Gypsy/Traveller family pitch comprising 1 no. mobile home, 2 no. touring caravans, 1 no. dayroom, and associated works, at Land north of Second Pits, Ipswich, IP7 7QQ in accordance with the terms of the application, Ref DC/19/04923, dated 22 October 2019, subject to the conditions in the attached schedule.

Preliminary Matters

2. There is an extant planning permission on the site for a stable building with access from Highlands Road, a stone track and associated hardstanding area. At the time of my site visit, the access, track and hardstanding area had been put in place along with the foundations for the stable building. These form authorised developments.
3. The appeal proposal is part retrospective as the use of the land has already taken place with the siting of a mobile home on the site of the stable building and the siting of two touring caravans. The dayroom has not been constructed. A 1.8-metre-high close boarded fence has been erected around the hardstanding area, mobile home and touring caravans. This development does not form part of the submitted appeal scheme and is the subject of separate enforcement action by the Council. I have considered the appeal on this basis.
4. A draft Statement of Common Ground was prepared by the appellant before the hearing however this was not agreed or signed by the parties before the event. Whilst the hearing continued on this basis, the parties were able to reach common ground on a number of matters during the proceedings.

5. The Council is in the process of preparing a new local plan. This document has been submitted for examination. A new criteria-based gypsy and traveller policy is proposed. I am aware that the examining Inspectors have raised concern in relation to a number of issues. In light of this, I give very limited weight to the plan in determining this appeal.

Main Issues

6. The main issues in this case are :
- having regard to local and national development plan policy, whether the location of the proposal is appropriate;
 - the effect of the proposal on the character and appearance of the area, in particular the Special Landscape Area;
 - the effect of the proposal on the setting of the Grade II Listed Waggon Farmhouse;
 - whether other material considerations, including the general need for and supply of gypsy sites, the accommodation needs and personal circumstances of the appellant, outweigh any harm identified, such as to justify the development.

Reasons

Appropriate location

7. It is common ground that the appeal site is located within the countryside outside the settlement of Monks Eleigh. Policy CS18 of the Babergh Core Strategy 2014 seeks to provide pitches and plots to meet identified needs of Gypsies and Travellers in the District. It identifies the preferred approach of meeting their needs through strategic housing sites, mixed use developments or through small sites. It goes on to state that proposals for new pitches would be considered against Policies CS2 and CS15, but they also need to be considered within the national planning context, that is the National Planning Policy Framework (the Framework) and Planning Policy for Traveller Sites 2015 (PPTS).
8. Policy CS2 concerns the spatial strategy of the borough and states that in the countryside, development will only be permitted in exceptional circumstances subject to proven justifiable need. The Council accepts that full weight cannot be attributed to Policy CS2 as it fails to fully comply with the Framework.
9. It is implicit in PPTS paragraph 14 that traveller sites may be in rural or semi-rural settings. Paragraph 25 of the PPTS states that local planning authorities should strictly limit traveller sites in the open countryside. It goes on to advise that it should be ensured that sites in rural areas respect the scale of and do not dominate the nearest settled community and avoid placing an undue pressure on the local infrastructure.
10. The proposal for a single gypsy pitch would not be of such a scale to dominate the village. Residents made the case that the two existing residential properties close to the appeal site should be considered to form a settled community. Having regard to the character of the immediate area, my view is that they form sporadic dwellings in the countryside. In any event, even if I were to agree with this premise, a single pitch alongside two residential properties

would not be out of scale or represent a dominant proposal. With regards to the pressure on local infrastructure, it was agreed at the hearing by all parties that a single pitch would not result in such pressures. I have no reason to disagree with this assessment.

11. Turning to the matter of accessibility, Core Strategy Policy CS15 xviii) seeks to minimise the need to travel by car. The site is located approximately a mile from the village. Monks Eleigh is classified as a Hinterland Village in Policy CS2 of the Core Strategy. It has limited facilities but does have a local community shop, a church, pub, village hall and recreation ground. The nearest primary school is in Bilderston, about 3 miles away and the closest secondary school is just over 7 miles away in Sudbury. Public transport in the area is very limited. I was advised that a bus service runs twice a week from Monks Eleigh to Sudbury. Clearly this would lead to a reliance on the car to access a wider range of services and facilities than those in the village.
12. On my site visit I walked the route to the village from the appeal site. Two routes are possible. The first is along a narrow unlit By Road (unnamed) without footways. The second is along Highlands Road, again a narrow unlit route without footways and then along a public footpath running alongside a field edge. The public footpath appeared to be reasonably well used, particularly by dog walkers. Whilst I accept the public footpath may not be feasible to use all year round, there is the alternative surfaced route. Both routes were pleasant, relatively flat and attractive and took between 15-20 minutes to reach the village. The route along the lane would also be suitable to cycle into Monk Eleigh.
13. Both Highlands Road and the By Road, experience very light traffic and I observed that due to the nature of the road, speeds were appropriate for the route with good visibility to observe pedestrians in the road. I acknowledge that there may be large agricultural vehicles using the road on occasion, however overall, I consider that walking into Monks Eleigh during daylight hours, would not be discouraged.
14. I acknowledge that the occupants of the appeal site would most likely need to use the car for trips to Bildeston, a journey time of about 10 minutes, to take children to the primary school or use it to go further afield to access other services, larger shops etc. However, this would not be unusual given the rural nature of the area and such trips would be relatively short. The Framework in Paragraph 105 recognises that opportunities to maximise sustainable transport solutions will vary between urban and rural areas and that this should be taken into account in decision making.
15. The sustainability criteria set out in PPTS paragraph 13 do not include distance from or means of transport to shops and services but refer to considerations unique to traveller site proposals. In this context I conclude that the appeal site has a reasonable level of accessibility to schools, health care and other facilities.
16. The appeal site would therefore be in a suitable location, complying with the objectives of the Framework, the PPTS and CS Policies CS2 and CS15.

Character and appearance

17. The appeal site forms a roughly rectangular piece of land lying to the south of

- the River Brett and north of Highlands Road. A dense canopy of trees lies to the northern boundary running along the watercourse. There are existing hedgerows to the western site boundary with more sporadic hedgerow along the remainder of the southern boundary along the road.
18. The site is located within a Special Landscape Area (SLA). Saved Policy CR04 of the Babergh Local Plan states that development proposals will only be permitted in such areas where they maintain or enhance the special landscape qualities of the area identified in the relevant landscape appraisal and are designed and sited so as to harmonise with the landscape setting. The SLA is a local landscape designation. It is not a nationally designated landscape and therefore does not attract the same level of protection.
 19. The Council's 2015 Landscape Character Assessment identifies the site as being within the Rolling Valley Farmland Character area. The area has an open valley appearance, with unspoilt river meadows near the valley floor, and open higher land with occasional woodland areas contributing to the visual quality of the landscape.
 20. At the hearing the Council helpfully qualified which parts of the development they consider cause harm to landscape character. The site access, track and hardstanding form part of the stable proposal which has an extant planning permission. No objection is therefore raised to these elements of the proposal. The Council also confirmed that the dayroom, which forms a single storey brick-built building with a pitched roof, raises no issues. The area of concern relates to the mobile home and touring caravans, that they would represent alien features in the landscape. The associated domestic paraphernalia would also have a negative impact on landscape character.
 21. The appeal site lies in a dip in Highlands Road. Viewing the site from the north west, the existing boundary hedgerow around the hardstanding area, is in the forefront of the view with the grass paddock to the eastern side of the appeal site rising up beyond. The proposed structures on the site would not readily be visible from this viewpoint, screened by the boundary hedgerow. The existing hedgerow is proposed to be supplemented where necessary with local species to fill in any gaps. Looking at the site from this direction, I consider that the existing and additional planting would effectively screen the proposed development, ensuring that the proposal is assimilated into the landscape.
 22. Looking from the south east, as the road rises towards Second Pits, there is a clear view into the site from this more elevated position. The proposed boundary hedgerow would assist to filter views of the mobile home, caravan and other paraphernalia on the site. This provision would reinforce the field patterns seen in the wider landscape, with boundary hedgerows being a feature of the area's landscape character. The dayroom, about which the Council raises no concerns in visual terms, would be sited forward of the mobile home and touring caravans. In this position, being of a height of around 4 metres it would help to obscure views of the mobile home/caravan from the south east. Additional screen planting could be provided in the paddock area and/or close to the gates into the stoned hardstanding area which would further screen these structures and other domestic paraphernalia on the site. This could be secured through the imposition of an appropriate planning condition should the appeal be allowed.

23. The appellant brought my attention to the approved stables development, which if fully implemented, may result in horse related paraphernalia such as horse boxes being evident in the site. These would have a potentiality negative landscape impact. As there is a reasonable likelihood that the stable building would be implemented if the appeal were to be dismissed, I take account of this fallback position in coming to my decision.
24. Given the above, I find that the combined effect of the proposed landscaping, the siting of the dayroom, the mobile home and touring caravans on the site, would ensure that the proposal would not have an unacceptable effect on the character and appearance of the area and would maintain the landscape qualities of the SLA. The scheme would therefore comply with Saved Policy CR06 of the Babergh Local Plan, Core Strategy Policy CS15 and also the Framework objective of seeking to recognise the intrinsic character and beauty of the countryside.

Heritage Matters

25. Wagger Farmhouse, a Grade II listed building, is located approximately 96 metres to the north of the application site. Three outbuildings form part of the complex, two of which appear to pre-date July 1948 and are therefore curtilage listed. The farmhouse, probably of 16th -17th century origin, forms a two-storey timber framed and plastered building with a cross wing at the eastern end. The significance of the building is derived from its architectural and historic interest. In terms of setting, the agricultural fields, woodland, and paddock of the rural landscape surrounding the farm make a positive contribution.
26. The Council in evidence explained that the introduction of alien features, namely the mobile home and touring caravans, the materials of their construction and their light colour, would cause harm to the setting of Wagger Farm.
27. Setting is the surroundings in which an asset is experienced. The extent and importance of setting is often expressed through visual considerations. The farmhouse is not visible in views from the northwest due to existing vegetation and levels. I observed on my site visit that the farmhouse can be seen from Highlands Road through gaps in the tree cover along the river, with the paddock area of the appeal site in the foreground. From this viewpoint, the appeal proposal would not have an impact on the setting of the heritage asset, as the open rural aspect would be retained.
28. The proposed dayroom, mobile home and touring caravans would be sited to the western end of the appeal site. The River Brett and the associated tree canopy provides a visual separation between the two sites. Looking from the garden to Wagger Farmhouse, the structures on the appeal site would be glimpsed through the trees and vegetation. There is a likelihood that domestic paraphernalia would also be visible. This would clearly be more pronounced in the winter months when the trees are not in leaf. This would erode the rural setting of the listed building and result in harm to its significance.
29. However, the siting of the mobile home and caravans, with the dayroom in the foreground would to an extent limit their visibility. Existing vegetation would provide a good screen in the summer months, whilst additional planting would help address current gaps in the winter. Until such planting was established, there would be less than substantial harm to the significance of the heritage

asset. I agree with the Council that this harm would be at the lower end of less than substantial. Nevertheless, in line with paragraph 199 of the Framework, I must give great weight to the asset's conservation.

30. In line with paragraph 202 of the Framework, the harm should be balanced against the public benefits of the scheme. Given that the harm would be time limited, while planting became established, I consider that it would be of a small magnitude. The provision of a single gypsy pitch would be a public benefit contributing to the unmet need in the borough. Additionally, the release of a site, albeit in a different borough, would have some public benefit.
31. In balancing the small and time limited harm against the public benefits, I consider that the public benefits would be sufficient to outweigh the harm.
32. Accordingly I conclude that the appeal scheme would have an acceptable effect on the Grade II listed Waggars Farmhouse. The proposal would therefore accord with the objectives of section 16 of the Framework and also Policies CS 15 of the Babergh Core Strategy and Saved Policy CN06 of the Babergh Local Plan 2006.

Other matters

33. There is no dispute between the parties that the appellant and his family are travellers meeting the relevant definition set out in the PPTS. I have no reason to disagree.
34. At the hearing there was discussion about the need for gypsy and traveller sites within the local area and the personal circumstances of the appellant. The Council confirmed at the hearing that it could not demonstrate a 5-year supply of gypsy and traveller sites and therefore there was an unmet need in the District. The parties also agreed that there is a lack of suitable, available and affordable alternatives and that the personal circumstances of the appellant should be given significant weight in favour of the appeal. As the harm I have identified is outweighed by public benefits, it is not necessary for me to discuss these considerations in detail.
35. A number of local residents have expressed concern about the proposal on highway grounds. Highlands Road is narrow, unsuitable for large vehicles and has limited passing bays. Whilst the road is narrow, it is lightly trafficked. I accept that agricultural vehicles will use the lane and there is potential for conflict. However, as most trips would be by private car with touring caravans leaving the site from time to time only, I am not persuaded that a highway safety issue would arise in this regard.
36. With respect to the matter of passing places, I note that the highway authority raised no objection to the appeal scheme subject to a number of planning conditions including one relating to the provision of a passing place. This was discussed at the hearing. I observed on my site visit that there are a few places for vehicles to pass and many of these comprise accesses to properties, field tracks etc. However, having regard to the good level of forward visibility on Highlands Road, together with the level of traffic, I take the view that a passing place is not required.
37. The issue of flooding has also been raised by residents. The appeal site lies in Flood Zone 1, an area least likely to flood. Surface water from the site would be dealt with through a soakaway and foul water to a septic tank. Whilst there

may have been localised flooding in the past from the adjacent river, I have no evidence before me to suggest that the site is at risk or that the proposal would increase the risk of flooding elsewhere.

38. The appeal scheme is part retrospective and therefore unauthorised. It is government policy that intentional unauthorised development is a material consideration in determining planning applications and appeals. The rationale of the policy is that if land is developed before obtaining planning permission there is no opportunity to appropriately limit or mitigate harm that may have occurred. Whilst intentional unauthorised development has taken place, as there is an extant planning permission in place and given the lack of alternative accommodation, I afford this limited weight.
39. I note from representations that there is a covenant on the appeal site which prevents residential use. This forms a separate civil matter and not one which I can have regard in this appeal.

Planning Balance

40. I have found that the appeal site forms a suitable location for development and that the proposal would cause no harm to the character and appearance of the area. I have also concluded that there would be no heritage harm.
41. As the proposal complies with the development plan and national policies, and there are no other considerations that indicate otherwise, planning permission should be granted. The development would represent sustainable development as sought by the NPPF and the PPTS.

Conditions

42. Suggested conditions should the appeal be allowed were discussed at the hearing. It is necessary that the development shall be carried out in accordance with the approved plans for the avoidance of doubt and in the interest of proper planning. A condition limiting the occupation of the site to those who meet the definition of travellers in the PPTS is required having regard to their accommodation needs.
43. A condition is required to limit the number of pitches and caravans on the site in the interests of the character and appearance of the area.
44. As the development has already commenced it is necessary to impose condition 4 to require the submission of a Site Development Scheme including details of hard and soft landscaping and lighting to safeguard the character and appearance of the area. There is a strict timetable for compliance because permission is being granted retrospectively. The condition will ensure that the development can be enforced against if the requirements are not met. The appellant suggested an alternatively worded condition to achieve the same ends, however this was less comprehensively worded. Condition 5 is required to ensure the maintenance of the landscaping scheme.
45. The site access is already in place forming part of the approved stable scheme. Suggested conditions regarding the access, visibility splays, and gates are therefore not required. However, it is necessary to impose a condition to maintain visibility splays and the set back of the gates at the site access in the interest of highway safety. I have already discussed above that a condition requiring a passing place is not required.

46. The Council suggested a condition to prevent the burning of waste on the site. Following discussion at the hearing it was agreed this was not necessary in this case as such a condition would not normally be applied to a residential property. I understand that a condition of this nature is applied to the extant stables development to safeguard against the burning of horse waste.
47. Residents suggested a condition to require the removal of the existing unauthorised 1.8-metre-high close boarded fence. I do not consider this to be necessary as it does not form part of the scheme before me and the Council has enforcement powers to ensure it is removed.

Conclusion

48. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should succeed.
49. I have had regard to the requirements of Article 8 of the First Protocol to the Convention, as incorporated by the Human Rights Act 1998. I have also considered the Article 8 rights of the child in the context of Article 3 of the United Nations Convention on the Rights of the Child which requires that the best interests of the child shall be a primary consideration. Since I am allowing the appeal, my decision would not lead to a violation of the rights of the appellant or his family in these regards.

Helen Hockenhull

INSPECTOR

APPEARANCES

FOR THE APPELLANT

Dr Simon Ruston	Ruston Planning Ltd
David Penfold	Appellant
Rosie Penfold	Appellant's wife

FOR THE COUNCIL

Daniel Cameron	Planning Officer
Simon Bailey	Team leader Heritage and Enforcement
Tegan Chenery	Heritage Officer

INTERESTED PARTIES

John Dagg	Planner and Barrister (representing the occupiers of Second Pits and Waggar Farm)
Cllr Bryn Hurran	Ward Councillor

ADDITIONAL DOCUMENTS SUBMITTED AT THE HEARING

1. Appeal decision Ref APP/P1615/W18/3215543 - Land adjacent to the Old Railway Cutting, Hawthorne Hill, Oxenhall, Newent.

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans: Site Location Plan Drawing No. DP19-SLP, Site Plan as Existing Drawing No.1473/02, Proposed Site Layout Drawing No. 19177/01 A, Proposed Dayroom Plan Elevations Drawing No.19177/02
- 2) 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 any subsequent definition that supersedes that document).
- 3) No more than three caravans, as defined by the Caravan Sites and Control of Development Act 1960 and the Caravan Site Act 1968 as amended, shall be stationed on the pitch at any one time, comprising no more than one static and two touring caravans.
- 4) The use hereby permitted shall cease and all caravans, structures, equipment and materials brought on to land for the purposes of such use, shall be removed within 3 months of the date of failure to meet any of the following 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) shall have been submitted for the written approval of the local planning authority. The scheme shall include a timetable for implementation and include details of:
 - a) hard and soft landscaping works for the site, including boundary treatments or any other means of enclosure. The submitted details shall include any proposed changes in ground levels and shall also accurately identify spread, girth and species of all existing trees, shrubs and hedgerows on the site and indicate any to be retained, together with measures for their protection which shall comply with the recommendations set out in the British Standards Institute publication "BS5837:2012 Trees in relation to design, demolition and construction
 - b) external lighting
 - ii) If within 11 months of the date of this decision, 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 scheme shall have been approved by the Secretary of State.
 - iv) The Site Development Scheme shall be implemented in full in accordance with the approved details and completed in accordance with the approved timetable.

Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter be maintained.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

- 5) Any trees, hedges, shrubs or turf identified within the approved landscaping details (both proposed planting and existing) which die, are removed, seriously damaged or seriously diseased, within a period of 5 years of being planted or in the case of existing planting within a period of 5 years from the commencement of development, shall be replaced in the next planting season with others of similar size and species.
- 6) Notwithstanding the provisions of Part 2 Class A of the Town & Country Planning (General Permitted Development) Order 2015 (or any Order revoking and re-enacting that Order with or without modification) no obstruction over 0.6 metres high shall be erected, constructed, planted or permitted to grow within the area of the visibility splays approved as part of application ref B/15/00056.
- 7) Gates provided at the vehicular access shall be inward opening only and shall be set back a minimum of 10 metres from the nearside edge of the carriageway and thereafter maintained and retained.