
Appeal Decision

Site visit made on 10 May 2022

by Martin Allen BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 July 2022

Appeal Ref: APP/G1630/W/22/3290434

Claydon Park, Three Ways, Tewkesbury, Gloucestershire, GL20 7BH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission under section 73A of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr Herbert Rogers against Tewkesbury Borough Council.
 - The application Ref 21/01218/FUL is dated 12 October 2021.
 - The application sought planning permission for the change of use of land for permanent siting of 2 chalet homes for occupation by travellers and use of the existing building for ancillary storage without complying with conditions attached to planning permission Ref 14/00347/FUL, dated 19 August 2014.
 - The conditions in dispute are Nos 3, 5, 7, 12 and 13, which are set out in the attached Appendix.
-

Decision

1. The appeal is allowed and planning permission is granted for the change of use of land for permanent siting of 2 chalet homes for occupation by travellers and use of the existing building for ancillary storage at Claydon Park, Three Ways, Tewkesbury, Gloucestershire, GL20 7BH in accordance with the application 21/01218/FUL dated 12 October 2021, without compliance with condition numbers 3, 5, 7 and 12 previously imposed on planning permission Ref 14/00347/FUL dated 19 August 2014 and subject to the conditions in the attached Schedule.

Preliminary Matters

2. As set out above, the appellant has appealed against the failure of the Council to make a decision on an application made under Section 73A of the Act. The Council has indicated that had the appeal not been submitted, it would have refused planning permission. The Council's Statement of Case sets out a putative reason for refusal referring to all of the relevant conditions. I have therefore had regard to this, and it forms the basis of the main issue below.
3. For the avoidance of doubt and in the interests of clarity, within the main body of my decision, I have referred to the condition numbers as they appear on the 2014 planning permission.

Main Issue

4. The main issue is whether the conditions are reasonable and necessary, having regard to the character and appearance of the area.

Reasons

Condition 3

5. Condition 3 controls the positioning of the approved two caravans within the site, in accordance with the plans submitted with the original planning application. The appellant seeks a variation of this condition to allow a revised siting. Originally the units were positioned approximately 4 metres from the western boundary of the site, allowing for additional planting to be incorporated between the units and the acoustic fencing along this boundary. The revised sitings would result in the units being positioned less than 1 metre from the fencing, limiting the amount of additional planting that could be undertaken at this point.
6. The Council set out within its statement of case that the revised siting, which I was able to see in situ at the time of my site visit, would increase the visibility of the units and prevent meaningful planting to screen the development. However, I am conscious that the Planning policy for traveller sites (the PPTS) accepts that Traveller sites can be located within rural areas. There is thus a tacit acceptance that units, such as static caravans will be seen in such areas. As such, I do not accept that the units have to be screened from view entirely in order to be acceptable.
7. I acknowledge that from the north, particularly from the road bridge which crosses over a railway, there are elevated views towards the appeal site. However, many views into the site are already screened by evergreen trees. Moreover, while the units on site are visible, they are framed by large trees either side, as well as being viewed in the context of the acoustic fencing. As such, while I accept that the units are more visible than they likely would have been under the previously approved scheme, I am not convinced that their visual appearance is of such significance as to be harmful, particularly in light of the contents of the PPTS that I refer to above.
8. The units would be more visible to users of the railway given their proximity to the railway line. Yet such views would be fleeting when passing on a train and the development would not be an overly incongruous feature.
9. The Council refers to the comments of the Inspector in determining a previous appeal on this site, however that scheme related to the siting of three additional units. As such, those comments do not convince me that the proposed re-siting would be unacceptable.
10. Accordingly, I find that the variation of condition 3 to allow a revised siting to the units, as shown on the now submitted plans, would be acceptable and would not result in unacceptable harm to the character or appearance of the area. Thus, the proposal accords with policies SD4, SD6 and SD13 of the Gloucester, Cheltenham and Tewkesbury Joint Core Strategy (the Core Strategy), insofar as they seek to ensure development is appropriately designed, that development considers visual sensitivity of an area and that the development of Gypsy Traveller sites does not have an unacceptable impact on character and appearance. I shall therefore vary the condition to refer to the updated siting plan.

Condition 5

11. Condition 5 required the submission of landscaping details. The details of this have previously been agreed through the discharge of this condition (ref: 15/00004/CONDIS). While these details included additional planting along the boundary to the railway line, which I have found above is not necessary to ensure an acceptable appearance to the development, there was also additional planting secured within the appeal site which would soften the visual appearance of the development from the adjacent road.
12. While I note the appellant's contention that no further landscaping is necessary, over and above that which currently exists on site, I find that the inclusion of the additional planting as approved is necessary to ensure that the development at the site integrates appropriately with its rural surroundings.
13. Therefore, I find that this condition is reasonable and necessary, in part, in the interests of safeguarding the character and appearance of the area, and in order that the development accords with policies SD4, SD6 and SD13 of the Core Strategy, the aims of which I set out above. I shall therefore vary the condition to refer to the approved details secured through the previous discharge of condition application, subject to omitting the landscaping adjacent to the residential units. As a result of this variation, a consequential amendment is also required to condition 6, omitting the implementation of the landscaping adjacent to the residential units and imposing a new timescale for implementation.

Condition 7

14. Condition 7 prohibits the undertaking of any commercial activities on the site. The Council set out within its statement that the condition was imposed due to unauthorised commercial activities having taken place at the site previously. However, I am conscious that the description of development for planning permission permits only a change of use for the siting of chalet homes and the use of an existing building for ancillary storage. There is no reference to any commercial use and as such, this was not part of the development applied for.
15. Given that no commercial activity was originally proposed and that the Council has the power to enforce any material change of use that occurs at the site, I find, in this case, that the condition is not necessary to make the development acceptable in planning terms and thus fails the tests set out in the Planning Practice Guidance (the PPG). As such, I shall delete this condition.

Condition 12

16. Condition 12 requires that the caravans and one elevation of the existing building be timber clad, the reason for the condition stating that this was to ensure that the development integrates appropriately with its surroundings.
17. The building that was on site at the time of the application was already an existing feature of the area and as such the requirement to clad it in timber was, in my judgement, overly onerous and not necessary. Furthermore, as I have set out above, the PPTS accepts that sites will be located within rural areas and as such it is to be expected that in many cases caravans will be the main form of accommodation that is provided. In this light, it should not be necessary to disguise them with the use of timber cladding. I accept that caravans are generally light in colour and that this can make them visible, however this is an accepted aspect of traveller sites.

18. Given the context of the site which I have discussed above, together with the additional landscaping that is secured by condition, the appearance of the caravans, unclad, would not be unacceptable at this location and thus the requirement to install timber cladding is not necessary to make the development acceptable. Even without cladding, the development would accord with the relevant requirements of policies SD4, SD6 and SD13 of the Core Strategy.

Condition 13

19. Condition 13 prevents the erection of means of enclosure as permitted development. I note that the appellant asserts that there is no sound planning reason for restricting the erection of means of enclosure and I am conscious that the PPG advises that conditions restricting the future use of permitted development rights or changes of use may not pass the test of reasonableness or necessity.
20. Nonetheless, I am also mindful that the PPTS sets out that when considering applications weight should be attached to, amongst other things, sites being soft landscaped in such a way to increase its openness and not enclosing a site with so much hard landscaping, high walls or fences, that the impression may be given that the site and its occupants are deliberately isolated from the rest of the community.
21. With this in mind, I find it appropriate for there to be a form of control in this respect. The condition does not prohibit all means of enclosure but prevents it without the approval of the Council. As such, the appellant is able to seek approval for the erection of means of enclosure in appropriate circumstances. Thus, I find that the condition is reasonable and necessary in the interest of the character and appearance of the area, to ensure compliance with policies SD4, SD6 and SD13 of the Core Strategy, as well as to accord with the PPTS.

Other Conditions

22. The guidance in the Planning Practice Guidance makes clear that decision notices for the grant of planning permission under section 73 should also restate the conditions imposed on earlier permissions that continue to have effect. I shall impose all those that I consider remain relevant. I have also amended condition 5 to refer to the approved landscaping details, agreed through a previous discharge of condition application. I have also amended pre-commencement and pre-occupation conditions, to refer to a timescale for their implementation, given that development has commenced on site. In the event that some have in fact been discharged, that is a matter which can be addressed by the parties. I have also amended the final condition in respect of biodiversity mitigation, to include an implementation clause.
23. As development has been commenced on site, I have not imposed a condition stipulating a timescale for implementation.

Conclusion

24. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should succeed.

Martin Allen

INSPECTOR

Schedule of Conditions

1. The site shall not be occupied by any persons other than gypsies and travellers as defined in Annex 1 to Planning Policy for Traveller Sites.
2. The caravans shall be sited in accordance with drawing number 754/PL02. Any material change to the position of a static caravan, or its replacement by another static caravan in a different location shall only take place in accordance with details submitted to and approved in writing by the local planning authority.
3. There shall be no more than 2 pitches and on each of the pitches hereby approved no more than 2 caravans as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 (of which, on each pitch, no more than one shall be a static caravan and no more than one shall be a touring caravan) shall be stationed at any time. No touring caravan may be sited on any pitch unless ancillary to the use of that pitch for the siting of a static caravan. There shall be no caravans sited or stored on areas outside the pitches.
4. The landscaping scheme approved under application no. 15/00004/CONDIS, other than that shown directly alongside the static caravans along the western boundary, shall be implemented in accordance with the details thereby approved.
5. All planting, seeding or turfing in the approved details of landscaping, other than that shown directly alongside the static caravans along the western boundary, shall be carried out in the first planting and seeding season following the date of this decision. Any trees or plants which within a period of five 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 consent to any variation.
6. Within 6 months of the date of this decision, details of the means of all external lighting on the site, shall be submitted to and approved in writing by the local planning authority. The submitted details should include measure to ensure that any proposed lighting would not interfere with the sighting of signalling apparatus and/or train drivers vision on approaching trains, or give rise to the potential for confusion with the signalling arrangements on the railway. There shall be no external lighting other than in accordance with the details of the approved scheme, unless the local planning authority gives written approval for any variation.
7. Notwithstanding the submitted details, within 6 months of the date of this decision a scheme for the foul and surface water drainage of the site, including a timetable for its implementation, shall be submitted to and approved in writing by the local planning authority. The approved scheme shall be carried out and completed in accordance with the approved timetable and maintained as such for the duration of the development.
8. Within 6 months of the date of this decision the vehicle parking and manoeuvring facilities within the curtilage of the site shall be completed in accordance with the details hereby approved. The vehicle parking and

manoeuvring facilities shall not thereafter be used for any purpose other than the parking and manoeuvring of vehicles.

9. No more than one commercial vehicle per plot shall be kept on the land for use by the occupiers of the caravans hereby permitted, and they shall not exceed 3.5 tonnes in weight.
10. Notwithstanding the provisions of Part 2 of Schedule 2 of the Town And Country Planning (General Permitted Development) Order 1995 (or any Order revoking and re-enacting that Order with or without modification), no gates, wall, fences (other than the acoustic fence) or other means of enclosure shall be erected on the land unless otherwise agreed in writing by the Local Planning Authority.
11. Within 6 months of the date of this decision, an acoustic fence, of a design that does not allow it to be climbed and to a minimum height of 2 metres, shall be erected along the boundary with the railway line, in accordance with details that have been submitted to and approved in writing by the Local Planning Authority. The fence shall be erected in accordance with the approved details prior to occupation and maintained as such thereafter.
12. Within 6 months of the date of this decision, two woodcrete bird and two woodcrete bat boxes shall be installed in accordance with recommendations in section 4.3 and appendix 4 of the Update Phase 1 Habitat Survey & Protected Species Survey Assessment June 2014, located following advice from an ecologist and thereafter retained and maintained.

Appendix – Conditions in dispute

3. The caravans shall be sited in accordance with plan No: 111C. Any material change to the position of a static caravan, or its replacement by another static caravan in a different location shall only take place in accordance with details submitted to and approved in writing by the local planning authority.
Reason: This permission is restricted in the interests of highway safety and to maintain and protect the integrity and visual amenity of the open countryside in which the site is located.
5. Notwithstanding the submitted details, no development shall take place until there has been submitted to, and approved in writing by, the local planning authority, a comprehensive scheme of landscaping, including indications of all existing trees (including spread and species) and hedgerows on the land and details of any to be retained together with measures for their protection during the course of development. The scheme shall be implemented as approved.
Reason: To ensure that the new development will be visually attractive in the interests of amenity in accordance with Policy LND7 of the Tewkesbury Borough Local Plan to 2011 - March 2006
7. No commercial activities shall take place on the land, including the storage of materials.
Reason: The site is not appropriate for unrestricted commercial use and to ensure that the development integrates harmoniously with its surroundings locality in accordance with Policies LND4 and LND7 of the Tewkesbury Borough Local Plan to 2011 - March 2006.
12. Notwithstanding the submitted plans, the proposed static caravans or any replacement static caravans, and the northern elevation of the existing building shall be clad timber in accordance with details to be submitted to, and approved in writing by, the local planning authority. The timber cladding shall be maintained as such thereafter.
Reason: To ensure that the development integrates harmoniously with its surroundings locality in accordance with Policies S6, S7, NHE1 of the Gloucestershire Structure Plan Second Review and Policy LND4 of the Tewkesbury Borough Local Plan to 2011 - March 2006.
13. Notwithstanding the provisions of Part 2 of Schedule 2 of the Town And Country Planning (General Permitted Development) Order 1995 (or any Order revoking and re-enacting that Order with or without modification), no gates, wall, fences (other than the acoustic fence) or other means of enclosure shall be erected on the land unless otherwise agreed in writing by the Local Planning Authority
Reason: To ensure that the development integrates harmoniously with its surroundings locality in accordance with Policy LND4 of the Tewkesbury Borough Local Plan to 2011 - March 2006.