
Appeal Decisions

Hearing Held on 14 June 2022

Site visit made on 14 June 2022

by Tim Wood BA(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 25 July 2022

Appeal A: APP/Y3940/W/19/3229836

Plot 5 The Poplars Residential Park, Poplar Tree Lane, Southwick BA14 9NB

- 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 Patrick McDonagh against the decision of Wiltshire Council.
 - The application Ref 18/07022/FUL, dated 23 July 2018, was refused by notice dated 29 November 2018.
 - The development proposed is the use of land for stationing of caravans for residential purposes and the erection of a stable.
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Appeal B: APP/Y3940/W/19/3229843

Plot 6 The Poplars Residential Park, Poplar Tree Lane, Southwick BA14 9NB

- 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 Patrick McDonagh against the decision of Wiltshire Council.
 - The application Ref 18/07033/FUL, dated 23 July 2018, was refused by notice dated 29 November 2018.
 - The development proposed is the use of land for stationing of caravans for residential purposes and the erection of a stable.
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Appeal C: APP/Y3940/W/19/3229845

Plots 1-3 The Poplars Residential Park, Poplar Tree Lane, Southwick BA14 9NB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 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 Ms Bridget McDonagh against the decision of Wiltshire Council.
- The application Ref 18/07423/VAR, dated 3 August 2018, was refused by notice dated 29 November 2018.
- The application sought planning permission for the change of use of agricultural land to extend an existing Gypsy and Traveller site, including erection of two additional day rooms and entrance walls and gate without complying with a condition attached to planning permission Ref APP/Y3940/W/15/3006435, dated 21 August 2015.
- The condition in dispute is No 2 which states that: *"The occupation of the site hereby permitted shall be carried on only by Mr Laurence (Lawrence) Cash (Senior), Mrs Theresa Cash, Jerry Cash, Jacqueline Cash, Laurence Cash (Junior), Mary Docherty and their resident dependants. Should the land cease to be occupied by these persons the use hereby permitted shall cease and all caravans, structures, materials and equipment brought on to or erected on the land, or works undertaken to it in connection with the*

use, shall be removed and the land shall be restored to its condition before the development took place."

Decisions

Appeal A

1. The appeal is allowed and planning permission is granted for the use of land for stationing of caravans for residential purposes and the erection of a stable at Plot 5, The Poplars Residential Park, Poplar Tree Lane, Southwick BA14 9NB in accordance with the terms of the application, Ref 18/07022/FUL, dated 23 July 2018, subject to the conditions set out in Schedule 1 of this Decision.

Appeal B

2. The appeal is allowed and planning permission is granted for the use of land for stationing of caravans for residential purposes and the erection of a stable at Plot 6, The Poplars Residential Park, Poplar Tree Lane, Southwick BA14 9NB in accordance with the terms of the application, Ref 18/07033/FUL, dated 23 July 2018, subject to the conditions set out in Schedule 2 of this Decision.

Appeal C

3. The appeal is allowed and planning permission is granted for the change of use of agricultural land to extend an existing Gypsy and Traveller site, including erection of two additional day rooms and entrance walls and gate at Plots 1-3, The Poplars Residential Park, Poplar Tree Lane, Southwick BA14 9NB in accordance with the application Ref 18/07423/VAR dated 3 August 2018, without compliance with condition number 2 previously imposed on planning permission Ref APP/Y3940/W/15/3006435, dated 21 August 2015 and subject to the conditions set out in Schedule 3 of this Decision.

Applications for costs

4. At the Hearing applications for costs were made by the appellants against the Council. These applications are the subjects of a separate Decisions.

Preliminary Matters

5. The Council's original decisions for appeals A and B included reasons relating to the drainage of the sites. The Council has confirmed within its submissions that it is now satisfied that these matters can be suitably dealt with by conditions, in the event that either appeal is allowed.
6. The sites are currently in use by the appellants.

Main Issues

7. Taking account of the above, the main issue in these appeals is the effects of the proposals on highway safety

Reasons

Highway Safety

8. The appeals relate to various parts of a larger site located adjacent to the junction of Poplar Tree Lane with Frome Road (A361). Access to the larger site

is taken from Poplar Tree Lane with access to the individual pitches taken from a track within the site.

9. The Council is concerned that the proposals would give rise to additional vehicles using the junction of Poplar Tree Lane with Frome Road and that the junction does not provide adequate visibility for its safe use. In addition, the Council considers that the increase in residents on the larger site would result in additional pedestrians negotiating the allegedly unsafe routes along Frome Road.
10. Poplar Tree Lane meets Frome Road at right-angles where Frome Road follows a straight route. The road is subject to the national speed limit of 60mph here. The appellants have submitted figures which indicate that a driver at the junction, emerging from Poplar Tree Lane would have visibility in the south-west direction (at 2.4m set back from the Give Way line; x distance) of 95m to the near edge, 119m to the white line indicating the edge of the carriageway and 160m to the centre. It was also noted that a driver on Frome Road approaching the junction would have very good visibility of vehicles on Poplar Tree Lane at the junction. The Council's submitted figures for visibility to the south-west indicate a distance of 111m. The Council also notes that visibility in the opposite direct (north-east) is restricted but this is due to a hedgerow at the appeal site and so is within the control of the appellants, going on to suggest that this could be resolved by the use of suitable conditions and so no objection was specifically raised in this respect.
11. The appellants and the Council seek to rely on the advice in Manual for Streets/Manual for Streets 2 (MfS/2) and the Design Manual for Roads and Bridges (DMRB). The Council states that, due to the nature of the road and the considerable numbers of vehicles that it carries, the advice in DMRB should be followed and a visibility of 2.4m x 215m should be required. The appellants state that MfS/2 is more appropriate as this is a non-trunk road and seeks to require safe stopping distances rather than the aim of maintaining constant flows of traffic, as set out by DMRB.
12. When determining previous appeals at the site (Refs; APP/Y3940/C/12/2178840 and APP/Y3940/A/12/2178838) my fellow Inspector considered very similar representations and concluded that there was no hard and fast answer as to which methodology should be used. I find myself reaching the same conclusion on this point. Whilst Frome Road is not a trunk road and so MfS/2 may be preferred, it carries significant numbers of vehicles. Nevertheless, MfS/2 indicates that its key principles may be applied to busier streets and non-trunk roads and that MfS/2 is the recommended starting point.
13. The figure of 2.4m x 215m preferred by the Council relates to the ability of a vehicle travelling on the main route to maintain a constant speed whilst allowing a vehicle emerging from the minor road (in this case, Poplar Tree Lane) to do so and match the speed of vehicles on the main road, without them having to slow. It is not a distance required to allow a vehicle on the main road to stop, if it should need to do so. Figures for vehicles' ability to stop are set out and are similar to the available visibility distances, for normal vehicles although they are exceeded for HGVs.
14. The appellants have submitted detailed figures relating to traffic movements on Poplar Tree Lane, taken in 2019 and compared to figures in 2012. The 2019 figures showed a 5 day average (Monday to Friday) of 1151 movements with

an average morning peak hour flow of 142 movements and 104 in the afternoon peak hour. Similar figures are also presented for vehicles generated by the appeal site, at the same time period. These showed that the 5 day average was 58 movements. During the peak hours of the adjacent network, referred to above (08:00 to 09:00 and 15:00 to 16:00) the site generated an average of 2 movements in the morning and 4 movements in the afternoon peaks. The peak hour for the appeal site was between 12:00 hrs and 13:00hrs with a figure of 7 movements. The appellant states that, even assuming that all of the appeal site traffic uses the junction under scrutiny (which would be incorrect as it is known that some vehicles travel using the northern section of Poplar Tree Lane), the average flow from the appeal site would account for 4.7% of the total flow observed in the 2019 surveys.

15. It is notable that these figures would include the traffic generated by the 3 pitches which already had planning permission granted (by the aforementioned appeals and APP/Y3940/W/15/3006435). Within the earlier appeal, a range of vehicle movements of 6 to 12 per day was referred to for a single pitch. An additional 2 pitches were then permitted, which would bring additional traffic movements with them. Even taking account of a suggested reduction in traffic, than would otherwise be the case, due to occupation of the 3 pitches by a single family group, this leads me to conclude that the additional vehicles generated by the 2 additional pitches represented in Appeals A and B, would be negligible, when compared to the observed flows on Poplar Tree Lane and using the Frome Road junction. Taking account of the possible consequential increase in vehicle movements arising from the possible occupation of plots 1-3 by unrelated families, I consider that this would be very small when compared to the traffic numbers observed locally and would not result in any unacceptable increase.
16. Although some reference was made to accidents on Frome Road, it seems clear that none of the small number recorded were contributed to by any alleged deficiencies in visibility of or for vehicles emerging from Poplar Tree Lane. As set out above, the hedgerow to the north-east of the junction is controlled by the appellants and I am satisfied that a condition could offer suitable control to maintain visibility here. The hedge to the south-west is in separate ownership (and within a separate planning authority area). It is evident that it is periodically cut back and so the achievable visibility here varies and is noted as being considerable, within the earlier appeal decision. Taking account of the evidence submitted by the appellants it would appear that, if the hedge is maintained so that it does not encroach on the highway, the visibility splay desired by the Council could be achieved. The appellants refer to the legal powers available to the Council to require a landowner to cut back the hedge or to carry out the works, so that suitable visibility is maintained (or to request that a neighbouring authority undertake the same). Notwithstanding the fact that it appears that this power has not been used here and whilst it would place a burden on the relevant authority, a solution is available if it is considered essential to provide a visibility splay of 215m as requested by the Council.
17. With regard to pedestrian safety, the Council is concerned that additional residents at the appeal site would mean more people walking along the adjacent section of Frome Road, which they consider to be unsafe. There is no footway along the adjacent sections of Frome Road, although there is one which terminates opposite the north-eastern extremity of the appeal site, said

to be around 120m from the junction with Poplar Tree Lane. From my perspective, I consider that residents would be very unlikely to wish to walk along Frome Road and that most journeys to and from the site would be in a vehicle. This matter was also considered within the previous earlier appeals and it was concluded that, whilst not ideal, such a walk could be undertaken on the verge but would be unlikely. I consider the same to apply today and that the very modest additional number of residents that would arise from the appeal schemes, even when taken cumulatively, would not unacceptably increase the risk to safety here.

18. The Council refer to the National Planning Policy Framework and to a previous version which was applicable when the previous appeals were considered and to the fact that it required that proposals should only be rejected where highways effects would be "severe". They compare this to the current version which states that, "Development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety..." (para 111). Whilst I acknowledge that there is a shift in the severity of the test set out in the later version of the NPPF, I consider that any effects arising from any of the appeal schemes fall considerably short of "unacceptable".
19. As a result of my findings on this issue, I am satisfied that the proposals would have no unacceptable effects on the safety of drivers or pedestrians, subject to the imposition of suitable conditions. I find no conflict with Core Policy 47 of the Wiltshire Core Strategy 2015.

Other Matters

20. There is a significant amount of material submitted by the appellants and the Council in relation to the need for and supply of suitable sites for Gypsies and Travellers within the area. Some time at the hearing was taken discussing such matters. As a result of my findings on the Main Issue above, I have concluded that there is no conflict with the development plan arising from any of the proposals. If I were to proceed to consider the issue of the supply/demand of sites it could either have a neutral effect on the appeal (if I were to find that there is a suitable supply sufficient to meet demand) or it could add weight to an already acceptable proposal (if I were to find the supply lacking). Either outcome would have no material effect on the outcome of any of the 3 appeals and so it is not necessary for me to consider this matter.
21. In addition, the appellant has submitted information relating to the personal circumstances of the appellants. Again, these could only add weight to the appeals and as I have concluded that they should be successful, it is not necessary to consider these matters.

Conditions

22. I have considered the suggested and agreed conditions in the light of the advice and guidance in the NPPF and the Planning Practice Guidance.
23. There is no need for the standard commencement condition as it was clear that the use of the sites has already commenced. There was agreement that the number of caravans should be limited to 2 on each site in Appeals A and B and to a total of 7 for Appeal C (consistent with the previous permission) and I consider it is reasonable that one of these on each pitch could be a larger static

type. I will attach a condition requiring the submission of further details relating to the disposal of surface water and sewerage and use a form of wording which provides a back stop should agreement not be reached. These conditions are required in order to ensure that the developments have an acceptable visual effect on the area.

24. Other conditions preventing any commercial activities on the land and the burning of material in the open and restricting the size of vehicles parked there to a maximum weight of 3.5 tonnes are reasonable and necessary to safeguard the appearance of the area and the living conditions of other local residents. I will also impose a condition concerning the provision and retention of a visibility sightline in a north-easterly direction at the junction of Poplar Tree Lane and Frome Road. This is reasonable in the interests of highway safety, as set out above. I shall include conditions on all three permissions which restrict the occupation of the sites to occupation by Gypsies and Travellers as defined in the PPTS so that the sites provide for the intended occupants. I shall include a condition on each permission which identifies the approved plans, for the sake of certainty.

Conclusions

25. For the reasons set out above, I find that the additional pitches would give rise to no unacceptable effects on highway safety. The effects of granting Appeal C are that the site would be occupied by persons other than those originally specified in the original permission, and potentially unrelated to each other. I am satisfied that this would have no unacceptable effects on the number of vehicle and pedestrian movements to and from the site and would give rise to no unacceptable safety effects. Therefore, all three appeals are successful.

T Wood

INSPECTOR

Schedule 1, Conditions Appeal A

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans: All prefixed 17 905, 001; 002A; 003A; 005A; 006A.
- 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 its equivalent in replacement national policy).
- 3) No more than 2 caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 as amended of which no more than 1 shall be a static caravan shall be stationed on the site at any time.
- 4) No vehicle over 3.5 tonnes shall be stationed, parked or stored on this site.
- 5) No commercial activities shall take place on the land, including the storage of materials and no burning of materials shall take place on open ground.
- 6) The use hereby permitted shall cease and all caravans, structures, equipment and materials brought onto the land for the purposes of such use shall be removed within 28 days of the date of failure to meet any one of the requirements set out in i) to iv) below:
 - i) Within 3 months of the date of this decision a scheme for the disposal of surface water and sewerage (hereafter referred to as the scheme) shall have been submitted for the written approval of the local planning authority and the scheme shall include a timetable for its implementation.
 - 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 approved scheme shall have been carried out and completed in accordance with the approved timetable.

Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter retained and remain in use.

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.

- 7) Within one month of the date of this decision, a visibility splay of 215m (y distance) shall be provided at the Poplar Tree Lane and A361 Frome Road junction in a north-easterly direction at a set back distance of 2.4m (x distance) from the carriageway edge measured along on the centreline of Poplar Tree Lane. The splay shall thereafter be maintained free from obstruction over a height of 0.9m above the level of the carriageway.

Schedule 2, Conditions Appeal B

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans: All prefixed 17 904A, 001; 002; 003; 005A; 006A.
- 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 its equivalent in replacement national policy).
- 3) No more than 2 caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 as amended of which no more than 1 shall be a static caravan shall be stationed on the site at any time.
- 4) No vehicle over 3.5 tonnes shall be stationed, parked or stored on this site.
- 5) No commercial activities shall take place on the land, including the storage of materials and no burning of materials shall take place on open ground.
- 6) The use hereby permitted shall cease and all caravans, structures, equipment and materials brought onto the land for the purposes of such use shall be removed within 28 days of the date of failure to meet any one of the requirements set out in i) to iv) below:
 - i) Within 3 months of the date of this decision a scheme for the disposal of surface water and sewerage (hereafter referred to as the scheme) shall have been submitted for the written approval of the local planning authority and the scheme shall include a timetable for its implementation.
 - 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 approved scheme shall have been carried out and completed in accordance with the approved timetable.

Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter retained and remain in use.

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.

- 7) Within one month of the date of this decision, a visibility splay of 215m (y distance) shall be provided at the Poplar Tree Lane and A361 Frome Road junction in a north-easterly direction at a set back distance of 2.4m (x distance) from the carriageway edge measured along on the centreline of Poplar Tree Lane. The splay shall thereafter be maintained free from obstruction over a height of 0.9m above the level of the carriageway.

Schedule 3, Conditions Appeal C

- 1) The development hereby permitted shall be carried out in accordance with the following approved plan: 17 905B 001.
- 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 its equivalent in replacement national policy).
- 3) No more than 7 caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 as amended of which no more than 3 shall be a static caravan shall be stationed on the site at any time.
- 4) No vehicle over 3.5 tonnes shall be stationed, parked or stored on this site.
- 5) No commercial activities shall take place on the land, including the storage of materials and no burning of materials shall take place on open ground.
- 6) Within one month of the date of this decision, a visibility splay of 215m (y distance) shall be provided at the Poplar Tree Lane and A361 Frome Road junction in a north-easterly direction at a set back distance of 2.4m (x distance) from the carriageway edge measured along on the centreline of Poplar Tree Lane. The splay shall thereafter be maintained free from obstruction over a height of 0.9m above the level of the carriageway.

APPEARANCES

FOR THE APPELLANT:

M Green
J Hurlstone

FOR THE LOCAL PLANNING AUTHORITY:

K Green
H Totz
S Jarman
M Wiltshire