



Appeal Decision

Hearing held on 28 June 2022

Site visit made on 28 June 2022

by Martin Allen BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 September 2022

Appeal Ref: APP/Q3305/W/21/3275308

Old Gore Wood, Old Gore Lane, Emborough BA3 4SJ

- 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 Shaun Essex against the decision of Mendip District Council.
 - The application Ref 2020/1063/FUL, dated 30 May 2020, was refused by notice dated 27 November 2020.
 - The development proposed is the use of land as a 9 pitch travellers caravan site.
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Decision

1. The appeal is allowed and planning permission is granted for the use of land as a 9 pitch travellers caravan site at Old Gore Wood, Old Gore Lane, Emborough BA3 4SJ in accordance with the terms of the application, Ref 2020/1063/FUL, dated 30 May 2020, subject to the conditions as set out in the attached Schedule.

Main Issues

2. The main issues raised in this case are:
 - The effect of the proposal on the character and appearance of the area, to include the scale of the development in relation to the nearby community,
 - The provision of measures in respect of environmental sustainability, and
 - The effect of other considerations, including the need for gypsy and traveller accommodation, on the overall planning balance.

Reasons

Character and appearance

3. The appeal site comprises an irregularly shaped, rough paddock positioned alongside the roads, the A37 and Old Gore Lane. It is enclosed along all boundaries by mature trees and hedging, and it appears that the site was previously woodland, before being cleared to form a paddock. There is an existing access along Old Gore Lane.
4. The appeal scheme seeks to develop the entire site for 9 gypsy traveller pitches, arranged around a central internal road. Each pitch would comprise of a static caravan, touring caravan, dayroom, with parking provision for two vehicles.
5. Notwithstanding the presence of nearby structures, the area surrounding the appeal site has a distinctly rural nature. This is reinforced by the mature

vegetation that lines many of the roads in the area, as well as by the longer distance views that are available over the surrounding agricultural land. The development of the site would result in the introduction of new man-made elements at this location. While the existing boundaries would to some extent limit views into the site, which could be supplemented by additional planting, the introduction of these new elements would be unfamiliar at this location and would have an urbanising effect, particularly in views from the A73 and Old Gore Lane, as well as a nearby footpath. This urbanising effect would also result from the introduction of lighting that would be associated with the scheme. Moreover, the extent of the proposed development over the entirety of the enclosure would result in a scheme that fails to positively respond to its location and the surroundings.

6. The site benefits from a previously granted planning permission for the development of 2 gypsy traveller pitches, which would be positioned at the eastern end of the site, adjacent to the A37 in a linear arrangement along the road. While this is noted, the development proposed within the current scheme would be substantially larger and there would thus be a greater visual effect on the area.
7. There was also concern, raised by local residents, over the effect on the character and appearance of the area of an increased number of vehicles accessing the site, including larger vehicles. However, given the proximity of the busy A-road which carries a significant number of vehicles each day, I find that any effect in this respect would not be harmful.
8. Planning Policy for Traveller Sites indicates that sites in rural areas should respect the scale of, and not dominate, the nearest settled community. It was contended, by the Council, at the hearing that the nearest settled community comprises the five dwellings that lie in close proximity to the appeal site, along Old Gore Lane as well as to the south along the A37. While these are the nearest properties, I consider that this is an overly narrow analysis. I note that a short distance to the south, along the B3139 there are approximately eleven dwellings, with a small number at the junction of Old Gore Lane with the B3139. In my view therefore, there are a sufficient number of dwellings within the locality, comprising the wider community, to ensure that the scale of the proposal, at nine pitches, would not dominate it. There is also an appropriate degree of separation to ensure that there would be no visual dominance over the existing properties.
9. For the reasons given above, while the scheme would not dominate the local community, I find that the proposal would be harmful to the character and appearance of the area, in this respect it conflicts with policies DP1, DP4, DP7 and DP15 of the Mendip District Local Plan Part 1: Strategy and Policies (adopted December 2014) (the Local Plan). Together, and amongst other things, these policies seek to ensure that development contributes positively to local distinctiveness, does not degrade the quality of the landscape and is of a scale appropriate to local context.

Environmental sustainability

10. One of the reasons for refusal relates to the lack of information in regard to the incorporation of energy conservation and efficiency measures within the proposed development. Policy DP7 of the Local Plan requires that development incorporate all practical measures to achieve energy efficiency, as well as

maximising opportunities for, amongst other things, renewable energy generation on site, water efficiency measures, recycling facilities, together with sustainable construction techniques. One of the aims of this is to ensure that development is sustainable in the long term.

11. The appellant's appeal statement sets out a willingness to incorporate measures to address this matter, including use of recycled aggregates for sub-base material, use of an integrated sustainable drainage system, inclusion of photovoltaic roof panels to the dayrooms, rainwater harvesting facilities and the provision of separate means of the sorting and disposal of waste and recycling.
12. On the basis of this information, at the hearing the Council confirmed it was satisfied that the matter could be satisfactorily dealt with by way of a planning condition, requiring further details in respect of the stated measures and their implementation. There is nothing before me that would lead me to consider differently. Accordingly, subject to an appropriate planning condition, the scheme would make adequate provision of measures in respect of environmental sustainability, and thus would accord with the requirements of policy DP7 in respect of this main issue.

Other considerations

Need for sites and alternative sites

13. At the hearing, the Council provided its most recent assessment of the need for and supply of gypsy traveller sites across the district, which was dated December 2021. This outlined that the previous Gypsy and Traveller Accommodation Assessment (GTAA) was undertaken across Somerset in 2010, the findings of which are out-of-date, but which are nonetheless used for the basis of estimates in the Local Plan.
14. The Council accepts that it is currently unable to demonstrate a five-year supply of gypsy traveller sites and that there remains a shortfall in pitch provision in the district. The document submitted at the hearing estimates this shortfall to be within a range of 39 to 67 pitches.
15. The Council highlighted that Part 2 of the Local Plan had recently been adopted and that this contained a single allocation for a gypsy traveller site. Currently, there is no planning permission in place for the development of this site and, I was informed, no definite figure for the number of pitches that are to be delivered, albeit that 15 are initially envisaged.
16. I was not provided with any substantive evidence in respect of when it is expected that this site would be delivered and as such, for the purposes of this appeal, I cannot be certain that it is deliverable within the next five years. The initial figure of 15 pitches was taken into account within the assessment of need that I refer to above. Thus, the significant doubt over any timescale for its forthcoming delivery adds further to the identified shortfall in provision.
17. My attention was drawn to funding that was recently secured, for Glastonbury town, which includes site funding for the provision of gypsy traveller sites. However, no further details were provided in this respect and there is no certainty in respect of when or where such sites may become available. As such, this matter has little bearing on my decision.

18. There are currently no vacant pitches within the district that are available for occupation.
19. On the basis of the above, it is clear that there is currently a substantial, unmet need for gypsy traveller pitches within the district. I find that this matter carries substantial weight in favour of the appeal scheme, and this is a position that the Council agreed with.

Personal circumstances and best interests of the child(ren)

20. At the hearing, it was raised that family members of the appellant were known to be doubled up on pitches, as well as the appellant having knowledge of other individuals doubled up on sites. However, it was confirmed that the appeal is not relying on any personal circumstances of specific future occupiers, rather the general need for sites, as discussed above, is relied on.
21. It was asserted that the best interests of children who may occupy the pitches is a matter that carries considerable weight in favour of the proposal. However, whilst a primary consideration, no specific occupiers were identified and thus I am unable to make a specific assessment of the benefits to any particular individuals in this respect. Nonetheless, I am mindful of the benefits that a secure, private, settled base would afford to children who may occupy the pitches. However, in this case this matter is one which is reflected in the weight accorded above to the general need for sites within the district.

Highway safety

22. While not a matter raised in objection to the proposal by the Council, there was nonetheless significant concern raised by interested parties at the hearing in respect of the effect the development would have on highway safety within the vicinity of the site. In respect of the junction of Old Gore Lane with the A37, there is sufficient visibility in both directions when entering the A37 to ensure that vehicles are able to exit Old Gore Lane safely. Similarly, there is nothing before me to suggest any deficiency in forward visibility of vehicles on the A37 turning into Old Gore Lane.
23. At the other end of Old Gore Lane, the road meets the B3139, and I accept, having driven out of this junction, that there is restricted visibility when exiting Old Gore Lane. This was also identified by the Inspector who dealt with a previous appeal on this site. However, in my view, the proposal would not result in significant additional traffic movements at this junction. I find that it would not be attractive for vehicles to travel along this road regularly due to the narrowness and lack of passing places for vehicles travelling south along the lane, as well as the proximity of the A37 which would be a more convenient option.
24. I note that the highways authority (the HA) has not objected to the proposal on any highway safety grounds. It was alleged that the HA mistakenly assessed the site and incorrectly considered that a precedent had been set by the previous allowing of an appeal for the two pitches. While the response to consultation did refer to the previous appeal decision, the comments made are in relation to the junction with the A37 at the northern end of the lane, not to the southern junction. Given that the HA make no specific comments in regard to the junction with the B3139 and that I consider that there would be no

significant increase in traffic movements at this junction, there would not be any detriment to road safety within the vicinity of the appeal site.

25. Reference was made to the occurrence of the delivery of vehicles to a nearby car sales business, which necessitates a car transporter parking on the A37 with the potential to block visibility for vehicles leaving Old Gore Lane. However, this would, in my view, not be a frequent occurrence. Furthermore, this as an existing situation and nothing was put before me to show that it results in accidents occurring. As such, this matter does not persuade me that any unacceptable road conditions exist.

Other Matters

26. At the hearing, concern was raised in respect of how child and family friendly the site would be, including in terms of young residents being able to walk outside of the site within the surrounding area. While this matter is noted, there is adequate provision within the site for open space that children would be able to use. Each pitch would have a grassed area and there would also be a communal play area provided. This is not therefore a matter that weighs against the proposal.
27. The site is located away from any settlement where services are provided and there is a lack of accessible public transport options from the site. Thus, it would be necessary for occupiers of the site to rely on the use of the private car in order to access any facilities. Nonetheless, the acceptance that gypsy traveller sites can be located in the countryside, reduces the weight that is attached to harm in this respect.
28. There was mention of the lack of maintenance of an existing fence and hedge at the site. However, this matter has little bearing on my consideration of the acceptability of the proposed development.
29. Concern was also expressed by interested parties in regard to a lack of capacity in local schools to accommodate additional pupils that may reside at the site. The Council raised no objection on this basis and no substantive evidence was produced that the development would result in an oversubscription of school places.

Planning Balance

30. The development of the appeal site as proposed would result in harm to the character and appearance of the area. Albeit, that this would be mitigated to some degree by appropriate landscaping, as well as that the effect would be localised, with any impact diminishing as distance from the site increases. Accordingly, I consider that there would be limited harm in this respect. I have also identified that harm would result from the reliance on the use of the private car, albeit that this too would be limited. Thus, I accord moderate weight to the collective harms that would result from the development.
31. Balanced against this are the factors in favour of the proposal. There is a clear and significant need for sites within the district, the appeal scheme would make a notable contribution towards addressing this need. There would also be social benefits to future occupiers of the site in having a settled base. These factors attract significant weight, sufficient to outweigh the harm.

32. That the scheme would not have an adverse effect on highway safety is a neutral factor in the balance.

Conditions

33. I have imposed the standard implementation timescale condition and in the interests of certainty a condition to define the approved plans. As the site is in the countryside where development is restricted, it would be necessary to limit occupancy to gypsies and travellers. To safeguard the character and appearance of the area, the number and type of caravans should be specified, commercial activities and vehicles over 3.5 tonnes should be prevented, the proposed landscaping details implemented, existing vegetation protected, and a Landscape Environmental Management Plan secured to show details of the management of the landscaping.
34. To ensure that the site is suitable for occupation, I have also included conditions in respect of contamination. Conditions are required in respect of both foul and surface water drainage in order to protect the environment. To protect biodiversity conditions are included in respect of site and vegetation clearance, inclusion of biodiversity features and external lighting. In the interests of highway safety conditions are also required in respect of surfacing of the access, location of gates, visibility splays and construction of parking and turning areas.
35. To ensure occupiers experience satisfactory living conditions, a condition requiring the erection of an acoustic fence along the boundary with the A37 is also necessary. As explained in the main issues above, a condition is also required securing energy efficiency measures.

Conclusion

36. The proposed development would result in harm to the character and appearance of the area. However, any harm that would result from the scheme would be convincingly outweighed by the other material considerations that I have outlined above. Accordingly, I conclude, having regard to all matters raised, that the appeal should succeed.

Martin Allen

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall be begun before the expiration of three years from the date of this permission.
- 2) This decision relates to the following drawings:
 - Unscaled Location Plan
 - 1:2500 scale Location Plan
 - Site Layout (Drawing Number Gore-01)
 - Detailed Landscape Design (Drawing Number LB198/D08a)
 - Utility/Day Room - Indicative Layout, Elevation (Drawing Number 13_573_004 Revision I)
 - Sustainable Drainage Strategy (May 2020)
 - Arboricultural Impact Assessment, Arboricultural Method Statement Tree Protection Plan (July 2020)
 - Preliminary Ecological Appraisal and Preliminary Roost Assessment Survey (Issue 2, dated 13/07/20)
- 3) 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).
- 4) There shall be no more than 9 pitches on the site and on each of the pitches hereby approved no more than 2 number caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 (as amended), shall be stationed at any time on each pitch, of which only 1 number caravan on each pitch shall be a static caravan.
- 5) No commercial activities shall take place on the land, including the storage of materials.
- 6) No vehicle over 3.5 tonnes shall be stationed, parked or stored on the site.
- 7) All hard and/or soft landscape works shall be carried out in accordance with the approved details (Drawing Number LB198/D08a). The works shall be carried out prior to the occupation of any part of the development or in accordance with the programme (phasing) agreed in writing with the Local Planning Authority. Any trees or plants indicated on the approved scheme which, within a period of five years from the date of the development being completed, die, are removed or become seriously damaged or diseased shall be replaced during the next planting season with other trees or plants of a species and size to be first approved in writing by the Local Planning Authority. All hard landscape works shall be permanently retained in accordance with the approved details.
- 8) All the existing trees and hedges shown on the landscaping plan (Drawing Number LB198/D08a) shall be protected by strong fencing, the location and type to be previously approved in writing by the local planning authority. The fencing shall be erected in accordance with the approved details before any equipment, machinery or materials are brought onto the site for the purposes of the development, and shall be maintained until all equipment, machinery and surplus materials have been removed from the site. Nothing shall be stored or placed within any fenced area, and the ground levels within those areas shall not be altered, nor shall any excavation be made, without the prior written consent of the local planning authority.

- 9) Before the development is first occupied or brought into use a landscape environmental management plan, including long term design objectives, management responsibilities and maintenance schedules for all landscape areas, shall be submitted to and approved in writing by the local planning authority. The landscape management plan shall be carried out as approved.
- 10) No development shall commence unless an investigation and risk assessment of the nature and extent of contamination on site and its findings have been submitted to and approved in writing by the Local Planning Authority. This assessment shall be undertaken by a competent person, and shall assess any contamination on the site, whether or not it originates on the site. The assessment shall consider all previous uses and shall be conducted in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11'. The assessment and written submission shall include:
- (i) a survey of the nature, extent and significance of any contamination;
 - (ii) an assessment of the potential risks to:
 - human health,
 - property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes,
 - adjoining land,
 - groundwaters and surface waters,
 - ecological systems,
 - archaeological sites and ancient monuments; and
 - (iii) an appraisal of remedial options, and proposal and justification for the preferred option(s).
- 11) No development shall commence until a detailed remediation scheme to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, controlled waters, ecological systems, buildings and other property and sites of historical interest, has been submitted to and approved in writing by the Local Planning Authority unless the findings of the approved investigation and risk assessment concludes that a remediation scheme is not required. The scheme shall include:
- (i) all works to be undertaken;
 - (ii) proposed remediation objectives and remediation criteria;
 - (iii) timetable of works and site management procedures and where the site is to be developed in phases, a phasing plan identifying any specific protection measures;
 - (iv) where required, a monitoring and maintenance programme to monitor the long-term effectiveness of the proposed remediation and a timetable for the submission of reports that demonstrate the effectiveness of the monitoring and maintenance carried out.
 - (v) where required, additional contingency measures designed to safeguard future users and receptors

The remediation scheme shall be designed to ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation. The approved remediation scheme shall be carried out prior to the commencement of development (other than those works required to carry out remediation) or in accordance with the approved timetable of works.

- 12) No occupation shall commence, or where the site is subject to an already approved phasing plan, there shall be no occupation of any part of each phase, until a verification report has been submitted to and approved in writing by the Local Planning Authority, unless the findings of the approved investigation and risk assessment has confirmed that a remediation scheme is not required. The verification report shall confirm that the approved remediation has been completed and demonstrate the effectiveness of the remediation carried out.
- 13) In the event that contamination which was not previously identified is found at any time when carrying out the approved development, it shall be reported in writing immediately to the Local Planning Authority and further development works shall cease unless alternative arrangements have been first agreed in writing with the Local Planning Authority. An investigation and risk assessment shall be undertaken and where remediation is necessary, a revised remediation scheme shall be submitted to and approved in writing by the Local Planning Authority. The revised scheme shall thereafter be implemented as approved. The requirements of this condition shall also apply if other circumstances arise during the development, which require a reconsideration of the approved remediation scheme.
- 14) No development shall commence until a detailed scheme for the disposal of foul drainage from the development has been submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be carried out in accordance with the approved details and completed prior to the occupation.
- 15) Notwithstanding the information submitted at application stage, no development shall commence until a surface water drainage scheme for the site, based on sustainable drainage principles and an assessment of the hydrological and hydrogeological context of the development, has been submitted to and approved in writing by the Local Planning Authority. The scheme shall include a programme of phasing, implementation and maintenance for the lifetime of the development and subsequently be implemented in accordance with these approved details.
- 16) Prior to any works, including groundworks, commencing on site, vegetative clearance will be carried out in strict accordance with the following procedure, either:
 - a) In September and October when dormice are still active but avoiding the breeding and hibernation seasons. A licensed dormouse ecologist shall supervise the work checking the site for nests immediately before clearance and, if needed, during clearance. All work shall be carried out using handheld tools only. If an above-ground nest is found it shall be left in situ and no vegetation between it and the adjacent undisturbed habitat shall be removed until dormice have gone into hibernation (December) as per method b). The results shall be communicated to the Local Planning Authority by the licensed dormouse ecologist within 1 week; or

- b) Between December and March only, when dormice are hibernating at ground level, under the supervision of a licensed dormouse ecologist. The hedgerow, scrub and/or trees will be cut down to a height of 30cm above ground level using hand tools. The remaining stumps and roots will be left until the following mid-April / May before final clearance to allow any dormouse coming out of hibernation to disperse to suitable adjacent habitat.

No vegetative clearance will be permitted between June and September inclusive when females have dependent young. Written confirmation of the operations shall be submitted to the Local Planning Authority by a licensed dormouse ecologist within one week of the work

- 17) Any vegetation, other than hedgerows, trees or scrub, in the construction area should initially be reduced to a height of 15 centimetres above ground level by hand, brushings and cuttings removed, and the remainder left for a minimum period of 48 hours of fine warm weather (limited rain and wind, with temperatures of 10°C or above) before clearing to minimise the risk of harming/killing any reptiles that may be present and to encourage their movement onto adjoining land. This work may only be undertaken during the period between March and October under the supervision of competent ecologist. Once cut, vegetation should be maintained at a height of less than 10cm for the duration of the construction period. Any features such as brash or log piles which potentially afford resting places for reptiles will be dismantled by hand by a competent ecologist in April or August to October and any individuals found translocated. A letter confirming these operations and any findings shall be submitted to the Local Planning Authority by the ecologist responsible prior to groundworks commencing.
- 18) The following will be integrated into buildings or mounted upon suitable trees or otherwise installed prior to first occupation of the site:
 - a) Two Vivara Pro Woodstone Nest Boxes (32mm hole version) or similar mounted between 1.5m and 3m high on the northerly facing aspect of trees, and retained thereafter
 - b) Two Vivara Pro Barcelona Woodstone Bird Box (open front design) or similar mounted between 1.5m and 3m high on the northerly facing aspect of trees, and retained thereafter
 - c) A bee brick built into the wall about 1 metre above ground level on the east elevation of each Utility/Day Room, and retained thereafter
 - d) One log pile constructed as a resting place for reptiles on the southern boundary near the pond, and retained thereafterPhotographs of the installed features shall be submitted to the Local Planning Authority prior to the first occupation of the site.
- 19) No external lighting shall be erected or provided on the site until a "lighting design for bats" has been submitted to and approved in writing by the Local Planning Authority. The design shall show how and where external lighting will be installed (including through the provision of technical specifications) so that it can be clearly demonstrated that areas to be lit will not disturb or prevent bats using their territory or having access to their resting places. All external lighting shall thereafter be installed in accordance with the specifications and locations set out in the design, and these shall be retained thereafter in accordance with the design. No new external lighting, other

than that shown on the approved plans, shall be installed within the boundary of the application site.

- 20) The driveway, for a minimum distance of 10 metres back from the edge of carriageway, shall be consolidated and surfaced (not loose stone or gravel) in accordance with details, which shall have been submitted to and approved in writing by the Local Planning Authority, prior to occupation of the site. Once constructed the access shall thereafter be retained in that condition at all times.
- 21) Any entrance gates erected shall be hung to open inwards, shall be set back a minimum distance of 10 metres from the carriageway edge and shall thereafter be retained in that condition at all times.
- 22) At the proposed access there shall be no obstruction to visibility greater than 600 millimetres above adjoining road level within the visibility splays shown on the submitted plan Drawing Number GORE-01. Such visibility splays shall be constructed prior to the commencement of the development hereby permitted and shall thereafter be retained at all times.
- 23) No occupation shall commence until the access, parking and turning areas have been constructed in accordance with details shown on the approved plans. The vehicular access, parking and turning shall thereafter be kept clear of obstruction and shall not be used other than for the access and parking of vehicles in connection with the development hereby permitted.
- 24) No pitch hereby permitted shall be occupied until the 2m high close-boarded acoustic fence shown on drawing number 13_573_003C has been provided, and that fence shall thereafter be retained.
- 25) Prior to the commencement of development, full details of measures in respect of energy conservation and efficiency, to include as a minimum the inclusion of photovoltaic panels to the roofs of day rooms, collection of rainwater for use on site, waste management facilities and use of re-cycled aggregates, shall be submitted to and approved in writing by the local planning authority. The approved details shall be implemented prior to first occupation of any pitch and retained for the life of the development.

APPEARANCES

FOR THE APPELLANT:

Dr Angus Murdoch	Agent, Murdoch Planning Limited
Andrew Laird CMLI	Landscape Architect, Laird Bailey Landscape Architects
Shaun Essex	Appellant
Mrs Essex	Wife of appellant

FOR THE LOCAL PLANNING AUTHORITY:

Carlton Langford	Planner, Mendip District Council
Simon Trafford	Team Leader, Mendip District Council

INTERESTED PARTIES:

Mark Reynolds	Context Planning (representing local residents)
Cllr Tim Killen	Mendip District Councillor
Lyn Killen	Local resident
Roger Killen	Local resident
Karen Ayre	Local resident
Sue Harris	Local resident
Michael Harries	Local resident
Gill Skinner	Local resident
Peter Skinner	Local resident
J. Crockett	Local resident
Maurice Crockett	Local resident
Julie Foxwell	Local resident

DOCUMENTS SUBMITTED AT HEARING

- 1) Copies of location plan, site layout and dayroom plans
- 2) Gypsy and Traveller Sites: Local Plan Monitoring Report – December 2021