



Appeal Decision

Hearing held on 4 May 2022

Site visit made on 4 May 2022

by Mrs H Nicholls FdA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4 November 2022

Appeal Ref: APP/Y3940/W/21/3267074

Trickys Paddock, Brickworth Road, Whiteparish SP5 2QG

- 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 James Gammell against the decision of Wiltshire Council.
 - The application Ref: 20/06783/FUL, dated 10 August 2020, was refused by notice dated 14 October 2020.
 - The development proposed is the change of use of land to use as a residential gypsy and traveller site for two pitches, each pitch accommodating two caravans, including no more than one static caravan/mobile home, and a dayroom, together with the laying of hardstanding and installation of a package sewage treatment plant.
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Decision

1. The appeal is allowed and planning permission is granted for the change of use of land to use as a residential gypsy and traveller site for two pitches, each pitch accommodating two caravans, including no more than one static caravan/mobile home, and a dayroom, together with the laying of hardstanding and installation of a package sewage treatment plant at Trickys Paddock, Brickworth Road, Whiteparish, SP5 2QG, in accordance with the terms of the application, Ref 20/06783/FUL, dated 10 August 2020, subject to the conditions in the attached schedule.

Preliminary and Procedural Matters

2. Following the Council's refusal, potential harmful effects on the quality of the Solent and Southampton Waters Protected Sites¹ were highlighted as relevant due to the site being within the catchment of the River Test and because the proposal could alter the nitrate levels within the water environment. The hearing was closed orally on the day of sitting, but post-hearing correspondence on this particular topic has been exchanged between the parties, owing to the late submission of evidence relating thereto.
3. The Council published an updated Gypsy and Traveller Accommodation Assessment 2022 – 2038 (GTAA) in June 2022 along with a supplemental Statement that summarised any changes of note compared to the earlier version (2020). The parties agreed that this was a relevant consideration and it was discussed during the hearing.
4. Insofar as the site is being used for two pitches, the development has commenced and I have dealt with the appeal on this basis. I have also

¹ Including: the Solent Maritime Special Area of Conservation, Chichester and Langstone Harbours Special Protection Area and Ramsar Site, Portsmouth Harbour Special Protection Area and Ramsar Site and Solent and Southampton Water Special Protection Area and Ramsar Site

considered the appeal on the basis of the submitted plans, which in a number of respects differed from the situation on the ground.

Main Issues

5. In the context of the above, the main issues are:

- the effects of the proposal on the character and appearance of the area;
- the effects on the Solent and Southampton Water Protected Sites;
- the need for traveller pitches;
- personal circumstances; and
- if harm is identified, whether this would be outweighed by other considerations that indicate permission should be granted.

Background

6. A planning permission authorising the use of part of the site as a single traveller pitch was originally granted on appeal for the benefit of a previous owner in 2009². This permission was restricted to the named occupant and his dependants with a requirement for the use to cease and the site to be restored following their departure. Another appeal was granted for a variation of the conditions on the 2009 permission in 2013³. In 2014, an application was made to vary the personal occupancy conditions on the permission and was refused.
7. Following a more recent application to vary conditions, the site now benefits from permission for use as a single traveller pitch for the appellant, Mr James Gammell, and his wife, to reside on the site until such time as they depart. This permission was granted subject to conditions in 2018⁴.
8. In 2019, an application was made to vary the personal and temporary conditions and to increase the number of caravans from 2 to 4. This was refused. The appeal application was submitted subsequent to this in 2020.
9. Based on the evidence, the appellant's son, Mr James Gammell (junior), has lived on the site for the past three years, along with his wife and children with the existing pitch having been 'doubled up'. Permission is sought under the appeal proposal to increase the number of pitches to enable Mr James Gammell (junior) and his family to reside on site, alongside the pitch occupied by his mother and father.
10. It was explained that another family member was also currently residing on site in a touring caravan, but that he was seeking an alternative pitch and would imminently be moving. As such, I have considered the appeal on the basis of the needs of the appellant and Mr James Gammell (junior) and their dependants.

Reasons

Character and appearance

11. The appeal site adjoins the A27 road and is within a field of around 0.8 hectares set within pleasant, undulating countryside. The site and surrounding

² Appeal Ref: APP/T3915/A/09/2096174 dated 14 September 2009

³ Appeal Ref: APP/Y3940/A/12/2188911 dated 6 September 2013

⁴ Ref No: 18/0909/VAR dated 5 December 2018

area falls within the 'Farley Forest Heathland Mosaic' Landscape Character Area (LCA)⁵ which is described as generally undulating, a peaceful enclosed landscape of extensive woodland cover and with pastoral and arable fields bounded by full hedgerows and hedgerow trees. The site is fairly typical of the wider LCA, being a pastoral field on an undulating landform and which benefits from a degree of enclosure from hedgerows and topography. Unusually, the site, until recently, did not have full hedgerows on the A27 road frontage boundary or along the north-western side. I return to this aspect shortly.

12. The area also falls within a 'Special Landscape Area' (SLA) as covered by saved Policy C6 of the Salisbury District Local Plan (2003) (Local Plan). Policy C6 states that development proposals in the countryside covered by the SLA designation will be considered, amongst other things, with particular regard to the high quality of the landscape, requiring proposals to be sympathetic and to incorporate high standards of landscaping and design. Policy CP47 of the Wiltshire Core Strategy (2005) (CS) relates to traveller sites and whilst requiring development to avoid an unacceptable impact on the character and appearance of the landscape, does not specifically preclude traveller developments within the SLA. In fact, aside the larger settlements, the areas of Wiltshire countryside that are not within the Areas of Outstanding Natural Beauty or National Park are all designated as SLAs, and thus, the need to locate traveller pitches within SLAs is largely unavoidable.
13. It is common ground between the main parties that the existing traveller pitch no longer results in an undue adverse impact on the surrounding landscape. This is due to the fact that the pitch itself has been enclosed by a hedgerow that has grown particularly high and comprises a high proportion of evergreen conifer trees. However, as there is insufficient space to accommodate the proposal within the existing pitch, the hedgerows will need to be removed to make way for an enlarged area and the creation of new hedgerows. The Council's Landscape Officer provided advice on the preferred mix of native and evergreen hedge plants to form the new hedgerows around the pitches and also around the wider field and envisages that they would afford the necessary mitigation within 3 to 5 years' time.
14. It became clear at the site visit that the hedges around the field, including the roadside hedge, a new internal hedge alongside the access track and the north-western hedgerow had been recently planted with regularly spaced 'Laurel' shrubs and that these had already grown to reach the approximate height of the post-and-rail-fence of around 1.2m. The proposed landscaping schedule does not include this species of hedgerow plant and is not to the exclusion of all other species. As such, whilst the recent planting has proven that the site can fairly readily be 'greened' and softened in views from the A27 to assimilate within the wider landscape, I am not considering the retention of this particular landscaping. I envisage that an alternative scheme similar to that submitted which should include a greater variety of native and evergreen species would be necessary to avoid the site becoming an alien feature by reason of its dominance of evergreen hedging.
15. In addition to the recent landscaping, works have also been undertaken to the access to straighten and widen it, add kerbstones and create manicured lawns either side thereof. The surfacing of this feature was as yet incomplete. These

⁵ Wiltshire Landscape Character Assessment (2005)

changes have created a further degree of urbanisation which divert from the low-key nature of the single pitch and its access.

16. Whilst the proposal would not fundamentally alter any of the site's characteristics in terms of its compatibility with the wider LCA, it is clear to me that there would be a degree of harm from introducing the additional pitches and associated structures onto the site. This is due to the lack of appropriate existing landscaping to prevent them from being highly visible from the A27, as well as partially visible from the nearby public right of way on elevated land.
17. This visual harm would be experienced largely by walkers and drivers passing through the area. Though the existence of other buildings and dwellings in the immediate surroundings at least provides a more appropriate context for the pitches than in an isolated visible location, the harm would endure for at least the first few years. The success of the landscaping that could mitigate the harm would depend on appropriate management. However, it is clear that, with this, along with careful planning of works at the access to minimise its degree of formality and hardsurfacing, that the harmful impacts of the proposal would at least be minimised and largely temporary in nature.
18. Taking the above into consideration, I conclude that there would be a degree of harm from the proposal relative to the condition of the site for a single pitch. This harm results in conflict with CS Policies CP47, CP51 and CP57 and Policy C6 of the Local Plan which collectively seek to ensure that development protects, conserves and, where possible, enhances landscape character and local distinctiveness by responding to the value of the natural and historic environment.

Protected Sites

19. The site lies within the River Test catchment area which drains into the Solent, which forms part of and has links with various protected sites, designated under the Habitats Regulations⁶ for their specific qualifying features including aquatic plants, the water environment and the multiple bird species that they support.
20. In short, levels of nitrogen and phosphorus from various sources are reaching the protected sites with negative consequences, harmful to their integrity. As a result, the nutrient input from changes in use of land and developments within the catchment areas that drain into the protected sites must be assessed and found not to add to the existing nutrient burdens.
21. The existing use of the site is pastoral land, which itself has a nutrient output, and there is an existing residential use of land which also has a nutrient output via a septic tank. The proposal would add an additional traveller pitch and its resident occupants which would increase the nutrient burden from the site. However, upgrading the existing septic tank to a new package treatment plant (PTP) would achieve a nutrient benefit and could ensure that the development were nutrient neutral.
22. The 'Nitrate Budget' submitted to the hearing was found to be deficient, as was a later version submitted as post-hearing correspondence. However, a version of the nitrates budget prepared by 'A C Building Designs Ltd' has considered the existing situation compared with the proposed and Natural England have

⁶ The Conservation of Habitats and Species Regulations 2017, as amended

considered the details submitted and considered that nitrate neutrality can be achieved as part of the development itself, subject to conditions to ensure the installation of the PTP in place of the septic tank and its ongoing maintenance. This process will also be subject to separate environmental permitting processes outside the scope of the planning regime.

23. As competent authority for the purposes of the Habitats Regulations, I have undertaken an Appropriate Assessment and I have consulted with Natural England. Owing to the identification of specific measures within the scheme and the ability to secure them via planning conditions, I am certain that based on the best available scientific evidence, the proposal would not harm the integrity of the protected sites and would therefore accord with the expectations of the Habitats Regulations.

Need for pitches

24. The Planning Policy for Traveller Sites (2015) (PPTS) requires local planning authorities to identify and update annually a supply of specific deliverable sites sufficient to provide 5 years' worth of sites against their locally set targets. The previous GTAA of 2020 noted a requirement of 132 PPTS pitches for the period 2019 – 2036. The Council also drew attention to a shortfall in the number of traveller pitches with an acknowledgement of a deficit of at least 10 pitches from those required by CP Policy 47 which sets a target of 19 pitches for the South Wiltshire area for the period 2016 - 2021.
25. The Council's updated GTAA was agreed as being the most relevant document to quantify the need for pitches within the area. In essence, there is a need for 120 pitches over the plan period (2022 – 2038) for PPTS compliant travellers, of which 79 of these are required within the first five years. The residual of the requirement would be needed in the later years of the plan and other pitches would be required to meet the non-PPTS travellers and those falling within the 'unknown' categories.
26. As part of the 2022 GTAA research work, a survey was undertaken at the site and the need for a single pitch was identified. This is reflected in the overall need of 120 pitches.
27. In view of the shortfall in pitches required by Policy 47 at the end of the relevant period, it is evident that the policy is failing to deliver on its targets. In addition, the main parties agreed that until such time as the Council have an adopted plan, including allocations or a strategy for the provision of traveller pitches to meet this need, that the Council could not demonstrate a five year supply of traveller sites as required by paragraph 10 of PPTS. This is a further significant material consideration in the determination of the appeal.

Personal Considerations

28. The status of the family unit as travellers as defined by Annex 1 of the PPTS was not disputed by the Council. Consequently, the policies within PPTS are relevant in addition to the policies of the development plan.
29. The appellant has suffered with health complications in recent years and Mr Gammell (junior) is one of his main carers. This has necessitated them living on the same site together. Whilst other family members have registrations at the local doctor's surgery, none have as pressing a need to attend medical appointments as Mr Gammell (senior).

30. There are four resident children on site. Whilst two of the children are of primary school age, none are currently in school as the family have been uncertain about their ability to settle and register in a local school. The children are currently schooled at home. Given the living arrangements, the appellant and his wife also often look after the grandchildren when needed to do so.
31. It is clear to me that the extended family not only wish to live together but, in fact, need to do so for health and care-related reasons. The family have a settled base and it allows them to access local medical care. This is a well-known benefit of allowing travellers to have a settled base, as would be the ability of the family to register the children at a local school.
32. In terms of alternative sites to which the family could turn in the event of the appeal being dismissed, the family expressed a concern that there were none available to their knowledge, and that the search for a suitable site for the other temporarily resident family member had highlighted the lack of suitable sites in the area. The Council were also unable to point out any vacant alternative sites or sites that benefit from an allocation or permission that should be considered. Mr Gammell (junior) was also asked if, theoretically, he would have the financial means to consider an alternative site, to which the response was negative.
33. The Public Sector Equality Duty under the Equality Act (2010) includes a requirement for a public authority to foster good relations between persons who share a relevant protected characteristic and persons who do not share it. The Human Rights Act⁷ establishes a right to respect for private and family life, his home and his correspondence. Under Article 3 of the United Nations Convention on the Rights of the Child, a child's best interests should be a primary consideration, and no other consideration must be regarded as more important or given greater weight.
34. Taking these matters into account, it is clear that there is a need for two pitches at the site for the family to continue to support each other and that there appear to be no immediately obvious solutions to accommodating them elsewhere given the lack of availability or financial means to seek alternatives. This would mean, in all likelihood, that were I to dismiss the appeal, that at least the family of Mr Gammell (junior), including his children, would become homeless and would have to live a roadside existence, double up on pitches elsewhere or move between other temporary stopping places. The prospects of Mr Gammell (senior) not being able to access medical appointments is also a possible outcome in this scenario. The overall effect would be to worsen the prospects of the whole family and this would clearly not be in the best interests of the children.

Other Matters

35. A number of objections have been submitted from the Parish Council and local residents which raise points in connection with the planning history of the site and aspects addressed above. I have taken these into account in reaching my decision. A number of other points have been raised which I address below.
36. In terms of the loss of peace and tranquillity and insufficient capacity of local infrastructure to cater for the proposal, I consider that the increase in one pitch

⁷ Article 8 of the European Convention on Human Rights as enshrined in the Human Rights Act (1998)

from the single permanent pitch which already has permission is unlikely to cause material effects in either of these regards.

37. There is no cogent evidence that the site floods or that the proposal would increase the risk of such. Nor is there any evidence that the access is unsuited to the development. The Highway Authority did not object subject to conditions and I see no reason to disagree subject to the required visibility splays being provided.
38. I note that there is a lack of footpaths for future residents of the site to reach nearby facilities, but the location of the site is not in dispute between the main parties. In addition, the occupants' reliance on a vehicle is an accepted consequence of their traveller lifestyle.
39. I do not regard that allowing the appeal would result in the creation of a precedent. The site already has permission for a single traveller pitch and is to be increased in size for an additional family pitch. Another case would be determined on the particular need, circumstances and impacts at that time.
40. I note the concern that the proposal includes day rooms and that these would likely be used for purposes other than that stipulated, i.e. as a form of permanent accommodation. However, this aspect is capable of being addressed by way of conditions.

Planning Balance

41. There would be harm to the character and appearance of the area which brings the development into conflict with the development plan, when considered as a whole. However, the harm identified above would be reduced over time through appropriate landscape mitigation secured by condition.
42. The policy failure to deliver the requisite number of pitches and the current absence of a five year supply of traveller sites are significant material considerations. In addition, the personal circumstances of the family in this case, such as the need for the family to stay together for health reasons and in the best interests of the children, considered in context with the absence of readily available alternatives onto which they could all relocate, are also key considerations that weigh in favour of the scheme. Therefore, I conclude that the considerations in this case are of such materiality that when taken collectively, they outweigh the identified harm and indicate that the decision should be taken other than in accordance with the development plan.

Conditions

43. As the development has already commenced, a time limit condition is not necessary. However, a condition stipulating the approved plans is necessary in the interests of certainty.
44. The Agent indicated that whilst the site currently benefitted from a personalised permission, that the condition limiting occupation to Mr Gammell and his wife is not reasonable or necessary given that that particular pitch has been found to be appropriately located and adequately concealed by landscaping. However, as the personal circumstances of the appellant and family have contributed to my decision to allow the appeal, I consider that maintaining such a personalised condition is necessary, albeit with adaptations to refer to all occupants and the new number of pitches. Additionally, a

separate condition requiring the cessation of the use of the land and its restoration following their departure from the site is also necessary.

45. A condition are required in connection with further details about the sewage disposal method and mitigation measures is necessary to ensure the integrity of the protected sites. There is a strict timetable for compliance because permission is being granted retrospectively, and it is not possible to use a negatively-worded condition to secure the approval and implementation of the details before the development takes place. The condition will ensure that the development can be enforced against if the requirements are not met.
46. A condition restricting the limitation on the number of caravans is necessary in the interests of the character and appearance of the area. Similarly, and because the site has not been designed for use as such, a condition is necessary restricting the size of vehicle that can be parked or stored on site.
47. As set out, schemes of work detailing the landscaping, its management, and works to the access are necessary as there is insufficient detail in the submitted evidence. The form of wording used in these conditions ensure that the development can be enforced against if the requirements are not met.
48. A condition preventing commercial activities is necessary to restrict any potential nuisances. For reasons of highway safety, it is also necessary to condition that the visibility splays shall be retained free from obstruction at all times.

Conclusion

49. For the foregoing reasons, the appeal is allowed, subject to the conditions.

Hollie Nicholls

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr James Gammell (Senior)	Appellant
Mr James Gammell (Junior)	Family member of appellant
Mr Philip Brown	Agent

FOR THE LOCAL PLANNING AUTHORITY:

Mr Joe Richardson	Senior Planning Officer - Wiltshire Council
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INTERESTED PARTIES:

Councillor Richard Britton	Councillor for Alderbury and Whiteparish
Mrs Julie Bell	on behalf of Whiteparish Parish Council
Mr Bruce Thompson	Whiteparish resident

SUBMITTED DOCUMENTS:

Document 1	Nitrate Budget for the Proposal
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SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans:
 - DWG No: 19/TRICK/01 Site Location Plan Date Received 10.08.20
 - DWG No: 19/TRICK/05 Proposed Site Layout Plan/Landscaping Plan Date Received 10.08.20
 - DWG No: 19/TRICK/04 Rev Existing and Proposed Streetscene/Sections Date Received 10.08.20
 - DWG No: 19/TRICK/03 Rev A Proposed Dayrooms Elevations and Floor Plans Date Received 10.08.20
- 2) The use and occupation of the land hereby permitted shall be carried on only by the following:
 - Mr Jimmy Gammell (Senior) and Mrs Kathleen Gammell;
 - Mr Jimmy Gammell (Junior) and Mrs Priscilla Gammell, and their resident dependants.
- 3) When the land ceases to be occupied by those named in condition (2) above, the use hereby permitted shall cease and all caravans, structures, materials and equipment brought onto or erected on the land, or works undertaken to it in connection with the use, shall be removed and the land restored to its former condition in accordance with a scheme to be submitted to and approved in writing by the Local Planning Authority. The restoration shall be carried out in accordance with an agreed timetable.
- 4) No more than four (4) 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 two (2) shall be static caravans, shall be stationed on the land at any time.
- 5) Unless within 1 month of the date of this decision a scheme for the manufacturer details of the proposed private treatment plant (PTP) and a maintenance plan for the maintenance of the PTP are submitted in writing to the Local Planning Authority for approval, and unless the approved scheme is implemented within 3 months of the Local Planning Authority's approval, the use of the site shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed until such time as a scheme is approved and implemented.

If no scheme in accordance with this condition is approved within 6 months of the date of this decision, the use of the site shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed until such time as a scheme approved by the Local Planning Authority is implemented.

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.

- 6) Unless within 6 months of the date of this decision a scheme for works to the access, soft and hard landscaping and management thereof, has been submitted in writing to the Local Planning Authority for approval, and unless the approved scheme is implemented within 9 months of the Local Planning Authority's approval, the use of the site shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed until such time as a scheme is approved and implemented.

If no scheme in accordance with this condition is approved within 12 months of the date of this decision, the use of the site shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed until such time as a scheme approved by the Local Planning Authority is implemented.

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.

- 7) No commercial activities shall take place on the land, including the storage of materials.
- 8) No vehicle over 3.5 tonnes shall be stationed, parked or stored on the land.
- 9) No structure or erection or planting exceeding one metre in height shall be placed between the A27 carriageway and the 122m by 2.4m visibility splay measured in a westerly direction from the centreline of the access point onto the public highway.

End of Schedule