



Appeal Decision

Hearing held on 1 November 2022

Site visit made on 1 November 2022

by Simon Hand MA

an Inspector appointed by the Secretary of State

Decision date: 10 November 2022

Appeal Ref: APP/H1840/W/22/3304747

The Paddocks Comhampton, Dunhampton, Ombersley, Worcestershire, DY13 9ST

- 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 Mrs R Jones against the decision of Wychavon District Council.
 - The application Ref 20/02381/CU, dated 23 October 2020, was refused by notice dated 9 February 2022.
 - The development proposed is change of use of land to residential gypsy caravan site consisting of 6 caravans, of which no more than 3 would be mobile homes, the laying of hardstanding and erection of 3 amenity buildings.
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Decision

1. The appeal is dismissed.

Main Issues

2. The history of the site and whether cumulative harm arises in terms of scale of the site and vehicle movements on the local lanes such as to warrant a refusal.

Reasons

3. Comhampton Lane is one of a network of small rural lanes that lies to the west of the A449 dual carriageway and to the north of Ombersley. The hamlet of Comhampton lies immediately to the south. As the Lane goes north out of the hamlet there is a field on the eastern side. This has been divided into four plots which now all seem to be owned or occupied by gypsy families. The plots are long and narrow and development has gradually been extended towards the back of the plots.
4. Plot 1 is the Paddocks and is closest to Comhampton. It currently has planning permission for 5 pitches and this appeal will provide for a further 3. The initial pitches were on the roadside, with further development behind. The appeal site lies behind again to the rear of the site. Plot 2 has permission for 3 pitches of which two were temporary until very recently when one of those was made permanent. Plot 3 is vacant and is used for grazing ponies, while Plot 4 has permission for 3 permanent pitches.
5. Further away to the north along Dog Lane is another site which has about 12 pitches while to the east closer to the dual carriageway is a site at Acton Villa with 2 pitches.

6. It is agreed that the site lies in the open countryside and PPTS requires rural sites to be very strictly limited where they are away from existing settlements. They should also respect the scale of and not dominate the nearest settled community and avoid placing undue pressure on the local infrastructure, which in this case refers to the local highway network.

Policy and 5 year supply

7. Council policy for windfall gypsy sites is found in SWDP17 which has 11 criteria against which sites must be judged. As the appellant pointed out, the policy does not require all 11 to be met, so they act as a guide. It is long established that criterion (i) is not met as the site is not on the edge of a category 3 settlement, but the only other criterion that might be failed is (vii) which is whether the size and number of pitches are of an appropriate scale for the location. This refers back to PPTS 25 as mentioned above.
8. The Council are now able to demonstrate a 5 year supply of sites. There was some discussion as to how large the surplus was, but the appellant accepted they did have a surplus, however small. However, this relies on providing pitches only for gypsy families that meet the definition in PPTS – or ‘policy gypsies’ as they are increasingly called. There are no plans yet to deal with other, ethnic gypsies in the area. The GTAA found there to be 52 pitches for all gypsies required in the 5 years from 2019-2023, or 10.4 a year. Thus by the end of 2022 they would need to have provided 41.6. In fact the Council noted they had granted (or had been allowed on appeal) 40 pitches since 2019 to date. As the year is not over, they could well be on track. They also note there are 4 pitches involved in outstanding applications and a further 4 appeals to be determined. It seems to me highly likely therefore that even taking into account the much larger number of pitches required overall, the Council can show a 5 year supply.

Sustainable location?

9. SWDP17 is also silent on sustainable locations. It remains government policy to encourage development to areas where there is a genuine choice of modes of transport to reach local facilities. That clearly is not the position here and it is accepted that most, if not all journeys will be by car. However, as is recognised in many appeal decisions, PPTS does not suggest that rural sites should be avoided because of this. Many Inspectors have taken the pragmatic view that when dealing with a group whose lifestyle involve travelling, often long distances, that being a few kilometres from local schools, shops, doctors and so on is not a negative factor. In this case the nearest primary school is 2.4km away, and Ombersley is 4km away, where there are local facilities. This does not seem unreasonable in terms of Gypsy and Traveller sites.

Previous appeal decisions

10. There is a history of appeals on the Plots where the same issues were fully aired. In 2018, following a Hearing¹, permission was granted to double the existing site on Plot 1 from 2 to 4 pitches. At that time there were lawful pitches on Plot 4 and an unlawful pitch on Plot 2 that was subject to an appeal. The Inspector found there had been a noticeable change in character of the land with a different pattern of activity, noise and structures associated with

¹ APP/H1840/W/17/3190058

the development of the various plots. The Inspector considered the idea of a "tipping point". At some point incremental development of the plots would mean the size and number of pitches were now of an inappropriate scale. He had considerable sympathy with that view but found that although that point was near it was not yet exceeded. It is clear to me that he is here considering that element of PPTS paragraph 25 that talks about respecting the scale and not dominating local settled community. As he talks about access routes to the site, and scale, he is considering wider impacts than just a visual effect.

11. He goes on to find the development would lead to an increase in traffic on the local road network that was "poor". Again he considers the tipping point concept and finds, given the limited actual evidence of harm, that the cumulative impact of the developments on the various plots has not led to a severe impact on the road network. At that time the Council could not show a 5 year supply of gypsy sites (although it claimed it soon would be able to), but the Inspector found the benefit of a settled base for the extended family and the provision of 2 extra pitches outweighed the limited harm he had found.
12. In 2019, following another Hearing² a further pitch was allowed on Plot 1. This time the Inspector found that as the site was for the extended family on Plot 1 this meant the unacceptable risk caused by an open market site, that the totality of pitches would dominate the nearest community in terms of activity and vehicle movements, was avoided. The only way of overcoming this objection was to make the permission personal to relations of the appellant. I very much read into this that he felt the tipping point for scale and dominance had now been reached but was side-stepped as one large family on Plot 1 would have less impact than several smaller families, due to self-policing and shared journeys. I also note there was then a severe shortfall of gypsy site provision in the District.
13. I have dealt with these two decisions in some detail as the cumulative impacts in this case are significant and it is important to understand how these impacts have been dealt with in the past as this feeds directly into the discussion below.

Scale, domination, and infrastructure

14. Although previous Inspectors have dealt with these issues separately, I consider that by now they have become intertwined. The site lies within the network of lanes lying to the west of the A449. It is generally accepted these are narrow and tortuous with several sharp right-hand bends and few passing places. I travelled the lanes twice, both before and after the hearing and had to reverse some distance having met a delivery van on one bend and luckily was able to pull into a drive to allow a tractor to pass. I have no doubt therefore the highway network is difficult to negotiate and potentially dangerous.
15. It was pointed out there are no accident statistics for the lanes, the only recorded accidents happening on the dual carriageway, and it was implied I should therefore conclude the lanes were safe. However, what it says to me is that a serious accident has not happened yet. It was also pointed out that we should not wait until someone was actually hurt before deciding the lanes were dangerous.

² APP/H1840/W/19/3221290

16. The amount of traffic using the lanes is also uncertain. Back in 2018 it was apparently 50-60 vehicles a day, but since then there are more gypsy pitches and apparently some barn conversions too. The Highway Authority did try and carry out a traffic count for this Hearing but the recording equipment was vandalised. The appellant argued that a quiet rural lane could carry up to 1000 vehicle movements a day (and still be defined as 'quiet'). Even if the lanes carried half that number the traffic associated with only 3 pitches was a minor increase. On the other hand if vehicle movements were as low as 60, then there was hardly any danger at all. This is a classic attempt of having your cake and eating it, but it seems to me to miss the point. It does not matter, within reason, how many vehicle movements there are, but on what sort of roads they are moving.
17. There is no hard evidence of danger, but many local people wrote in to oppose the appeal, and most raised highway safety concerns and their evidence contained many descriptions of near misses, as others who attended the Hearing also explained. It is commonsense to me that the highway network is potentially not capable of safely accepting more traffic, and since the two previous appeal decisions more gypsy pitches as well as barn conversions have happened to further increase traffic levels that back in 2018 and 2019 were noted to be approaching the point of danger.
18. It is generally agreed that Comhampton is a small hamlet of about 13-14 dwellings with a possible 7 more at Owl Hill. Allowing the appeal will bring the number of Gypsy pitches along Comhampton Lane to 14. The simple maths suggests this is wildly out of scale with the local settled community. The appellant made the valid point that the purpose of the scale and domination test was not to try and socially engineer who lives in the countryside but argued that as the site was not readily visible from Comhampton, it could not visually dominate it, and so it passed this test. In my view the test, such as it is, was summed up by a previous Inspector who said there was, in 2019, an unacceptable risk of *"the totality of pitches in the area dominating the nearest settled community in terms of activity and vehicle movements"*. There is also the issue, touched on by a previous Inspector, that the hamlet at Comhampton cannot expand as it is constrained by development plan policies and so there comes a point where the expansion of the gypsy site too should be constrained in the interests of equality and fairness.
19. Returning to the idea of a tipping point, it seems to me quite clear this was close to being reached in 2018 and the further development since then plus the three pitches under consideration now exceed that point. As noted above, the vehicle movements associated with the appeal site are likely to be harmful and the scale of the development does not respect the scale of the local community and is likely to put undue pressure on the local road infrastructure. The change in the character of the land, noted in 2018, has got progressively worse as the various plots have become more developed and further development would consolidate this and add to the harm. For all these reasons it is therefore contrary to paragraph 25 of PPTS, and also contrary to criteria (i) and (vii) of SWDP17.

Conclusions

20. According to the appellant they had numerous enquiries from wider members of the family and friends about staying on the site and there also children on

the site who will eventually need their own pitch. The proposed pitches are intended to fulfil that need. But this is a general need and there are no specific reasons as to why any future occupiers should live here as opposed to anywhere else and no personal circumstances have been put forward. I am aware that Gypsy families generally have trouble in finding lawful sites to stay on, regardless of whether the Council can show a 5 year supply of pitches or not, and I am also aware of the Public Sector Equality Duty but none of these outweigh the harm I have identified and the appeal should be dismissed. I have considered the conditions discussed but these do not change the planning balance.

Other Matters

21. Since the Hearing the Court of Appeal judgement in *Smith v SSLUHC & Ors* [2022] has been issued which states the PPTS is unlawfully discriminatory in excluding non-nomadic gypsies from the definition of Gypsies and Travellers. For this appal this has implications for the GTAA and the Council's supply of gypsy sites. However, as I discuss above, I think the Council may well have a 5 year supply of site whatever definition is included. However, even if not, the shortfall is likely to be minor and would not add sufficient weight to the planning balance to change the outcome of this decision.

Simon Hand

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Phillip Brown
Mr and Mrs Jones

FOR THE LOCAL PLANNING AUTHORITY:

Sean Herbert
Denise Duggan
Gareth Jones (Worcestershire CC Highways Authority)

INTERESTED PARTIES:

Councillor Christopher Day
Richard Essex

DOCUMENTS

1. Updated note on 5 year land supply
2. Map of area with gypsy pitch provision