



Appeal Decision

Hearing Held on 2 November 2022

Site visit made on 2 November 2022

by S Ashworth BA (Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 December 2022

Appeal Ref: APP/D0840/W/21/3269749

Little Meadows Arbour, road from Toldish Road to Moorland Road, Toldish, Indian Queens, St. Columb, Cornwall TR9 6HG

- 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 P Cooper against the decision of Cornwall Council.
 - The application Ref PA20/03553, dated 10 March 2020, was refused by notice dated 28 August 2020.
 - The development proposed is change of use of land to a private gypsy/traveller site comprising of 6 pitches with associated works including 6 mobile homes, 6 touring caravans, 2 semi-detached day rooms, hardstandings and the installation of a septic tank.
-

Decision

1. The appeal is allowed and planning permission is granted for the change of use of land to a private Gypsy/Traveller site comprising of 6 pitches with associated works including 6 mobile homes, 6 touring caravans, 2 semi-detached day rooms, hardstandings and the installation of a septic tank, at Little Meadows Arbour, road from Toldish Road to Moorland Road, Toldish, Indian Queens, St. Columb, Cornwall TR9 6HG in accordance with the terms of planning application ref: PA20/03553, dated 10 March 2020 subject to conditions set out in the attached schedule.

Preliminary Matter

2. The St. Enoder Neighbourhood Plan (the Neighbourhood Plan) was successful at referendum on 15 July 2021, after the date the planning application was refused. It therefore now forms part of the development plan for the area and carries full weight in the decision-making process. The main parties have had the opportunity to comment on the implication of the Neighbourhood Plan and are not therefore prejudiced by my consideration of it.

Main Issue

3. The main issue is whether the site lies in a suitable location having regard to the effect of the proposal on the character and appearance of the area and national and local planning policy for the provision of Gypsy and Traveller sites and, if any harm is identified, whether there are any benefits which would outweigh that harm.

Reasons

Character and Appearance

4. The appeal site comprises a small, roughly rectangular area of open grassed land which is part of a larger dog-legged field extending eastwards towards the settlement boundary. The site borders a rural by-way for a short stretch on its western boundary and by the private drive to a detached residential property, Heikym, to the north. To the south is Little Meadows, a residential property undergoing renovation and extension¹ and to the eastern side of the site land is currently being developed as a six pitch Gypsy and Traveller site granted permission following an appeal in 2018² (the 2018 appeal).
5. The site lies within Landscape Character Area LCA17 of the Cornwall and Isles of Scilly Landscape Character Study 'St Austell or Hensbarrow China Clay Area'. The site and wider area display some of the key characteristics identified within the character area as set out in the appeal documents. However, commensurate with the location of the site outside of but close to the defined settlement boundary, the character and appearance of the area around the site varies significantly. Within the settlement boundary, built development, which centres on Moorland Road, comprises a variety of industrial and residential premises. However, moving further along the by-way towards open countryside, built development is more sporadic and the area becomes distinctly rural in character. The appeal site reflects the historic small field pattern of the area and forms part of that rural character and, apart from the close boarded perimeter fencing, a matter which I will turn to later, makes a positive contribution to the character and appearance of the area.
6. The proposal is for six Gypsy and Traveller pitches which would each contain one mobile home, one touring caravan and a parking space. The layout of the site would be similar to that of the site adjoining it. Four of the pitches would be set end on to the boundary with the driveway to Heikym and the other two positioned alongside the boundary with Little Meadows. The pitches would be served by two semi-detached day rooms of permanent construction. Access to the by-way, leading to Moorland Road, would be taken through the adjoining site.
7. At the time of the earlier, 2016, appeals³ relating to the unauthorised use of the present appeal site for the stationing of mobile homes, the Inspector noted that the seven caravans which then occupied the site did not integrate well with the existing pattern of development being physically detached from the more built-up area and that the site had a relatively high pitch density in comparison to the spacious and rural nature of the development immediately surrounding it. Since that time, the context of the site has been altered with the introduction of the pitches on the adjoining field, and to a lesser extent, by the introduction of further built development immediately south of the site, albeit that the development of that site incorporates significant areas of open space.
8. The combination of the mobile homes and the day rooms, which would have an urban bungalow like appearance, plus areas of hardsurfacing and parked

¹ Planning Application ref: PS22/07041

² Appeal ref: APP/D0840/W/17/3182803

³ Appeal refs: APP/D0840/C/16/3143967 & 3143968

vehicles, would result in a high coverage of the site at odds with its current open appearance. Moreover, the introduction of the caravans and the structures and attendant activity into an area which is otherwise sparsely developed would be inconsistent with some of the key characteristics of the landscape character type, specifically the small-scale pastoral field pattern and the vernacular style of buildings. This would be particularly apparent from within the site and from the houses nearby. Whilst in the context of the existing site the development would not be isolated or incongruous, nevertheless it would extend the built up part of the settlement further into the countryside and result in a loss of open land.

9. The tops of the caravans would be visible from the by-way and the development as a whole would be visible from neighbouring properties, particularly from first floor windows. However, given the established vegetation and fencing that bounds the site, public views into it would be limited. Moreover, the surrounding topography is relatively level and as a consequence, there would be very limited long range views of the development. Whilst the proposal would double the number of pitches in the vicinity, the main parties agreed at the hearing that there were no public vantage points from where it would be possible to see the development in its entirety.
10. At the 2018 hearing the Inspector noted that the present appeal site, described as a paddock, would contain and soften the appearance of the pitches on the adjoining site. Further details of the paddock and of its landscaping and management were required by condition. It is clear that the proposal would result in the loss of that paddock. However, as set out above, public views into the site are very limited and it seems to me that the site would be well contained by the by-way and private drive so that its extent would be clearly defined and limited.
11. The fencing surrounding the site, a domestic rather than traditionally rural feature, was required by condition of the previous permission to be removed. The removal of the fencing was considered a benefit of that scheme. However, I heard at the hearing that both the appellant and the neighbouring residents would prefer that the fence stayed in place for security reasons particularly, as I saw at my visit, because the neighbouring occupiers keep and breed dogs. The matter is therefore one of balance. Given the vegetation largely screens the fence, more so that it appears to have done in 2018, it seems to me that any harm from the retention of the fence would be limited. Screening is not an appropriate method of making an otherwise unacceptable development acceptable but as boundary hedges and vegetation are a characteristic feature of the area, the vegetation in this case contributes to the rural landscape. Taking all these matters together therefore I conclude that harm to the character and appearance of the site would be localised and limited.
12. On that basis the proposed development would be contrary to Policies 2, 12 and 23 of the Cornwall Local Plan 2016 (the Local Plan). These policies require, amongst other things, that development proposals identify the value and sensitivity of the character and importance of landscapes and will need to sustain local distinctiveness and character. In addition, the proposal would fail to comply with Landscape Policies 1 and 2 of the Neighbourhood Plan which require that development should reflect the character of the local landscape, should seek amongst other things to protect against insensitive development

on rural character, and should prevent the extension of a settlement in a way which would conflict with its setting.

Consideration of the proposal against other local and national policies relating to the provision of Gypsy and Traveller accommodation.

13. There is no specific policy relating to the provision of Gypsy and Traveller sites in the Neighbourhood Plan. However, Policy 11 of the Cornwall Local Plan requires that new sites should be of an appropriate size, proportionate to any nearby settled community and be located to ensure reasonable access to services. There is no dispute between the parties that the proposal meets the requirements of this policy and I have no reason to disagree.
14. Government policy set out in 'Planning Policy for Traveller Sites 2015' (PPTS) very strictly limits new traveller site development in the open countryside that is away from existing settlements or outside areas allocated in the development plan. In this case, whilst the site is within the open countryside for planning purposes, it is attached to an existing Traveller development which itself abuts established housing within the settlement. Accordingly, the proposal would not be considered as being away from an existing settlement. There are no allocated Gypsy and Traveller sites in the area, a matter to which I will turn later. Moreover, the proposal would meet the locational requirements of Policy 11, which does not exclude new sites in the countryside. I therefore conclude that the location of the development would accord with both development plan policy and national policy as set out in the PPTS.

Other Considerations

Existing level of provision and need for sites

15. Policy 2a of the Local Plan sets a requirement for the provision of 318 permanent pitches by 2030, following the production of the needs assessment in 2015. The Council's latest monitoring report, June 2022, indicated that 113 new permanent pitches had been provided since 2015 and I heard at the hearing that subsequent to that, further permissions have been granted. I acknowledge therefore that provision is increasing. The proposal would make a further, albeit moderate, contribution to that provision.
16. I have taken into consideration comments by the Parish Council, and the Council, that the needs assessment should be revised downwards in line with the revised definition of a Gypsy or Traveller for planning purposes, as set out in the PPTS 2015, which did not include members of the community who had ceased to travel permanently. However, the Court of Appeal in *Smith*⁴ held that the exclusion of Travellers who have ceased to travel permanently is discriminatory and has no legitimate aim following the case. I am therefore unconvinced that such an approach is now likely to be taken in any future permanent pitch needs calculations. Nevertheless, notwithstanding this, it is common ground between the parties that there is still a substantial unmet need for permanent pitches in Cornwall. Such unmet need carries significant weight in support of the proposal.
17. I recognise from the evidence before me that there is a concentration of pitches in the China Clay community network area and fewer elsewhere in Cornwall. I acknowledge the Councils' point that a more even spatial

⁴ *Lisa Smith v SSLUHC* [2022] EWCA Civ 1391

distribution may be more beneficial. However, Policy 2a does not set localised targets for the 318 pitches. In addition, there is nothing within Policy 11 which suggests such an approach and, whilst the Council monitors pitch provision on an area basis, the PPTS sets out that decision makers should determine applications for sites from any travellers and not just those with local connections.

18. I note that there is doubt as to whether further pitches are required in this area and understand that it has taken some time for the 2018 permission to be implemented. However, whilst there has been a recent application to remove a Gypsy and Traveller occupancy condition from an 8 pitch site at Little Hallaze, Penwithick⁵ these matters do not conclusively demonstrate that there is no need for pitches in the area or justify the refusal of this permission particularly taking into account the identified shortfall in the County as a whole.
19. I have also heard that caravans on the Minorca Lane site, reportedly owned by members of the Gypsy and Traveller community, are rented out for residential purposes without restriction on occupancy. However, I understand that there are no occupancy conditions on this site and as such the matter has no bearing on the determination of the case before me.

Failure of Policy

20. It is common ground that since 1994 there has been a failure of policy to meet the need for pitches in Cornwall and its former districts through the plan led system, contrary to national planning policy. Such failure of policy carries additional substantial weight.

Living conditions

21. I have taken account of the concern of neighbouring residents regarding the potential impact of the proposal on their living conditions as a result of noise and disturbance. I have heard and read that there was a degree of anti-social behaviour arising from the unauthorised use of the land as a residential caravan site. However, whilst the proposal would generate a degree of activity on the site, and in the surrounding area, which does not currently exist, there is no evidence before me that an authorised Gypsy and Traveller site would generate any more noise or anti-social behaviour than would be expected in residential settings within the settled community. Nor is there evidence that the existing site has resulted in any significant harm to living conditions, albeit that that site has only recently been occupied. Accordingly, I am unconvinced that the proposal would unduly harm the living conditions of neighbouring occupiers.

Effect on The Kelliers

22. The Kelliers, a site of post-medieval tinnerns pits, now public open space undergoing restoration by the Parish Council, lies to the south-west of the site on the opposite side of the by-way. I understand the concern expressed at the hearing about the impact of the development on that space. However, the caravans would not be readily visible from the open space and whilst there may be activity on the site, I am satisfied that it would not be so significant as to be harmful to the enjoyment of the public space.

⁵ Application No : PA20/07000

Planning Balance and Conclusion

23. The proposal accords with the locational aspects and overall policy provision for Gypsy and Traveller sites as set out in Policy 11 of the Local Plan and the PPTS. However, I have found some harm to the character and appearance of the area and as such the proposal does not comply with Landscape Policies 1 and 2 of the Neighbourhood Plan or Policies 2, 12 and 23 of the Local Plan. That harm is limited for the reasons set out and as such I give limited weight to the conflict with these policies.
24. However, there are a number of matters which weigh in support of the scheme. They include the lack of five years worth of specific deliverable sites against the Council's targets and the failure of policy over a long period to provide for the accommodation needs of Gypsy and Travellers in the county. In addition, the proposal would provide a modest increase in the supply of Gypsy and Traveller sites. Taken together, the benefits of the scheme attract considerable weight.
25. Consequently, the material considerations in this case indicate that planning permission should be granted.

Conditions

26. The Statement of Common Ground indicates that the main parties have agreed the conditions set out in the Council's statement of case. The appellants have agreed to the pre-commencement terms where applicable. I have considered the suggested conditions in the light of guidance set out in the Framework and Planning Practice Guidance.
27. The standard time limit and plans conditions are required to provide certainty and in the interests of proper planning. At the time of the preparation of the Statement of Common ground the main parties agreed that, if planning permission was to be granted, it should be subject to a condition limiting occupation of the site to Gypsies and Travellers as defined in Annex A of the PPTS 2015. However, taking account of comments made by the parties, following *Smith* as set out above, there is no reason before me why such wording would be justified in this case. I shall therefore grant planning permission subject to a condition which restricts occupation to Gypsies and Travellers, defined so as to not exclude those who have ceased travelling permanently.
28. In order to provide certainty, and to limit any further harm to the character and appearance of the area, it is necessary to limit the total number of pitches to six and specify the number and type of caravans permitted. In order to protect the living conditions of adjoining residents it is necessary to prevent commercial activities on site; limit the number and size of commercial vehicles kept per plot; preclude external lighting, except where agreed by the Council and ensure that parking and turning facilities are kept available for their intended purpose.
29. In order to prevent further harm to the character and appearance of the area, conditions requiring the submission and agreement of a landscaping implementation and maintenance scheme for both hard and soft landscape works including perimeter fencing, is necessary. The Council will be aware from discussion at the hearing of the neighbouring residents' request to be consulted on details regarding boundary treatment.

30. The main parties have also suggested a condition requiring the maintenance of an up-to-date register of the names of all occupiers of each individual unit on site. This was discussed at the hearing and I noted the appellant's agreement to it. However, as set out in the 2018 appeal decision, the Council has enforcement and investigatory powers to redress any breach of the condition requiring the site to be only occupied by gypsies and travellers. As such the suggested condition is not necessary to make the development acceptable.
31. Accordingly, taking into account all matters raised, the appeal is allowed subject to conditions.

S Ashworth

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Dr S Ruston MRTPI	Ruston Planning Ltd
Mr R Crandon	Tirlun Design Associates
Mr P and Mrs J Cooper	The appellants

FOR THE LOCAL PLANNING AUTHORITY

Mr J Holman MRICS MRTPI FAAV Cornwall Council

INTERESTED PARTIES

Cllr D Cole	Cornwall and St Enoder Parish Councillor
Mr and Mrs R Griffin	Local residents

DOCUMENTS SUBMITTED AT THE HEARING

1. Signed copy of the Statement of Common Ground
2. Decision notice, block plan, workshop elevations and garage elevations relating to application PA22/07041 : Renovation and extension of dwelling, reinstatement of workshop and repositioning of garages at Little Meadows.

DOCUMENTS SUBMITTED AFTER THE HEARING

1. Existing and proposed elevations, a coloured block plan indicating the extent of the application site and a ground layout plan relating to PA22/07041.

SCHEDULE OF CONDITIONS

1. The development hereby permitted shall be carried out within three years of the date of this permission
2. The development hereby permitted shall be carried out in accordance with the following approved plans: 02 Site Location Plan and Proposed Block Plan and 03 Proposed Semi-Detached Day Rooms.
3. The site shall not be occupied by any persons other than gypsies and travellers, defined as persons of nomadic habit of life whatever their race or origin, including such persons who on grounds only of their own or their family's or dependants' educational or health needs or old age have ceased to travel temporarily or permanently, but excluding members of an organised group of travelling showpeople or circus people travelling together as such.
4. There shall be no more than six pitches on the site and on each of the six pitches hereby approved no more than two 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, of which only one caravan shall be a static caravan.
5. No commercial activities shall take place on the land, including the storage of materials.
6. No more than one commercial vehicle per plot shall be kept on the land for use by the occupiers of the caravans hereby permitted, and it shall not exceed 3.5 tonnes in weight.
7. No external lighting shall be used on the site other than in accordance with details which have first been submitted to, and approved in writing by, the local planning authority.
8. The parking spaces and turning areas detailed on the approved plans shall be kept available at all times for the parking and turning of motor vehicles by the occupants of the pitches and their visitors and for no other purpose.
9. No development shall commence until full details of hard landscape works have been submitted to and approved in writing by the local planning authority and these works shall be carried out in accordance with the approved details prior to the occupation of the dwelling hereby permitted. Notice shall be given to the local planning authority when the approved scheme has been completed.
10. No development shall commence until a scheme of landscaping has been submitted to and approved in writing by the local planning authority. The landscaping scheme shall provide planting plans with written specifications including:
 - Details of all existing trees and hedgerows on the land, showing any to be retained and measures for their protection to be used in the course of development
 - Full schedule of plants
 - Details of the mix, size, distribution and density of all trees/shrubs/hedges

- Cultivation proposals for the maintenance and management of the soft landscaping.

The protection measures proposed shall be completed in accordance with the approved scheme before the development hereby permitted commences and shall thereafter be retained until it is completed. Notice shall be given to the local planning authority when the approved scheme has been completed.

All planting, seeding or turfing comprised in the approved scheme of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the building or the completion of the development, whichever is the sooner. Notice shall be given to the local planning authority when the approved scheme has been completed. Any trees or plants which within a period of five years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of a similar size and species as those originally planted.