



Appeal Decision

Hearing Held on 20 October 2022

Site visit made on 20 October 2022

by Mrs H Nicholls FdA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 December 2022

Appeal Ref: APP/D0840/W/21/3255090

Land to the west of New Road, St Hilary, Penzance TR20 9EA

- 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 A Martyn against the decision of Cornwall Council.
 - The application Ref PA19/07496, dated 21 August 2019, was refused by notice dated 9 March 2020.
 - The development proposed is Change of use of land to 1 no. Traveller site including 1 no. mobile home, 1 no. touring caravan, 1 no. polytunnel, and 1 no. shed.
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Decision

1. The appeal is allowed and planning permission is granted for change of use of land to 1 no. Traveller site including 1 no. mobile home, 1 no. touring caravan, 1 no. polytunnel, and 1 no. shed at land to the west of New Road, St Hilary, Penzance, TR20 9EA, in accordance with the terms of the application, Ref PA19/07496, dated 21 August 2019, subject to the conditions in the attached schedule.

Preliminary Matters

2. Given the manner in which the touring caravans had been introduced to the site and used for residential purposes, the appeal proposal is partly retrospective. I have assessed the appeal on this basis.
3. Annex 1 of the Planning Policy for Traveller Sites (2015) (PPTS) broadly defines gypsies and travellers as those of a nomadic habit of life. The Council accepted that the Appellant met the PPTS definition in the officer's report to the West Sub-Area Planning Committee in early 2020 and no contrary view was expressed at the hearing. I asked questions about the Appellant's patterns of travel for economic purposes and it appeared to me that the COVID-19 Pandemic had curtailed the frequency and length of stays away from his settled base. However, the Appellant indicated that he fully intended to resume his nomadic way of life. On this basis, the PPTS policies are applicable. However, the Smith Judgement¹ was handed down on the 31 October 2022 and concerns the PPTS definition of travellers. This Judgement has had a bearing on the wording of conditions which restrict the occupancy of pitches for nomadic travellers.
4. Despite the absence of an agreed statement of common ground, the parties were in agreement that the location of the site and how it relates to the requirements of Policy 11 of the Local Plan was not in dispute. Additionally,

¹ Smith v SSLUHC & Ors [2022] EWCA

there is an acknowledged absence of a five year supply of PPTS traveller pitches and that an unmet need of 55 pitches would likely remain unmet at the end of the period of the Cornwall Local Plan (2010 – 2030) (adopted 2016) was also not disputed. The Council had also assessed the availability of alternative sites and agreed that there were none. I had no reason to disagree with these findings.

Main Issue

5. In view of the above, the main issue in the appeal is the effect of the proposal on the character and appearance of the area and on the outstanding universal value of the Cornwall and West Devon Mining District World Heritage Site (WHS).

Site and Proposal

6. The site lies in a rural position on the outskirts of the village of St Hilary. The red line site area encompasses the access track, hardstanding area and the areas onto which the caravans and structures would be placed. The wider ownership extends to the whole of the gently sloping field which rises up towards the north-west, currently largely laid to grass and enclosed by treed hedgerows. The access track, which also has tree-lined hedgerows either side, connects with New Road. There are some scattered dwellings nearby, separated from the site by a Public Right of Way (PROW) and another field which is in separate ownership.
7. The site falls within the WHS and within landscape character area (LCA) 'CA06: Mounts Bay East' of the Cornwall and Isles of Scilly Landscape Character Study (2007) which broadly describes the area as a generally undulating low plateau inland, rising in the centre to the peak of Godolphin Hill, with grasslands enclosed by vegetated hedges, extensive areas of mining remains and a mix of both Anciently Enclosed Land and post-medieval settlement and enclosure.
8. The proposal seeks to change the use of land to residential purposes to accommodate 1 traveller pitch, with one static and one touring caravan. To facilitate the Appellant's cultivation of the land, permission is also sought for a polytunnel, potting shed and composting toilet. Though not detailed in the description, a hardstanding adjacent to the site gateway is also included to facilitate parking.

Reasons

9. The WHS, incorporated in 2006, comprises ten areas of distinctive patterns of buildings, monuments and sites which together form a coherent series of distinctive cultural landscapes created by the industrialisation of hard rock mining processes in the period 1700 - 1914. The application site is located within 'Area 3: Tregonning and Gwinear Mining Districts'.
10. The United Nations Educational, Scientific and Cultural Organisation (UNESCO) World Heritage Committee has set out a Statement of Outstanding Universal Value (OUV) for the WHS. The seven main landscape attributes of the WHS are its mine sites; mine transport infrastructure; ancillary industries; mine settlements and social infrastructure; mineworker's smallholdings; great houses, estates and gardens; and mineralogical and other related sites of particular scientific importance.

11. The National Planning Policy Framework (the Framework) sets out that WHSs are designated heritage assets of the highest significance and that any harm or loss of the significance of such an asset, from its alteration or destruction, or from development within its setting, requires clear and convincing justification².
12. Policy 24 of the Local Plan requires that development within the WHS should accord with the Cornwall and West Devon Mining Landscape World Heritage Site Management Plan 2020 – 2025 (Management Plan). It goes on to state that proposals that would result in harm to the authenticity and integrity of the OUV should be wholly exceptional. If the impact of the proposal is neutral, either on the significance or setting, then opportunities to enhance or better reveal their significance should be taken.
13. The Management Plan notes that Area 3 is the largest of the 10 areas of the WHS, and other than the hills of Godolphin and Tregonning, and the valley of the River Hayle, is largely undulating plateau. The Area is a rural one, with a predominance of farmland, areas of downland, mine dumps and scattered smallholders' cottages and fields. There are also a number of great houses and estates which further distinguish the Area, including Godolphin, Clowance and Trevarno, and which influenced the formation of settlements such as Praze-an-Beeble and Leedstown.
14. Following assessments undertaken on behalf of both main parties, it is accepted that the site comprises a former mineworker's smallholding and that its outer boundaries remain relatively true to the map depictions in the Tithe map of 1843. The fields of smallholdings are important to an overall understanding of the WHS as they show miners often had second areas of work. From the Tithe Map and later OS maps it is possible to tell that a terrace of miner's cottages which once stood nearby have since long gone, and other former cottages have been combined and extended into single dwellinghouses that still stand. Furthermore, the access track to the site is suggested to have previously served a nearby mine, of which no above-ground workings remain.
15. As the site is a feature for which the WHS is inscribed, it makes a contribution to its OUV. Whilst considered individually, the site makes only a small contribution relative to the large scale of the industrial WHS as a whole, it is a valuable contribution nonetheless and the Management Plan also advises that cumulative effects need to be considered.
16. The appeal proposal would not interfere with the main boundaries of the site or the access track, and its size and form as a smallholding of historic significance would still be appreciable. The use of the site for the cultivation of produce is also consistent with its previous use. The introduction of structures to accommodate the residential use and their visibility in the wider landscape would be the most harmful components of the proposal. However, the structures proposed in this instance are very modest in both number and scale. Their position would also be fixed by the limited extent of the red line to areas around the edges of the field without hardstandings.
17. In terms of the degree of visibility of the structures, those that exist on site at present are not necessarily the ones that would be retained and their positions differ on the ground by a modest amount to those marked on the plans. In any

² Paragraph 200

event, due to the site's enclosure by hedges and trees, the views are limited to very modest glimpses through vegetation. Even during the winter months without full leaf cover, I envisage that the hedges would still largely limit the visibility towards the modest number of structures except where there are small gaps. From my perspective, the degree of visibility and harm caused by the existing structures has been overstated and they are barely perceptible, though I note that the exterior of the caravans which have been painted a muted dark colour is atypical of caravans which are usually white or light-coloured. By reason of their small number, form, scale, siting and the appearance of the structures, combined with the site's characteristics and limited degree of visibility, the proposal would not result in more than a negligible degree of harm to the character and appearance of the area.

18. In my view, the site would retain its ability to be read as a smallholding even with the introduction of structures for residential use. The potential for a proliferation of domestic paraphernalia would be limited by virtue of the small area that would be changed to a residential use. The limited visibility of the site and the filtered glimpses available would not amount to a harmful visual change to the site or how it is experienced in public and private views. Furthermore, though additional native trees have already been planted by the appellant, the limited degree of visibility does not depend on these establishing, although they would offer further benefit in this regard over time.
19. Therefore, in my view, the proposal would not result in more than a negligible degree of harm to the OUV of the WHS. Though I have considered the potential for cumulative effects, no particular schemes in the area or wider WHS have been specifically brought to my attention, and given its negligible magnitude of effects, I rule such effects out in any event. The negligible effects would also be reversible, should the site not be required for residential purposes in the future.
20. Though I do not consider there would be more than negligible harm to the character and appearance of the area or the OUV of the WHS, the proposal conflicts with Policies 23 and 24 of the Cornwall Local Plan. It also fails to comply with Policies P3, C2 and C7 of the Management Plan insofar as they require proposals to protect and conserve the WHS and add to its quality and distinctiveness.
21. Under the terms of the Framework, the proposal will lead to less than substantial harm to the significance of a designated heritage asset. Whilst the degree of harm to the OUV of the WHS would be negligible, it is an asset of the highest significance.
22. I attach weight to the acknowledged absence of a five year supply of traveller pitches, the pressing unmet need and lack of specific alternative available sites. That there has been a longstanding failure of policy to deliver sites is also a relevant significant consideration. All of these factors combine to indicate that the delivery of one much-needed traveller pitch would be a public benefit of significant weight. In my view, this public benefit outweighs the less than substantial harm to the designated heritage asset.

Other Matters

23. From the hearing discussion, it became clear that interested parties believed that the description of the development was not exhaustive and that there was

some relevance to the word 'including'. It was taken by them to mean that other structures could be introduced to the land if the appeal were allowed, and the number of cars parked on the hardstanding, sometimes exceeding the number of occupiers, was supportive of their concerns. I am clear from the description of the proposal and the plans, which specifically limit the site area, when combined with the suggested conditions, that aside any cars owned by the appellant, no additional residential structures could be sited on the land and there is limited scope for residential paraphernalia to be introduced for reasons expressed above.

24. Though I heard from the Parish Council about the direction of travel for the St Hilary Neighbourhood Plan, given its stage of progression, I have afforded it only limited weight.
25. As the proposal before me is for a planning matter, I have not considered the applicability of any site licence requirements as these fall under a separate legislative regime in any event.

Planning Balance

26. Having undertaken the balancing of the benefits of the scheme against the less than substantial harm to a designated heritage asset, I do not consider that permission should be withheld for reasons relating to such.
27. I have identified some associated harm to the character and appearance of the area in conflict with Policy 23 of the Local Plan. However, that such effects would be of a negligible magnitude lessens the degree of weight to be attached to this harm. I also find that the factors weighing in favour of the scheme are of such weight that they outweigh this identified harm, and thus indicate that the appeal should be allowed.

Conditions

28. As the development is partly retrospective, there is no need for the condition specifying the statutory period for commencement. A condition specifying the approved plans is necessary in the interests of certainty.
29. As the needs and county-wide lack of provision for nomadic travellers has formed a key reason for granting permission, a condition is necessary limiting the occupation of the site to those who observe this way of life. However, the Appellant's personal circumstances have not formed any part of the reason for granting planning permission which means that a personalised condition is not necessary.
30. The Council suggested a condition limiting the duration of the permission to a three year period, as recommended to the West Sub-Area Planning Committee in early 2020. The rationale behind such a condition at that time was because it was considered that the availability of alternative sites outside of the WHS may improve within such a timescale, which would have allowed the site to revert to its agricultural use. The Planning Practice Guidance states that circumstances where a temporary permission may be appropriate include where it is expected that the planning circumstances will change in a particular way at the end of that period.
31. I asked what progress had been made in the intervening period of more than two years to locate and make alternative sites available and the answer was

that there had been none. Whilst the Council were in the process of preparing or commissioning an update to its '*Assessment of the Accommodation Needs of Gypsies and Travellers*' (2015), there was no firm date on when such a process would conclude or whether it was intended to inform any review of policy within a reasonable period of time thereafter. Consequently, I do not foresee any planning circumstances materially changing within a three year period with sufficient certainty that would enable me to impose such a condition. A five year period would provide more time, but I heard nothing in the way of a commitment that such a period would be used with any intent to deliver change. Consequently, given the circumstances surrounding the need now and the likelihood that it will persist into the future, I consider it appropriate to grant a permanent permission.

32. In the interests of the character and appearance of the area, a condition is necessary limiting the number and type of caravans permitted on site.
33. As the possible introduction of domestic paraphernalia and structures could further harm the appearance of the site, conditions limiting permitted development rights were discussed. I consider that the tightly-enclosed red line site area would limit the area to be used for residential purposes such that it would be unlikely that additional structures could be accommodated in any event. Any that the appellant sought to construct at a later date, within the red line or elsewhere, would therefore require a separate planning application. However, given the concern about the introduction of permanent features onto the site beyond those specified, a condition has been added specifically to prevent the creation of additional areas of hard surfacing.
34. A condition was also discussed about the application of a muted external colour paint or cladding treatment to the static mobile home that would be introduced to site to minimise visibility as has been done with the touring caravans on site at present. However, I have had regard to the limited availability of views, even throughout the changing seasons, and the potential that the site may be occupied by other travellers in the future. I consider that there is no compelling need to try and further conceal the caravans and that discretion on their finish should be left to the discretion of the Appellant or any future occupiers.
35. Though the Council's Environmental Health Officer recommended a condition seeking a contamination assessment and scheme of remediation if found, given that no earthworks or hardstandings are proposed to facilitate the residential use of the land, there would be no pathway between any potential contaminants and receptors that would warrant such a condition.

Conclusion

36. For the foregoing reasons, the appeal is allowed.

Hollie Nicholls

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr Andrew Martyn	Appellant
Dr Simon Ruston	Ruston Planning
Ms Nichola Burley	Heritage Vision

FOR THE LOCAL PLANNING AUTHORITY:

Mr Peter Blackshaw	Planning Appeals Officer
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INTERESTED PARTIES:

Mr Ian Baxendale	Local resident
Ms Jane Howells	Local resident
Mr Peter Behrens	St Hilary Parish Chairman

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans:
 - Site location plan, Ref AM19-SLP Rev A
 - Site Layout Plan, Ref AM19-BLOCK
 - Drawing: Polytunnel, scale 1:100 at A4, dated 14/09/19
 - Drawing: Compost toilet, scale 1:100 at A4, dated 14/04/19
 - Drawing: Potting Shed, scale 1:100 at A4, dated 14/09/19
- 2) 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.
- 3) There shall be no more than one pitch on the site, upon which no more than one mobile home, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968, and one touring caravan shall be stationed at any one time.
- 4) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no hard surfaces shall be created within the site or extended without an express grant of planning permission.

End of Schedule