



Appeal Decision

Site visit made on 22 December 2022

by Darren Hendley BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 04/01/2023

Appeal Ref: APP/B3030/W/22/3304428

4 The Paddock, Newark Road, Ollerton, Nottinghamshire NG22 0EH

- 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 John Calladine against the decision of Newark & Sherwood District Council.
 - The application Ref: 22/00483/FUL, dated 3 March 2022, was refused by notice dated 28 April 2022.
 - The development proposed is described as the replacement of existing static caravan with new dormer type bungalow.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. Various documents submitted with the appeal have referred to either Ollerton or Wellow in the appeal site's address. I have used the site address as was set out on the planning application form in my banner heading above as the application was made with these details. It is simply for the purposes of identifying the site. The description of the proposal above, which is also taken from the application form, refers to a dormer type bungalow. No dormer is proposed as the first floor accommodation would be served by side elevation windows in the gable ends and by a rooflight. Neither the Council's decision notice nor the appeal form refers to a dormer in the description. I have considered the proposal on this basis.
3. The Court of Appeal issued a judgment¹ regarding the interpretation of the Planning Policy for Traveller Sites 2015 (PPTS) and the application of that policy to Gypsies and Travellers as regards the definition that the PPTS sets out. The Court of Appeal found that the PPTS definition was unlawfully discriminatory with regard to the application of that policy to Gypsies and Travellers who have ceased to pursue nomadic lifestyles due to being elderly or disabled. The main parties were given the opportunity to comment on this judgment and which I have considered in my decision.

Main Issues

4. The main issues are (i) whether the proposal would be in a suitable location for housing, with regard to development plan policy and national planning policy;

¹ Lisa Smith v SSLUHC [2022] EWCA Civ 1391

(ii) the effect on the character and appearance of the area; and (iii) the effect on the supply of Gypsy and Traveller pitches.

Reasons

Suitable Location

5. The appeal site is in use as a Gypsy and Traveller site. It comprises a triangular area of land that contains a number of static caravans, or park homes, that are laid out in the northern part of the site and accessed from Newark Road. There are also associated touring caravans and domestic-related paraphernalia. The southern part of the site consists of an open area. The site lies between Newark Road, a well vegetated former railway line and Wellow Road, which is set at a considerably elevated position. The site also bounds a further Gypsy and Traveller site to the west and 2 residential properties to the north.
6. The site and the development in its vicinity is known as Wellow Green. It is made up of a mix of Gypsy and Traveller pitches and a small number of residential dwellings that have built up over time, principally on the same side of Newark Road as the site. According to the appellant, it numbers 69 pitches and dwellings. It is physically distinct from both the village of Wellow, which lies to the south-east, and the town of Ollerton, which is found to the west and north. It does not form part of these settlements and nor does such a modest clustering of development constitute a settlement or have the characteristics of one. Such a view is consistent with the appeal decisions that I have been referred to close by at Land adjacent to The Haven² and Newark Road³.
7. Spatial Policy 3 of the Council's Amended Core Strategy (2019) (Amended Core Strategy) guides development in rural areas, including focussing housing in what it deems are sustainable locations. It states that new development should be in villages. As the site lies outside what can be considered a village, the location does not favour the proposal. While it is not a matter of dispute that the proposal would be in a location that is accessible to services in Wellow and Ollerton that cater for day to day needs, this does not address that the location of the site is not in a village for the purposes of Spatial Policy 3.
8. Nor does Spatial Policy 3 offer support where it refers to settlements which do not meet the locational criterion of the policy but are well related to villages that do. The proposal would not lie in a settlement for reasons that I have already explained. The policy goes on to state that development not in villages or settlements, in the open countryside, will be strictly controlled to uses which require a rural setting. In this regard, it points to Policy DM8 in the Allocations & Development Management Development Plan Document (2013) (Allocations & Development Management DPD), as is relevant to the proposal.
9. Policy DM8 limits development in the open countryside to those types which are set out in the policy. This includes replacement dwellings. It is not in dispute that the caravan that would be replaced under the proposal meets the size and other requirements that are set out in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968. It is not therefore a building. It is also evident from the planning history of the site, as is set out in the Planning Officer's Report, that the siting of the caravan has been itself

² Appeal Ref: APP/B3030/W/20/3264664

³ Appeal Ref: APP/B3030/W/16/3152355

undertaken in relation to a planning permission⁴ for a material change of use of the land.

10. On this basis, the proposal would not be a replacement dwelling. It would not form part of the change of use of the land which the existing caravan benefits from under the existing permission. Even if a contrary view could be taken, it would not be of similar size and scale to the existing caravan with the accommodation that would be created, in particular in the roof area. The proposal would not therefore meet this criterion of Policy DM8 and none of the other types of development that are set out in the policy are applicable. Accordingly, these circumstances mean that the site that I have been referred to in Ollerton⁵ where the Council accepted a bricks and mortar property as a replacement dwelling for a mobile home has a limited bearing on my decision.
11. As regards rural housing for the purposes of the National Planning Policy Framework (Framework), the site would not constitute an isolated home in the countryside. The Framework however also states that in rural areas, planning policies and decisions should be responsive to local circumstances and support housing developments that reflect local needs. This is carried out through the application of the relevant policies of the development plan. The proposal would not accord with these policies. Nor would it constitute a rural exception site or be in a location where it would enhance or maintain the viability of rural communities because there are not local services of any significance in this small cluster of development. As the proposal would not be in a settlement or a village, it would also not garner support from the Framework in supporting services elsewhere.
12. I conclude that the proposal would not be in a suitable location for housing, with regard to development plan policy and national planning policy. As such, it would not comply with Spatial Policy 3 and Policy DM8 as it would not focus housing in a sustainable location, require a rural setting and would not be a type of housing development which is permitted in open countryside locations. It would also not comply with the Framework in this regard because it would not promote sustainable development in rural areas.

Character and Appearance

13. Under the Newark and Sherwood Landscape Character Assessment (LCA), the site lies within the Mid Nottinghamshire Farmlands Policy Zone MN PZ 22: Wellow Village Farmlands with Ancient Woodlands. It is said to be a gently undulating and rolling landscape and with some sense of enclosure, amongst other characteristics. Reference is also made to the disused railway line to the south of the site.
14. The site itself bears little relation to a village farmland landscape as it already contains the caravans and various other structures. As a result, there is little to conserve and reinforce, under the related LCA policy. The proposal would not therefore substantially alter the character of the site. The design of the proposal would be unassuming and not out of keeping with its location, given the mix of buildings and caravans.
15. The site already benefits from a reasonable degree of screening due to the disused railway line in particular, the elevated position of Wellow Road and as it

⁴ Council ref: 08/02253/FUL

⁵ Council ref: 16/02004/FUL

has a limited frontage onto Newark Road. The sense of enclosure would not be diminished and the appellant has offered additional landscape planting by the roadside. This aspect of the landscape character would be ably maintained.

16. The proposal would not result in an encroachment into the countryside in character terms because of the existing development on the site. There is no evidence before me that suggests that this development, including the caravan, is anything other than a permanent feature. Whether it would constitute further residential development to the periphery of settlements is of limited consequence because the site is not on the periphery of Wellow or Ollerton as there is intervening open land.
17. The issue of character and appearance is also not to be conflated with how the proposal fares against the development plan, as regards the countryside location. These are two distinct issues because, on the one hand, the countryside needs to be considered in its own intrinsic character and appearance terms, whilst the location of development within the countryside concerns what types of development are to be permitted within it. Accordingly, different conclusions can be reached on each issue.
18. I conclude that the proposal would not have an unacceptable effect on the character and appearance of the area. Hence, it would comply with Core Policies 9 and 13 of the Amended Core Strategy and Policy DM5 of the Allocations & Development Management DPD where they concern a high standard of design, positively addressing the relevant landscape policy zone, that landscapes are to be protected and enhanced, and local distinctiveness and character, amidst other matters. It would also comply with the Council's Landscape Character Assessment Supplementary Planning Document (2013) in these respects, as well as with the Framework where it concerns design and landscape character matters.

Supply of Pitches

19. The Council's Gypsy and Traveller Accommodation Assessment (2020) (GTAA) identifies a need for 118 pitches over the period 2019-2034 under what it terms the 'planning definition' of Gypsies and Travellers. This is taken from the PPTS. For the reasons that I have set out earlier in my decision, this definition is now deemed unlawful. The GTAA also sets out a higher figure of 169 pitches, which includes those who do not meet the 'planning definition', as well as those who are 'undetermined'. I consider that it is now the higher figure which is more applicable, as the figure deriving from the PPTS definition can no longer be relied upon.
20. The remainder of the PPTS remains applicable and sets out that local planning authorities are to provide 5 years' worth of sites against their locally set targets. The Council has stated that it has a shortfall against this requirement, which has not been disputed. Such a shortfall can only be increased when it is a 169 pitch deficit that needs to be considered.
21. The proposal would constitute a bricks and mortar dwelling. Consequently, it would result in the loss of a pitch on a gypsy and traveller site. Ostensibly, the proposal is to be treated as general housing on this issue, even if it would be the intention for it to be occupied by a Gypsy and Traveller family.

22. The appellant has pointed to that the Council has identified additional pitches for the site through its plan review document and is looking for existing sites to increase the number of pitches. The potential for pitches to be provided in the future does not though justify the loss of a pitch at the present time, in particular when there is already a shortfall.
23. There is an absence of development plan policy which deals with the redevelopment of an existing Gypsy and Traveller site. It falls therefore to be treated against other considerations on this issue, of which the current pitch shortfall is a matter which must be taken into account.
24. Therefore, I conclude that the proposal would result in the loss of a pitch at a time when the Council cannot demonstrate an adequate supply. This weighs significantly against the proposal.

Other Matters

25. It is not in dispute that the appellant and the associated family members are Gypsies and Travellers. They currently live on the pitch in the static caravan, and the associated touring caravan is also used for sleeping accommodation. The children attend local schools and the family is said to be outgrowing the accommodation. One of the parents has ceased to travel term time in order to look after the children. There is a strong network of family and friends. The appellant travels widely for business across the majority of the year, and the family travel during school holidays, including attendance at important Gypsy and Traveller community events.
26. The appellant wishes for the current lifestyle to be continued in bricks and mortar accommodation as a base until the children have finished their education. The proposal would provide a bedroom for each of the children, as well as the parents. It would not suffer from poor overheating and insulation that is said to occur in caravans.
27. I am not unsympathetic on these grounds. However, whilst the appellant considers that it would provide a settled base, so it appears does the current situation. It is also not evident how the existing arrangements disrupt the education of the children or would prevent them completing their education, even if the accommodation may not be ideal. The education needs of the children are an important consideration, but there is not an obvious disadvantage in this case.
28. The weight to be attached to such matters is also tempered by limited evidence that the family's needs could not be met by the existing housing stock in the broader area. In this regard, there are not insignificant areas of housing that provide existing bricks and mortar permanent dwellings. It is also unclear how the justification would hold up once the children have finished their education. There is also not substantive evidence to suggest that measures to the existing caravan have been undertaken to attempt to address any overheating and insulation issues.
29. While the Allocations & Development Management DPD is a number of years old, this does not in itself render the policies that it contains to be deemed out of date. The Framework does not seek to prevent local circumstances applying to where housing development in the countryside is not isolated. This is as long as it tallies with promoting sustainable development in rural areas, which

also concerns the justification for Policy DM8. This is also consistent with the findings of the Land adjacent to The Haven appeal decision. However, even supposing Policy DM8 was deemed out of date, there would still be conflict with Spatial Policy 3.

30. Proposed alterations to Policy DM8 under the Local Plan review and its consistency with the Framework will be a matter for the Inspector examining the soundness of the plan. It has reached the Publication stage and as of yet has not been submitted for Examination, based on the evidence before me. It carries limited weight and none of this alters my conclusion.

Balancing Exercise and Conclusion

31. The proposal would not be in a suitable location for housing with regard to development plan policy and national planning policy, and it would have an unacceptable effect on the supply of Gypsy and Traveller pitches. In addition to the policy conflicts that I have identified, it would also not comply with Policy DM12 of the Allocations & Development Management DPD as the presumption in favour of sustainable development would thus not apply.
32. The benefits in this case centre on the personal circumstances of the appellant. However, as I have set out above and on the basis of the evidence before me, I am not persuaded that the need for a settled base is not either met by the existing accommodation or could not be met by an existing dwelling in the area. All other matters are neutral.
33. The appellant has referred to the use of a restricted occupancy condition and where a neighbouring Council has applied this condition to bricks and mortar dwellings. Such a condition would not though be reasonable for a permanent dwelling where the justification relates to personal circumstances, in particular as such circumstances can change, as with the children finishing their education. As such a condition cannot be reasonably imposed, this would further reinforce that a Gypsy and Traveller pitch would be lost. Nor would the application of a temporary permission address the harm because it would not be reasonable to impose a related planning condition to such a dwelling.
34. In exercising my function on behalf of a public authority, I am also consciously aware of my duties under the Public Sector Equality Duty (PSED) contained within the Equality Act 2010 which sets out to eliminate discrimination, harassment and victimisation, advance equality and foster good relations, and the protected characteristics under the PSED, including for Gypsy and Traveller groups. I am also aware of my duties under Article 8 of the Human Rights Act 1998 (Article 8) that bestows the right to private and family life and for the home, and that the Article 8 rights of a child should be viewed in the context of Article 3(1) of the United Nations Convention on the Rights of the Child.
35. If I was to grant permission in this case, it would conflict with those duties because a Gypsy and Traveller pitch would be lost for the reasons that I have set out, even with the intended occupation of the proposed bricks and mortar dwelling. Furthermore, matters in relation to the suitability of a location for housing is a matter of legitimate wider public interest. This is reflected in Spatial Policy 3 and Policy DM8, as well as then Policy DM12 and the Framework. Taking into account all of the considerations, I am satisfied that this objective can only be adequately safeguarded if the proposal does not proceed. Not granting planning permission would therefore be a proportionate

response that would not violate the appellant's human rights. In reaching this view, I have also had due regard to my duty under the PSED, as well as under Article 8.

36. I have considered all matters that have been raised, but the benefits that would arise would not outweigh the harm caused by the proposal. For the reasons that I have set out, I conclude that the proposal conflicts with the development plan as a whole and there are no material considerations to outweigh this conflict. Therefore, the appeal should be dismissed.

Darren Hendley

INSPECTOR