



Appeal Decision

Hearing held on 24 January 2023

Site visit made on 24 January 2023

by Joanna Gilbert MA (Hons) MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 February 2023

Appeal Ref: APP/B3030/W/22/3304814

Shady Oaks, Eagle Road, Spalford NG23 7HA.

- 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 T Holmes against the decision of Newark & Sherwood District Council.
 - The application Ref 21/02528/FUL, dated 1 December 2021, was refused by notice dated 30 March 2022.
 - The development proposed is change of use of land to provide 4 pitches (1 static and 1 touring caravan and two parking spaces on each pitch) hardstanding and associated infrastructure for members of the Gypsy and Traveller community.
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Decision

1. The appeal is allowed and planning permission is granted for change of use of land to provide 4 pitches (1 static and 1 touring caravan and two parking spaces on each pitch) hardstanding and associated infrastructure for members of the Gypsy and Traveller community at Shady Oaks, Eagle Road, Spalford, NG23 7HA in accordance with the terms of the application, Ref 21/02528/FUL, dated 1 December 2021, subject to the attached schedule of 12 conditions.

Preliminary Matters

2. I have used the description of development agreed by the main parties and provided on the Council's decision notice as it better describes the proposal than the description of development on the application form. The main parties confirmed at the hearing that they were happy with this approach.
3. An appeal¹ was dismissed in 2020 on the same site for a detached house. As appeal decisions are capable of constituting material considerations², I have had regard to this appeal in reaching my decision.
4. A final statement of common ground was provided by email on 19 January 2023. I was provided with a signed copy of this document at the hearing.

Main Issues

5. The main issues in this appeal are:
 - a) whether the site is suitably located with regard to proximity to services;
 - b) the effect on the character and appearance of the area; and

¹ APP/B3030/W/20/3248951, decision issued 12 October 2020.

² North Wiltshire District Council v Secretary of State for the Environment and Clover [1993] 65 P. & C.R. 137

- c) whether any harm identified, including conflict with the development plan, would be outweighed by other considerations.

Reasons

a) Location

6. Amongst other things, paragraph 25 of the Planning policy for traveller sites (PPTS) states that local planning authorities should very strictly limit new traveller site development in open countryside that is away from existing settlements or outside areas allocated in the development plan.
7. Spatial Policy 3 of the Amended Core Strategy (March 2019) (ACS) on rural areas requires that, amongst other things, new development should be in villages with sustainable access to the Newark Urban Area, Service Centres or Principal Villages and have a range of local services to address day to day needs. Local services are identified as including, but not being limited to, post offices/shops, public houses and village halls. Spalford does not fall within any of the aforementioned categories of settlement, which are outlined in ACS Spatial Policy 1 on settlement hierarchy. ACS Spatial Policy 3 also confirms that development not in villages or settlements, but in the open countryside, will be strictly controlled and restricted to uses which require a rural setting.
8. ACS Core Policy 4 states that future pitch provision for Gypsies and Travellers will be provided in line with the Spatial Strategy focussed on securing provision in and around the Newark Urban Area. ACS Core Policy 5 sets out criteria for considering sites for Gypsies and Travellers and Travelling Showpeople. Amongst other criteria, criterion 2 requires the site to be reasonably situated with access to utilities and to basic and everyday community services and facilities, including education, health, shopping and transport facilities.
9. Policy DM8 of the Allocations and Development Management Development Plan Document (July 2013) (ADM) sets out types of development supported in the countryside. The proposal does not fall within ADM Policy DM8's parameters.
10. Most of the housing in Spalford is located around Chapel Lane, Sand Lane and Rabbit Hill Lane. The bus stop serving Spalford is located here, with one, somewhat irregular bus service running Monday to Friday between Newark, Collingham and Harby. There are no shops, public house, or village hall. The only other community infrastructure in Spalford is a post box. Further housing, farms and a caravan park (Four Seasons Country Park) are located sporadically along Eagle Road travelling south-eastwards from Spalford and in the open countryside. Open fields, hedgerows and groupings of trees separate existing development. Eagle Road lacks both street lighting and footpaths, and has the appearance of a rural road, with grassed verges and hedges. Located on Eagle Road away from the core of Spalford, the site forms the eastern part of a rectangular paddock.
11. In terms of access to services, the nearest church and village hall are located in South Clifton, while food shopping and healthcare facilities are in Collingham, over five miles away. The nearest primary and secondary schools are two to three miles away and would be likely to be accessed by school bus. I understand that one of the nearby schools is threatened with closure. While many people now undertake banking, shopping and health consultations online,

these would not negate the need for the site's intended occupiers to travel to services and facilities.

12. Paragraph 105 of the National Planning Policy Framework (the Framework) acknowledges that development should be focussed on locations which are and can be made sustainable. However, it also highlights that opportunities to maximise sustainable transport solutions will vary between urban and rural areas. Even taking this and the likelihood that any gypsies and travellers living on the site would travel as an intrinsic part of their lives into account, the appeal site is located away from facilities necessary for day to day living.
13. The intended occupiers would be permanently reliant on the private car rather than sustainable transport to reach services and facilities. Walking to the local bus stop would not necessarily be safe, given the absence of street lighting and pavements. Furthermore, the limited bus service would not offer flexibility and ease of access to all likely destinations. Although transport movements will already be made on the local road network by residents of Eagle Road and nearby Spalford, the addition of a number of pitches on the site would contribute further unsustainable movements by the private car.
14. I conclude therefore that the site is not suitably located with regard to proximity to services. This is contrary to ACS Spatial Policy 3 and Core Policies 4 and 5, ADM Policy DM8, PPTS paragraph 25, and paragraph 105 of the Framework as set out above. Given the size of the site and the number of pitches proposed, this would have no more than a moderate adverse effect.

b) Character and appearance

15. ACS Core Policy 5 asserts that sites for Gypsies and Travellers should not lead to the unacceptable loss, or significant adverse impact on landscape character and value, important heritage assets and their settings, nature conservation and biodiversity sites. ACS Core Policy 13 also deals with landscape character and refers to the assessment of the district's landscape character in the Landscape Character Assessment Supplementary Planning Document (SPD).
16. ACS Spatial Policy 3 states, amongst other things, that new development should not have a detrimental impact on the character of the location or its landscape setting. In addition to other matters, ADM Policy DM5 refers to ACS Core Policy 13 and to the importance of considering the rich local distinctiveness of the district's landscape and character of built form in dealing with new development and requires proposals to be considered against assessments contained in the SPD.
17. The SPD identifies the site as being located in the East Nottinghamshire Sandlands regional character area and in the landscape sub-area of ES PZ 02 Wigsley Village Farmlands with Plantations. The sub-area is described as flat with occasional undulating landform, with a mixture of intensive arable fields with strongly trimmed hedges and low intensity farming. There are fragmented blocks of mixed deciduous woodland and coniferous plantations. The sub-area is of a moderate condition with low landscape sensitivity. In terms of action to create built features in this sub-area, the SPD recommends concentrating new development around existing settlements and creating new development which reflects the local built vernacular.

18. Despite houses, farms, and a caravan park nearby, the sporadic nature of development along Eagle Road leads to gaps where fields adjoin the road. Bounded by hedges and trees, these fields support the area's open character.
19. The paddock, of which the site forms part, is surrounded by tall, imposing and unsympathetic conifers, and contains some hardstanding. It has two gated accesses, one at its north-western corner adjacent to Eagle Road with formal brick piers, and a further access off a shared track at the site's eastern end. Even with these features, the expanse of paddock is also of an open character and contributes positively to this part of Eagle Road.
20. The proposal would comprise four pitches with a maximum of one static caravan and one touring caravan on each pitch. Along with the pitches themselves, there would be an access road to the pitches and parking and turning areas. This would erode the paddock by introducing caravans, further hard landscaping and associated domestic paraphernalia to much of its eastern half. This would in turn erode the rural character of this part of Eagle Road.
21. There was some discussion at the hearing about the similarity of this appeal to a nearby caravan park. It was clarified that the Lowfields Country Holiday Fishing Retreat is some miles away from the site, although Four Seasons Country Park is close by. However, the Four Seasons site is set back away from the road and does not appear to be as densely filled with caravans as the proposal would be if fully occupied.
22. Although the proposal would harm the character and appearance of the area, the extent of harm would only be slightly greater than that found in the previous appeal as there would be a greater number of caravans than the single house proposed previously. This harm would be moderate and would weigh against the proposal.
23. In conclusion, the proposal would harm the character and appearance of the area. This would not conflict with ACS Core Policy 5 as it would not cause unacceptable loss or significant adverse impact on landscape character and value. However, it would fail to comply with ACS Spatial Policy 3, and ADM Policy DM5 as outlined. Furthermore, it would conflict with paragraph 174 of the Framework which requires, amongst other things, that planning decisions should recognise the intrinsic character and beauty of the countryside.

c) Other considerations

24. Section 38(6) of the Planning and Compulsory Purchase Act 2004 states that any determination must be in accordance with the development plan unless material considerations indicate otherwise. Paragraph 47 of the Framework and PPTS paragraph 22 echo this element of the Act.
25. It was common ground at the hearing that the intended occupiers of the site are gypsies and travellers consistent with the definition in PPTS Annex 1.

Need

26. PPTS paragraph 10 requires local planning authorities to identify and update annually a supply of specific deliverable sites sufficient to provide 5 years' worth of sites against locally set targets and identify a supply of specific developable sites or broad locations for growth for years 6-10 and, where possible, for years 11-15. PPTS paragraph 27 states that if a local planning

authority cannot demonstrate an up-to-date 5 year supply of deliverable sites, this should be a significant material consideration in any subsequent planning decision when considering applications for the grant of temporary planning permission.

27. PPTS paragraph 24 outlines, amongst other things, the need to consider the existing level of local provision and need for sites, the availability (or lack) of alternative accommodation, and other personal circumstances. It also confirms that locally specific criteria used to guide the allocation of sites in plans or which form the policy where there is no identified need for pitches/plots should be used to assess applications that may come forward on unallocated sites.
28. When the ACS was examined, the examining Inspector found that the gypsy and traveller pitch requirements in the ACS were unsound. As a result, the subsequent Newark and Sherwood District Council Gypsy and Traveller Accommodation Assessment (February 2020)(GTAA) is based on a baseline date of August 2019 and considers pitch needs for 2019 to 2033/34. It establishes that there is a need for 118 pitches for households meeting the PPTS Annex 1 definition. If considering temporary pitches, new household formation and households not meeting the PPTS Annex 1 definition, the overall need totals some 169 pitches.
29. The GTAA splits the need for pitches for those meeting the PPTS Annex 1 definition across 5 year periods, with 77 pitches needing to be delivered or available between 2019 and 2024. This high number of pitches reflects the need to address unauthorised and temporary development, doubling up of households on pitches, and demographic change. However, only 1 pitch has been provided thus far, with a shortfall of 76 pitches. The main parties are in agreement that the Council does not have a 5 year supply of pitches. This is of significant concern given the identified level of unmet need.
30. The proposed submission Amended Allocations and Development Management Development Plan Document (AADM) has recently been subject to public consultation. Submission of the AADM for examination is likely in March 2023. The AADM includes proposed site allocations for 143 pitches as a minimum. The AADM envisages the pitches to be located around Newark and Ollerton and to be provided via additional pitches on existing sites, bringing back into use sites which are no longer occupied, and new site allocations, including a public site at the former Belvoir Ironworks. Much of the focus would be on sites on Tolney Lane, Newark, where there is a long-established area of existing pitches. The appeal site is not proposed for allocation and did not come forward as part of the Council's call for sites.
31. Although the AADM is at a relatively advanced stage and may be submitted soon, it is not clear how long the examination process will be and the extent to which there are unresolved objections to relevant policies and allocations. Furthermore, it is not yet certain which pitch allocations are likely to be found sound as part of the examination.
32. The Council has drawn my attention to the Tolney Lane Flood Alleviation Scheme (TLFAS), which would include a flood resilient vehicular access to Great North Road, and site-level resiliency improvements costed at some £6 million. The TLFAS has been identified as the Tolney Lane area lies in Flood Zones 2 and 3, with the only point of access and egress lying in the River Trent's functional floodplain. The TLFAS would be located adjacent to proposed pitch

allocations on Tolney Lane and would improve access to further proposed pitch allocations beyond. In total, just under half the AADM pitch allocations would be on Tolney Lane. While the aims of TLFAS are laudable, even if the Tolney Lane pitch allocations were found sound, there is no guarantee that they would come forward quickly given the need to fund and implement TLFAS.

33. I recognise that the Council is taking steps to address the significant level of unmet need locally, but as the Council cannot demonstrate a 5 year supply of deliverable sites, and the adoption of the AADM and the safe delivery of flood-resilient pitch allocations remain uncertain, these factors add significant weight in support of the proposal's four pitches.

Alternative sites

34. I asked about any alternative sites which were suitable or available. The appellant had not found any alternative sites that would be suitable. There are no other authorised sites which would allow all the intended occupiers to live there and there are no public sites in the district. Notwithstanding the Council's preference for sites around Newark and Ollerton, this absence of suitable and available alternative sites provides significant weight in support of the proposal.
35. It has not been necessary for me to consider the personal circumstances of the intended occupiers, given my findings on the aforementioned other considerations.

Other Matters

36. Numerous concerns have been raised by Spalford Parish Meeting and local residents. Matters pertaining to character and appearance, visual impact, distance to services and facilities, and infrastructure provision and street lighting have been addressed in the main issues above.
37. Notwithstanding that the PPTS seeks to avoid gypsy and traveller sites dominating nearby communities and the relatively high number of pitches within the district, I have seen no evidence which points to other gypsy and traveller sites close to the site and the number of pitches proposed is small in number. Spalford Parish Meeting has attempted to calculate the likely population of the proposal, but these figures are simply estimates. While there are caravan parks nearby on Eagle Road and at Glen Holt, these are for leisure use and do not make provision for gypsies and travellers. There would be no unacceptable dominance of the settled community in this instance.
38. There would be no mains sewerage. Local residents have referred to the high water table. Sewerage would be dealt with via a septic tank. Apart from mention of the nearby nature reserve of Spalford Warren, there is nothing before me to indicate that this site is of particular biodiversity value and that there would be any detrimental effect on biodiversity importance. A condition would require enhanced landscaping, including use of native plant species.
39. Reference has been made to the risk of increased crime and anti-social behaviour. However, there is no evidential basis of any potential criminal or anti-social activity. Similarly, no detailed evidence has been provided to indicate how the living conditions of residents of Spalford would be impacted.
40. With regard to highway safety, Eagle Road is a relatively narrow road. There are blind bends, but the section of road immediately adjacent to the appeal site

is relatively straight. Conditions would be imposed to ensure that the access to the highway was appropriately laid out and that there were no ill effects on highway drainage. Beyond this, no concerns have been raised on highway safety by either the District Council or the County Council as the highways authority. In the absence of any evidence to the contrary, highway safety would not be detrimentally affected by the proposal.

41. There was concern expressed that the appeal was made outside the six month time period for submission. The appeal was made on 9 August 2022 within the appropriate time limit for appeals. There would be remaining paddock land if the proposal was implemented. However, any further pitch provision would require a planning application.
42. With regard to the effect on property values, the Planning Practice Guidance³ confirms that in general the courts have taken the view that planning is concerned with land use in the public interest, so that the protection of purely private interests such as the impact of a development on the value of a neighbouring property could not be a material consideration.
43. The Council refers to paragraphs 11, 38, 55 – 57, 62, and 74 of the Framework. These paragraphs relate to sustainable development; conditions and obligations, and housing delivery. These do not alter my findings.

Planning Balance

44. Based on the evidence before me, there is a significant unmet need and a shortfall of at least 76 pitches for gypsies and travellers in terms of 5 year supply. Therefore significant weight is attached to the benefits of the additional pitches. I also attach significant weight to the lack of alternative sites.
45. In contrast, the proposal would fail to accord with ACS Spatial Policy 3 and Core Policies 4 and 5, ADM Policies DM5 and DM8, PPTS paragraph 25, and paragraphs 105 and 174 of the Framework as set out above. I afford moderate weight to the harm to the character and appearance of the area and to the harm in respect of location and access to services.
46. Taking account of the weight that I have attributed to the various factors, the harm in relation to location and access to services and character and appearance would be clearly outweighed by the other considerations. These other considerations consist of the significant weight afforded to the benefits of the additional pitches where there is both a significant unmet need and a significant shortfall in five year supply, and the lack of alternative sites. Therefore, I conclude that circumstances exist which justify the proposal on an indefinite basis without a temporary or personal condition.
47. Both temporary and personal permissions were discussed at the hearing. However, as I have found that a permanent permission would be appropriate in this instance, I have not given these options further consideration. I have had regard to the human rights of the families in question and the best interests of the children. As I intend to allow the appeal and grant permission there would be no interference with their rights or interests.
48. A single detached house has previously been refused on the site along with other refused planning applications for new houses locally. The previous appeal

³ Paragraph 21b-008-20140306 What is a material planning consideration?

was dismissed due to its location, character and appearance, and flood risk. In dealing with the first two main issues, I have had regard to the findings of the previous Inspector. The appellant has addressed flood risk through the provision of a flood risk assessment and a condition is applied to ensure that flood management measures are provided. While I have had regard to the previous appeal and to case law⁴ on the subject, I am required to consider the proposal in light of the need for and supply of pitches, rather than for bricks and mortar housing. The two appeals are not similar in this respect and therefore my decision diverges from the previous decision.

Conditions

49. Given the extent of change to some conditions, I provided updated conditions to the main parties after the hearing. I have taken the main parties' further comments into account in reaching my decision.
50. Conditions 1 and 2 set out the time limit and the approved plans in the interests of clarity and certainty. I have not attached a condition on personal or temporary permission as I have already determined that permanent permission is justified and acceptable. Conditions 3 and 5 are necessary to ensure that the site and its access are appropriately detailed to ensure adequate surface water disposal. This is in the interests of highway safety, flood risk, and the living conditions of the intended occupiers. Condition 4 requires provision of waste and recycling details and is necessary to ensure that character and appearance and living conditions are maintained.
51. Condition 6 is required to ensure the safety of the intended occupiers in the event of flooding. The proposed flood management condition in the statement of common ground was not reasonable or enforceable in this instance. I have re-drafted this condition to require a Flood Management Plan, the details of which should be approved in writing by the Council. While I discussed details such as anchoring of static caravans with the parties during the hearing, further consideration should be given to whether this is appropriate in this instance as part of the discharge of condition process.
52. Regarding external lighting, condition 7 is necessary to reduce light pollution. Condition 8 on soft landscaping would be necessary to mitigate the proposal's visual effect and to ensure the replacement of any plants that die within the first five years.
53. The grant of planning permission should be subject to a condition limiting occupation of the site to gypsies and travellers as defined in PPTS Annex 1. However, a recent judgment⁵ held that the exclusion of travellers who have ceased to travel permanently is discriminatory and has no legitimate aim. There is no foretelling as to whether any intended occupiers might be forced to cease travelling permanently. Imposing the suggested condition set out in the statement of common ground would be liable to result in unlawful discrimination, with intended occupiers potentially being unable to live on this site. I shall therefore grant planning permission subject to condition 9 which restricts occupation to gypsies and travellers, defined so as to not exclude those who have ceased travelling permanently.

⁴ Dunster Properties Ltd v First Secretary of State [2007] EWCA Civ 236

⁵ Court of Appeal in Smith v SSLUHC & Others [2022] EWCA Civ 1391

54. To promote reasonable living conditions, the number of caravans allowed to be stationed on the land should be limited by condition 10 to two per pitch of which no more than one should be a static caravan. Condition 11 prohibiting commercial activity taking place on site and condition 12 restricting the size of any commercial vehicle parked on the site are necessary in the interests of character and appearance and to maintain living conditions for the intended and neighbouring occupiers.

Conclusion

55. For the above reasons, and having had regard to all other matters raised, I conclude that the appeal should be allowed.

Joanna Gilbert

INSPECTOR

Appearances

For the appellant:

Joseph G Jones

Tom Holmes

BFSGC Planning

Appellant

For the Council:

Simon Stanion

Joshua Morley

Roger Blaney

Linda Dales

Shakespeare Martineau

Shakespeare Martineau

Councillor, Newark and Sherwood

District Council

Councillor, Newark and Sherwood

District Council

Interested Parties:

John McArthur

Andrea Maher

Valerie Watson

Local resident

Local resident

Local resident

Documents provided at the Hearing

LE1 Email correspondence dated 5 January 2023 between Joseph Jones and Marc Willers KC regarding Smith v SSLUHC & Others [2022] EWCA Civ 1391

- LE2 Newsletter of the Travellers Advice Team at Community Law
 Partnership No. 60 – November 2022
- LE3 Signed statement of common ground between the main parties

Schedule of 12 Conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Location Plan LP-01-2021; Block Plan BP-01-2021 dated October 2021; Proposed Access.
- 3) No part of the development shall be brought into use until details of the means of surface water disposal have been submitted to and approved in writing by the Local Planning Authority. The approved surface water disposal shall be installed prior to commencement of the approved use and retained thereafter.
- 4) No part of the development shall be brought into use until details of the waste and recycling area shown on Block Plan BP-01-2021 dated October 2021 have been submitted to and approved in writing by the Local Planning Authority. The approved waste and recycling area shall be installed prior to commencement of the approved use and retained thereafter.
- 5) No part of the development shall be brought into use until details of the access road shown on Block Plan BP-01-2021 dated October 2021 and Proposed Access have been submitted to and approved in writing by the Local Planning Authority. The details shall include provision to prevent the unregulated discharge of surface water onto the public highway. The approved access road shall be installed prior to the commencement of the approved use and retained thereafter.
- 6) No part of the development shall be brought into use until a Flood Management Plan has been submitted to and approved in writing by the Local Planning Authority. The development shall be implemented and maintained in accordance with the approved Flood Management Plan.
- 7) Prior to first occupation of the development, details of any external lighting to be used in the development shall be submitted to and approved in writing by the Local Planning Authority. The details shall include location, design, levels of brightness and beam orientation, together with measures to minimise overspill and light pollution. The lighting scheme shall thereafter be carried out in accordance with the approved details and the measures to reduce overspill and light pollution retained for the lifetime of the development.
- 8) Prior to first occupation of the development, details of additional soft landscaping works shall be submitted to and approved in writing by the Local Planning Authority and these works shall be carried out as approved. These details shall include full details of every tree, shrub, hedge to be planted (including its proposed location, species, size and approximate date of planting) and details of tree planting pits including associated irrigation measures, tree

staking and guards, and structural cells. The scheme shall be designed so as to enhance the nature conservation value of the site, including the use of locally native plant species.

The approved soft landscaping shall be completed during the first planting season following the first occupation/use of the development. Any trees/shrubs which, within a period of five years of being planted die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species. All tree, shrub and hedge planting shall be carried out in accordance with BS 3936 -1992 Part 1-Nursery Stock-Specifications for Trees and Shrubs and Part 4 1984-Specifications for Forestry Trees ; BS4043-1989 Transplanting Root-balled Trees; and BS4428-1989 Code of Practice for General Landscape Operations.

- 9) 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.
- 10) No more than 1 static caravan and 1 touring caravan, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968, shall be stationed on each pitch at any one time.
- 11) No commercial or industrial activities shall take place on this site, including the storage of materials associated with a business.
- 12) No vehicles over 3.5 tonnes shall be stationed, parked or stored on this site.