



Appeal Decision

Hearing held on 7 December 2022

Site visits made on 7 and 9 December 2022

by Bhupinder Thandi BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 06 March 2023

Appeal Ref: APP/H1840/W/21/3276934

Site at Hangman's Cross, Stourport on Severn DY13 9QQ

- 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 Doe against the decision of Wychavon District Council.
 - The application Ref 20/00561/CU, dated 13 March 2020, was refused by notice dated 14 December 2020.
 - The development proposed is the use of land as a 2 pitch caravan site consisting of 2 mobile homes; 2 touring caravans; 2 utility blocks, car parking, septic tank and associated works; retention of stable building permitted under reference 19/02104/FUL.
-

Decision

1. The appeal is allowed and planning permission is granted for the use of land as a 2 pitch caravan site consisting of 2 mobile homes; 2 touring caravans; 2 utility blocks, car parking, septic tank and associated works; retention of stable building permitted under reference 19/02104/FUL at the site at Hangman's Cross, Stourport on Severn DY13 9QQ in accordance with the terms of the application 20/00561/CU, subject to the conditions set out in the schedule to this decision.

Main Issue

2. The main issue is whether the proposal would be located within an appropriate location having regard to access to services and facilities.

Reasons

Appropriate location

3. In addition to setting out a minimum requirement for pitches Policy SWDP 17 of the South Worcestershire Development Plan (2016) (SWDP) includes a criteria based policy against which proposals are considered. Criterion (i) is whether the site is within, or on the edge of, a town or Category 1, 2 or 3 settlement. Policy SWDP 2C states that development in open countryside will be strictly controlled. Finally, Policy SWDP 4 sets out that proposals must minimise demand for travel and offer genuinely sustainable travel choices. These policies reflect Policy 25 of the Planning policy for traveller sites (PPTS) which 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.
4. The proposed development is for two pitches and associated structures. One pitch would be occupied by the appellant and his family, and the other pitch

would be occupied by his brother and his family. He advised that he and his brother are currently doubling up on their uncle's site nearby. The appellant advised that his children attend school locally.

5. The main parties agreed that the appellant and his family group fell within the definition of gypsies and travellers in the PPTS, and I have no reason to find differently. The appellant advised that his family had long-standing connections with the Hartlebury Common area going back generations and want to remain in the area.
6. The site is located within open countryside. The town of Stourport on Severn is located approximately 1.2km away along Stourport Road to the west. The town is a main settlement and has a number of services and facilities to meet the day to day needs of future occupants, larger order goods, health services, education and employment opportunities. Whilst connected by a footpath, residents are unlikely to use this route on a regular basis due to it being unlit and narrow in places. Whilst the site lies approximately 1.2km from the fringe of Stourport on Severn, it is evident that services and facilities reasonably necessary are located further into the town. Given this distance between the site and Stourport on Severn, the location of the nearest bus stop and the infrequency of the bus service future occupiers would likely use a private vehicle for these trips.
7. The site is located approximately 2km from the village of Hartlebury, a Category 1 settlement, located to the northeast. It contains a range of services and facilities to meet the day to day needs of future occupants. However, walking to Hartlebury involves walking along Stourport Road a busy rural road and the A449 which is a busy dual carriageway. Whilst there are footpaths along the roads, they are uneven and narrow in places and in combination with the overall distance and lack of lighting make the route undesirable and impractical. Whilst there are more direct routes over Hartlebury Common and the surrounding countryside these are recreational routes rather than the means to access shops and services.
8. The appellant suggested that the nearby 'Tilton Stores' was going to re-open in the near future providing an option close to the site. However, this is not supported by any substantive evidence. This was questioned by local residents and during my site visit it appeared that the shop has been closed for some time with no indication that it is likely to reopen.
9. The appellant also referred to the petrol station shop on the A449 which operates 24 hours a day. Whilst it would provide an option for occupiers, it is likely that occupants would visit it to fill up their vehicles rather than walk to it. As such, I give these elements of the appellant's argument very limited weight.
10. Finally, the appellant drew my attention to a farm shop on Stourport Road, which he currently frequents. In my view it is walkable from the site and provides goods to meet basic daily needs. Whilst Limcomb Lane does not benefit from a footpath, the appellant would be without a footpath for a very short distance before reaching Stourport Road with a footpath connecting the site and the farm shop. It is conceivable that the appellant would walk to it regularly given its closeness to the site.
11. It is acknowledged in the National Planning Policy Framework (the Framework) in paragraph 105 that transport solutions will vary between urban and rural

areas. As such, there will be a tension and a balance to be struck between the desirability of supporting sustainable rural development and maximising sustainable transport opportunities.

12. Taking the above into account, it is apparent that the site is not on the edge of Stourport on Severn or Hartlebury and future occupants would likely access education and health services via private vehicle. Although, there are some services and facilities nearby accessible by foot I find there would be some conflict, albeit limited, with SWDP Policies 2, 4 and 17 (i) and (x) and the PPTS.

Other Matters

13. Third parties have drawn my attention to a number of existing caravan sites and gypsy and traveller pitches in the area. Whilst a reasonable material consideration I am satisfied that a further two pitches and the number and density of pitches cumulatively would not have a dominating effect on settled communities in the area.
14. Although not cited as a reason for refusal by the Council, the effect of the proposed development upon the character and appearance of the area was a concern raised by the Lincomb Lane Action Group in their submissions in relation to both the application and the appeal.
15. The appeal site is an open parcel of land that lies within a pleasant rural setting characterised locally by equine uses. Whilst in a rural setting existing dwellings of varying sizes and designs are located near to the site. The site is broadly rectangular in shape. The development would occupy the northern half of the site with the pitches positioned along the highway. At this point, the site is elevated from Limcomb Lane with tree specimens and vegetation along the boundary.
16. The development would be largely screened from the public realm by existing boundary planting reducing the visual impact of the proposal. Conditions relating to the number of caravans, site layout, commercial use and vehicles and landscaping would also serve to mitigate this impact.
17. The development would leave a decent margin of land around the caravans and structures and open paddock areas would occupy a considerable area of the site retaining a sense of spaciousness. In my view, its impact would not be significant or at odds with the surrounding area given the presence of nearby dwellings and equine facilities.
18. Representations have been received concerning the impact upon the living conditions of the occupiers of 'The Bungalow' in respect of overlooking and privacy. This property neighbours the appeal site and sits on higher ground. In my judgement, views between the two sites would be largely obscured by the existing boundary treatment. In addition, there would be decent separation between 'The Bungalow' and the proposed static caravans. In this context, this would not result in significant harm to the living conditions of existing occupiers.
19. I note that the Council consider the proposal would not harm the setting of a listed barn at Chadwick Bank Farm and I have no reason to disagree. The proposal would preserve the significance of this designated heritage asset, in accordance with the Framework.

20. There is no substantive evidence that the road and access is unsuitable or that the proposal would adversely affect highway safety.
21. I note that Worcestershire Wildlife Trust raise no objection to the proposed development in respect of ecology and I have not been provided with any substantive evidence to come to a different conclusion. Furthermore, a condition has been imposed to ensure development is carried out in accordance with recommendations outlined in a submitted ecological appraisal.
22. Whilst representations have been received in respect of drainage the appellant has submitted a Water Management Statement which outlines the foul and surface water strategy. I am satisfied that the details are adequate, and the proposed development would not increase the risk of flooding locally.
23. Comments have been made that there could be expansion of the site in the future. I have considered the appeal on its own merits based on the evidence before me. There is no substantive evidence to indicate that the proposal would lead to an expansion of the site.
24. Whether sufficient grazing land is retained is subject to different legislation and is not a matter for me in this appeal.

Other Considerations

Supply of gypsy and traveller pitches

25. The PPTS sets out that local planning authorities should use a robust evidence base to establish the accommodation needs to inform the preparation of local plans and make planning decisions. At paragraph 10, it states that local plans should identify and update annually 5 years' worth of deliverable sites for gypsies and travellers.
26. Policy SWDP 17 relates to proposals for travellers and travelling showpeople pitches. Whilst it identifies the need for pitches in South Worcestershire it is based on a Gypsy and Traveller Accommodation Assessment (GTAA) carried out in 2014. The Council advise that the figures outlined in the SWDP have now been superseded by a GTAA undertaken in 2019.
27. The 2019 GTAA shows a need for 14 pitches in Wychavon compared to a need of 19 outlined in the SWDP during the period 2019-2023. The Council have taken the requirement as those that meet the definition of Gypsies and Travellers as set out in Annex 1 of the PPTS. However, the GTAA indicates that the pitches required to meet the needs of those defined as 'Ethnic Gypsies' is much greater standing at a minimum of 52 pitches. At the hearing the Council advised that they were following Government policy by assessing the need based on those falling within the definition set out in the PPTS. However, they were unable to explain the disparity in figures between 'Ethnic Gypsies' and those that met the PPTS definition and whether their need was accounted for.
28. The Council recognise that the figure in the SWDP is not a ceiling, but a minimum. However, they contend that they are exceeding the requirement and in turn can demonstrate a deliverable 5-year supply of pitches. At the hearing the Council advised that they had granted permissions resulting in an oversupply of some 29 pitches against the requirement set out in the SWDP.

29. The appellant on the other hand, states that following the Lisa Smith Judgement¹ the definition of Gypsies and Travellers in the PPTS has been found to be unlawful. Consequently, the figure in the SWDP cannot be relied on. In the eyes of the appellant the PPTS definition has served to suppress need by around 75% resulting in a shortfall of pitches rather than a surplus.
30. The appellant also contends that the Council unrealistically rely on a turnover rate of 25% for their supply, when in fact there are no available public or private pitches and there is a waiting list of around 100 applicants for pitches across Worcestershire. At the hearing the Council did not counter the appellant's argument in respect of the unavailability of public pitches.
31. Based on the evidence before me, I am not satisfied that the need outlined in Policy SWDP 17 is an accurate reflection of the need in the district. To me, the need arising from those defined as 'Ethnic Gypsies' has not been fully provided for. As the PPTS definition has been found to be unlawful, as it discriminates against Gypsies and Travellers that have ceased to travel due to age or health, there is likely to be an uplift in the number of pitches required when taking into account the needs of this group.
32. Without any evidence to the contrary, I find that the turnover rate cannot be relied upon to deliver pitches in the area, particularly in light of the length of the waiting list and the unavailability of public pitches. Whilst I have not been provided with substantive evidence to support the suppression figure quoted by the appellant, I am content that the actual need arising has been understated when taking into consideration the points above.
33. As such, in my view the need for pitches is actually greater than the Council acknowledges and there is sufficient uncertainty so as to question whether the Council have sufficient pitches to demonstrate a deliverable 5-year supply. Even if I were to agree with the Council's position the requirement is a minimum and there is a benefit in providing pitches above this level.

Alternative sites

34. At the hearing there was some discussion regarding the availability of other pitches in the surrounding area. The Council drew my attention to 10 vacant pitches on private sites identified in the 2019 GTAA. The appellant, however, advised that they are not available as the pitches are occupied or are transit sites.
35. Third parties referred to the availability of other sites in the wider area. However, the appellant advised that these sites are unavailable or unsuitable, for a number of reasons including, personal grounds, sites being occupied by the developer or their family members and that some are caravan sites open to the general public rather than pitches for gypsies and travellers. In addition, the appellant has submitted evidence in relation to unsuccessful enquiries for pitches on both public and private sites in Stourport-on-Severn.
36. Despite the Council's view and that of third parties I am satisfied that the site's referred to are not available or suitable to meet the appellant's needs. The evidence provided by the appellant is sufficiently robust for me to come to a conclusion on this matter.

¹ Smith v SSLUHC & Ors [2022] EWCA Civ 1391

Planning Balance

37. The development would not be located on the edge of a settlement but within open countryside. Whilst the basic needs of the appellant would be met nearby there would be a reliance on private vehicles to access health and education services. Therefore, there would be conflict with SWDP Policies 2, 4 and 17 (i) and (x). However, in my judgment, the harm resulting from this conflict would be limited for the reasons set out above. As such, I give limited weight to the conflict with these policies.
38. In my view, there is sufficient uncertainty to raise significant question marks over the need for gypsy and traveller pitches in the district based upon the identified need of 'Ethnic Gypsies', the Lisa Smith judgement and the rate of turnover and in turn the 5-year supply of deliverable pitches. As such, I am not satisfied that the Council can demonstrate a sufficient supply of pitches. Taken together, these matters attract significant weight in favour of the development.
39. Consequently, the material considerations in this case would outweigh the minor conflict with the development plan. Therefore, for the reasons given above, I conclude that the appeal is allowed.

Conditions

40. I have considered these in relation to the contents of both the Framework and Planning Practice Guidance (PPG). In the interests of precision, clarity and brevity I have undertaken some rationalisation of the conditions suggested by the Council.
41. In addition to the standard three-year time limit condition for implementation; it is necessary to specify the approved plans in the interests of certainty. A condition restricting the occupancy of the site to gypsies and travellers is necessary given the need for such pitches in the district.
42. Conditions relating to the number of caravans, site layout, commercial vehicles, landscaping, boundary treatments and external lighting have been imposed to ensure the satisfactory appearance of the development.
43. A condition requiring the development to be carried out in accordance with the submitted ecological appraisal has been imposed in the interests of achieving sustainable development.
44. The Council suggested a condition for submission of details of mains electricity generation and waste storage and disposal. However, no clear justification, as set out in the PPG, has been provided for the suggested condition. Therefore, I do not find that it would be reasonable and has not been imposed.
45. A personal condition restricting the occupancy of the site to the appellant and his family group was discussed at the hearing. However, in the reasons set out above, the appellant's personal circumstances are not determinative in this case and so a personal condition is not necessary.

Conclusion

46. For the reasons set out above the appeal succeeds.

B Thandi

INSPECTOR

Schedule of conditions

- 1) The development hereby permitted shall begin no 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: Site Location Plan Drawing Number 01586/10 Rev 2; Site Development Scheme Drawing Number 01586/1 Rev 8; Static Van (indicative) Drawing Number 01586/4 Rev 1; Amenity Block Drawing Number 01586/5 Rev 1 and Stable Block Drawing Number 01586/6 Rev 3.
- 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) No more than 4 caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 as amended (of which no more than 2 shall be a static caravan) shall be stationed on the site at any time.
- 5) No commercial vehicle over 3.5 tonnes shall be stationed, parked or stored on this site.
- 6) No development shall commence until details of the soft landscape works together with an implementation programme and scheme of maintenance, have been submitted to and approved in writing by the local planning authority. All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the site or the completion of the development, whichever is the sooner in accordance with the agreed implementation programme. The completed scheme shall be maintained in accordance with the approved scheme of maintenance; and any trees or plants which within a period of 5 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 similar size and species.
- 7) No development shall commence until details of the boundary treatments to be used in the development hereby permitted together with a timescale of implementation, have been submitted to and approved in writing by the local planning authority. Development shall be carried out within the agreed timetable in accordance with the approved details.
- 8) No external lighting shall be installed and brought into use until details of its nature and luminance have first been submitted to and approved in writing, and any external lighting shall then be installed and used in accordance with the approved details only.

- 9) The development hereby permitted shall be carried out in accordance with the recommendations set out in the Preliminary Ecological Appraisal Survey report carried out by Arbtech dated 21 May 2019.

APPEARANCES

FOR THE APPELLANT:

Mr Danny Doe	Appellant
Mr David Doe	Appellant
Mrs Kelly Doe	Appellant
Mr Doe Snr	Appellant
Dr Angus Murdoch	Murdoch Planning Ltd

FOR THE LOCAL PLANNING AUTHORITY:

Liam Carroll

INTERESTED PARTIES:

Simon Rees of Addison Rees Planning on behalf of the Limcomb Lane Action Group

Andrew Scheps

Robert Bell

Maylyn McEwan

Paul Rochelle

Debra Rochelle