



Appeal Decision

Hearing held on 26 January 2023

Site visit made on 26 January 2023

by Mr M Brooker DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 06 March 2023

Appeal Ref: APP/E0915/W/22/3306293

Mannory, Broomfallen Road, Scotby, Carlisle, Cumbria CA4 8DE

- 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 James Lowe against the decision of Carlisle City Council.
 - The application Ref 21/0893, dated 10 September 2021, was refused by notice dated 8 April 2022.
 - The development proposed is described as "change of use of land from agricultural use to 1 No. gypsy pitch comprising the siting of 4 no. mobile homes, 2 no. touring caravans, 1 no. utility block and, 2 no. toilet blocks, together with laying of hardstanding and installation of treatment plant (part retrospective)".
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. It was discussed at the hearing, and I saw at the site visit, that development at the site is substantially complete and consent has therefore been sought retrospectively. Furthermore, I note that while the development that has taken place is of the same overall quantity as that detailed in the banner heading above, the arrangement of development on the appeal site differs from that detailed on the submitted plans. I have determined the appeal accordingly.
3. The appeal site lies within the catchment area of the River Eden Special Area of Conservation (SAC) which has been identified as being in 'unfavourable' condition due to high nutrient levels. Under the Conservation of Habitats and Species Regulations 2017 (the Regulations), any proposals that may affect a designated habitat site should be considered with the aim of maintaining or restoring, at favourable conservation status, its natural habitats and species. I have therefore considered the effect of the appeal scheme on the River Eden SAC as a main issue in this appeal. While not referred to in the Decision Notice, both the appellant and Council have referred to this matter in their appeal statements and it was discussed at the Hearing. I am therefore satisfied that no party is disadvantaged by this approach.
4. The appellant's statement of case details that the appeal site currently accommodates an extended family, comprising four households of two adults; two adults and three children aged eight, six and eighteen months; two adults and one child aged fourteen months; and, two adults and three children aged seven, four and fifteen months, hereafter referred to as the 'extended family'.

Main Issues

5. The main issues in this case are:

- a) the effect of the proposal on highway safety, with particular regard to recreational users of the public right of way;
- b) The effect of the proposed development on the character and appearance of the area, with particular regards to landscape character and trees.
- c) Whether the appeal scheme likely has significant effects, whether by itself or in combination with other plans and proposals, on the River Eden SAC, and
- d) Whether there are material considerations which exist that outweigh the conflicts with the development plan and any other identified harm resulting from the appeal proposal.

Reasons

Highway safety

- 6. The appeal site is accessed off Broomfallen Road via a bridleway. The bridleway is a single unlit tarmacked lane all the way to the site and also serves a number of other properties, including other Gypsy pitches. The lane is often of a limited width and includes a number of tight turns and a sharp S-bend. I saw at the site visit that there are no formal passing places and that children play in on the road.
- 7. Criterion 8 of Policy HO11 of the Carlisle District Local Plan (Local Plan) is referred to by the Council and states that the site should have, or be able to provide, adequate access and turning space for large vehicles and caravans.
- 8. Furthermore, paragraph 109 of National Planning Policy Framework (the Framework) sets out that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.
- 9. I note that the Local Highway Authority have not objected to the appeal scheme although they did object to earlier schemes accessed off the bridleway. Moreover, as noted by the appellant I have not been provided with details of any traffic accidents on the lane.
- 10. The character and construction of the bridleway has evolved over recent years, with the widening of some parts of the lane, the laying of the tarmac surface and the introduction of speed bumps in addition to an increase in the number of properties accessed via the bridleway. Not all of the works have been carried out on a formal basis and not always with the approval of the Local Highway Authority and Council.
- 11. Local residents have expressed concern as to the potential conflict between vehicular traffic and users of the bridleway and on the basis of the evidence before me and that presented at the hearing, it is clear that the recreational quality and experience of users of the bridleway has declined in recent years as a result of amount of amount of vehicular traffic using the bridleway to access new developments.

12. My attention has been drawn to the many previous planning applications and appeals¹ for new development accessed off the bridleway and that a previous inspector described, with regard Oak Meadows the level of traffic as being “just about acceptable” and with regards further appeal decisions as the “very upper limit” of what is acceptable. Subsequent development has incrementally increased the level of traffic on the bridleway.
13. The appellant submits that based on TRICS data there are 80 vehicular movements per day including 10 at peak hours, not taking into account traffic from the appeal site. It is estimated that this adds a further 20 vehicular movements and raises peak hour movements to 14. These vehicle movements would include various vehicle types, including commercial vehicles.
14. The level of traffic travelling along the bridleway as a result of the appeal scheme is not in itself significant. However, on the basis of the evidence before me I am satisfied that the level of traffic on the lane has now reached a tipping point such that the environment enjoyed by users of the bridleway has significantly fallen in quality and the potential conflict between vehicles and other users of the bridleway has notably increased. In the context of the constraints of the bridleway referred to previously, the cumulative impacts of the traffic are severe.
15. Thus, I find the appeal scheme would be detrimental to highway safety contrary to criterion 8 of Policy HO11 of the Local Plan and would also fail to provide access which is safe and well-integrated with its surroundings contrary to criterion 5 of Policy SP6 of the Local Plan and the relevant provisions of the Framework.

Character and appearance

16. The appeal site appears as a roughly rectangular area of land located at the southern extent of Scotby village, near to the M6 motorway and adjacent to other authorised and unauthorised Gypsy pitches.
17. I saw at the site visit that the appeal site is bounded by fencing and a tree line adjacent to the properties identified by the appellant as Thistle Stables and Vienna Rose Stables, existing lawful gypsy caravan sites. The tree line is a feature of the local landscape. To the northwest of the appeal site is a further lawful Gypsy site identified as Oak Meadow.
18. Additionally, there are unauthorised sites and what appears to be an unoccupied site nearby. These sites are characterised by the prominent boundary treatment, the absence of soft landscaping and the aggregate or hardstanding laid across the surface of the land in addition to the static and touring caravans and other residential paraphernalia.
19. The Council’s statement details that, prior to the change of use that is the subject of this appeal, the appeal site consisted of part of an open agricultural field bound by an existing tree line and hedges.
20. Policy HO11 of the Local Plan requires that gypsy and traveller sites are well planned to be contained within existing landscape features or can be appropriately landscaped to minimise any impact on the surrounding area.

¹ 3127905, 3127903, 3130384 and 3127907

21. The appeal site is situated some way from the main built-up development of the settlement of Scotby. An existing tree belt appears as a feature when viewed from the bridleway at a short distance and in longer distance views from the M6 motorway, particularly when travelling north when the road turns to the left, presenting the appeal site to the view of drivers.
22. The appellant suggests that soft landscaping could positively enhance the environment and that the use of indigenous species could help assimilate the change of use into its surroundings.
23. Save for the absence of the screening effect of the now much reduced tree belt, I saw at the site visit that the appeal site did not appear substantially different from the authorised sites nearby, particularly when viewed from the lane. The appeal scheme, including fencing, caravans, buildings and hard standing, has however substantially changed the appeal site from an agricultural field to the gypsy pitch subject of the appeal scheme, resulting in the degradation of the character and appearance of the area and thus harm to the character and appearance of the area.
24. The introduction of soft landscaping within and to the boundaries of the site would substantially improve the otherwise hard and uncompromising appearance of the appeal scheme. While no such details are before me, I am satisfied that such details could be controlled by an appropriately worded condition and that soft landscaping would adequately mitigate the harm to the character and appearance of the area identified previously.
25. To conclude on this main issue, subject to an appropriately worded condition requiring the introduction of soft landscaping to the site, I find the appeal scheme would not harm the character and appearance of the area and thus is not contrary to criteria 2, 8 and 9 of Policy SP6, criteria 5 of Policy HO11 and Policy GI6 of the Local Plan.

Water neutrality

26. Under the *Conservation of Habitats and Species Regulations 2017* (the Regulations), any proposals that may affect a designated habitat site should be considered with the aim of maintaining or restoring, at favourable conservation status, its natural habitats and species. Before deciding to give permission for a plan or project that is likely to have a significant effect on a habitat site, the decision-maker must make an appropriate assessment of the implications for that site in view of its conservation objectives. The plan or project can then only be permitted after having ascertained there would be no adverse effect on the habitat site's integrity.
27. The appeal site lies within the catchment area of the River Eden Special Area of Conservation (SAC), described as an outstanding floristically rich river. The fish fauna of the River Eden includes Atlantic salmon and the River Eden system is important for otters. It is considered that poor water quality due to nutrient enrichment from elevated phosphorus levels is one of the primary reasons for habitats sites, such as the River Eden SAC being in an unfavourable condition. As a result, unless new development for overnight accommodation within this zone would demonstrably achieve a level of water neutrality it cannot be concluded with the required degree of certainty that it would not have an adverse effect on the integrity of these wetland sites. I have no basis to question this position.

28. The mobile homes and waste treatment plant are already in place on the appeal site, but do not benefit from planning permission. At the hearing the appellant noted the need, based on an online calculation, to mitigate the effects of this scheme to achieve the required level of water neutrality and no mitigation is proposed as part of the appeal scheme.
29. Accordingly, having made an appropriate assessment I conclude the development would have a likely significant effect on the integrity of the designated River Eden SAC for which no adequate mitigation is offered. It would therefore be in conflict with policy GI3 of the Local Plan, which seeks to safeguard such sites, the Regulations and the guidance in the Framework.

Other considerations

Need for and supply of gypsy sites

30. The Planning Policy for traveller Sites (PPTS) requires that the level of local provision and need should be considered when dealing with proposals for gypsy sites. The Council is required to demonstrate a 5 year supply of permanent traveller pitches. The Cumbria Gypsy and Traveller Accommodation Assessment (GTAA), dated January 2022 sets out a need for 33 permanent residential pitches in the District between 2021 and 2040 of which, 17 pitches are required in the first five years. In addition, the GTAA estimates that there will be a need for accommodation for 3 households whose gypsy status is unknown and, 3 pitches for traveller households who have ceased to travel permanently.
31. It was confirmed by the Council that since the publication of the GTAA, no further planning permissions have been granted for additional traveller pitches. The need for new sites therefore remains and the appeal site would contribute to that need. Furthermore, it is not in dispute that the extended family satisfy the relevant definition of Gypsies and Travellers and based on the evidence before me I find no substantive reason to conclude otherwise.
32. The need for accommodation is therefore a material consideration that weighs in favour of the appeal, and I afford it significant weight.

Alternative sites

33. It is not a matter in dispute between the parties that there are no alternative sites available to the extended family. At the hearing, the appellant briefly outlined their unsuccessful efforts to identify alternative accommodation including at private and Council owned sites. Based on the evidence before me I find no substantive reason to conclude other than that there are no alternative sites.
34. The absence of alternative sites is a material consideration that weighs in favour of the appeal, and I afford it significant weight.

Personal circumstances and accommodation need

35. It is not in dispute between the parties that the extended family living on the appeal site are Gypsies and have a personal need for a settled base, in particular to meet the best interests of the seven children present on site with regards to the education of the school age children as this takes place at nearby schools.

36. In addition, one of the site occupants, a child, has a health issue that requires regular physiotherapy and is under the care of a Hospital Consultant. Clearly, having a settled base would be beneficial in terms of this child being able to receive regular specialist health care and for the rest of the extended family to access routine healthcare.
37. Case law establishes that the best interests of the children are a primary consideration. There are 7 children on the site ranging in age from 14 months to 8 years old, as detailed in the appellant's statement of case. A settled base is clearly in the best interests of the children, rather than the alternative of doubling up on other pitches and having to keep moving around. A settled base would allow for the children to continue attending local schools and for the younger children to be able to do the same when they are old enough. It would also allow all residents to access health care provision on a consistent basis. I give the personal circumstances of the extended family and their accommodation needs significant weight and I also ascribe the best interests of the children substantial weight.

The Overall Planning Balance

38. Weighing in favour of the approval of the appeal is the general need for gypsy and traveller pitches in the district, the lack of suitable alternatives, the personal circumstances of the extended family who have a pressing need for a settled base so the families children can continue to regularly attend school, the long standing and ongoing failure of the Council policy to address the needs of the gypsy and traveller community and thus the unequal approach when compared to the settled community. However, I have identified harm with regards to highway safety and to the River Eden SAC contrary to the policies of the LP, the regulations and the Framework.
39. Furthermore, I found that with appropriate soft landscaping, controlled by condition, the appeal scheme would not result in harm to the character and appearance of the area. The absence of harm in this respect is of neutral weight.
40. I confirm that I have considered the possibility of granting a temporary planning permission. However, Planning Practice Guidance (the Guidance) indicates that circumstances where a temporary permission may be appropriate include where a trial run is necessary in order to assess the effect of the development on the area or where it is expected that the planning circumstances will change in a particular way at the end of that period. It has not been put to me that such circumstances apply in this instance.
41. Moreover, I am concerned that a time limited permission would not be appropriate due to the levels of harm that would arise even on a temporary basis. Taking all these factors into account, I also consider that a temporary permission is not justified.
42. I have also considered whether a personal permission (to restrict the occupation of the site to the extended family) would be appropriate. As set out in the Guidance, planning permission usually runs with the land and it is rarely appropriate to provide otherwise. There may be exceptional occasions where development that would not normally be permitted may be justified on planning grounds because of who would benefit from the permission.

43. I have had regard to the requirements of Article 8 of the First Protocol to the Convention, as incorporated by the Human Rights Act 1998, and am aware that the Article 8 rights of a child should be viewed in the context of Article 3(1) of the United Convention on the Rights of the Child. However, I am mindful that the extended family's individual rights for respect for private and family life (along with the best interests of the children) must be weighed against other factors including the wider public interest and legitimate interests of other individuals.
44. I have also considered the Public Sector Equality Duty (PSED) at section 139 of the Equality Act 2010 to which I am subject. Since the extended family are Gypsies, Section 149 of the Act is relevant. Because there is the potential for my decision to affect persons (the extended family) with a protected characteristic(s) I have had due regard to the three equality principles set out in Section 149 (1) of the Act.
45. To dismiss the appeal would disrupt the education of the school age children and the specific healthcare of one of the children. The negative impacts of dismissing the appeal arise since the extended family may be forced into a roadside existence and intermittent use of unauthorised sites. This would interfere with the best interests of the children and each member of the extended family's right for respect for private and family life and lends some additional weight in favour of the appeal.
46. However, I have found that the proposal would cause substantial harm to Highway Safety and the River Eden SAC and am satisfied that the well-established and legitimate aim of granting planning permission in accordance with the development plan and planning policies which seek to protect highway safety and the environment in the wider public interest, can only be adequately safeguarded by the refusal of permission in this instance. Whilst bearing in mind the need to eliminate discrimination and promote equality of opportunity, in my view the adverse impacts of dismissing the scheme on the extended family are necessary and proportionate.
47. Bringing matters together, the other considerations in this case and the benefits of the proposal, even taking into account the extended family's Article 8 rights and the PSED considerations, do not clearly outweigh the totality of the harm identified.

Conclusion

48. For the reasons given above I conclude that the appeal should be dismissed.

Mr M Brooker

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

James Lowe
Philip Brown

FOR THE LOCAL PLANNING AUTHORITY:

Rachel Lightfoot

INTERESTED PARTIES:

Graham Hale