



Appeal Decisions

Hearing held on 28 February 2023

Site visit made on 28 February 2023

by Simon Hand MA

an Inspector appointed by the Secretary of State

Decision date: 6 March 2023

Appeal A Ref: APP/J1860/C/21/3279663

Baughton View Caravan Site, Baughton, Earls Croome, Worcester, WR8 9DX

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr G Smith against an enforcement notice issued by Malvern Hills District Council.
- The notice, numbered ENF/21/0148, was issued on 28 April 2021.
- The breach of planning control as alleged in the notice is Non-compliance with condition 3 imposed on planning permission 17/01659/FUL (Change of use of the land to 6 No. Traveller Family Pitches and associated works including 6 No. mobile homes, 6 No. touring caravans, 6 No. day rooms, and hardstanding for a temporary period of 5 years - Variation of condition 5 of appeal decision APP/J1860/C/14/2223436 and condition 6 of appeal decision APP/J1860/W/15/3005906 to allow until next available planting season for implementation of the Site Development Scheme.)

Condition 3:

The uses hereby authorised shall be carried on only by Mr Gary Smith, Ms Lacey Brazil, Mr Anthony Lamb, Mrs Charmaine Lamb, Mr Rueben Buckland, Mrs Jane Buckland, Mr Dean Jones, Mrs Maria Jones, Mr Jordon Miller, Mrs Fallon Miller, Mr Lou Ayres, and Mrs Rose Ayres, and their resident dependent children and shall be discontinued on the 14th April 2021 or from when the premises are no longer occupied by them, whichever is the shorter.

Reason: As the development is only considered acceptable due to personal circumstances of the applicant.

- The requirements of the notice are: Comply with condition 3 of planning permission ref. 17/01659/FUL approved on 1st November 2019. 5.1 Permanently cease the use of the land for the uses approved by planning permission 17/01659/FUL, specifically the use of land for 6 No. Traveller Family Pitches and associated works including 6 No. mobile homes, 6 No. touring caravans, and 6 No. day rooms. 5.2 Permanently remove the 6 No. mobile homes, 6 No. touring caravans, 6 No. day rooms, hardstanding, and boundary treatments including fencing and gates at the entrance of the site from the land as edged red. 5.3 Restore the land to its original condition before the breach took place (grassland).
 - The period for compliance with the requirements is: 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Appeal B Ref: APP/J1860/W/20/3263247

Baughton View Caravan Park, Baughton, Worcester, Worcestershire, WR8 9DX

- 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 G Smith against the decision of Malvern Hills District Council.

- The application Ref 19/01878/FUL, dated 21 May 2020, was refused by notice dated 16 July 2020.
 - The development proposed is 6 no. traveller pitches and associated works including 6 mobile homes and touring caravans, acoustic fence, package treatment plant and hard standing.
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Decisions

Appeal A Ref: APP/J1860/C/21/3279663

1. The appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely non-compliance with condition 3 imposed on planning permission 17/01659/FUL Change of use of the land to 6 No. Traveller Family Pitches and associated works including 6 No. mobile homes, 6 No. touring caravans, 6 No. day rooms, and hardstanding for a temporary period of 5 years - Variation of condition 5 of appeal decision APP/J1860/C/14/2223436 and condition 6 of appeal decision APP/J1860/W/15/3005906 to allow until next available planting season for implementation of the Site Development Scheme at Baughton View Caravan Park, Baughton, Worcester, Worcestershire, WR8 9DX as shown on the plan attached to the notice and subject to the conditions in Annex A attached to this decision.

Appeal B Ref: APP/J1860/W/20/3263247

2. The appeal is allowed and planning permission is granted for 6 no. traveller pitches and associated works including 6 mobile homes and touring caravans, acoustic fence, package treatment plant and hard standing at Baughton View Caravan Park, Worcester, WR8 9DX in accordance with the terms of the application, Ref 19/01878/FUL, dated 21 May 2020, subject to the conditions in Annex A attached to this decision.

Preliminary Matters

3. The appeal was originally scheduled as an Inquiry, but with the agreement of the parties it was converted to a Hearing as there was no need for cross-examination of witnesses.
4. At the opening of the Hearing the parties helpfully provided a Statement of Common Ground (SOCG) which reduced the matters between them to two, firstly the locational sustainability of the site and secondly the situation regarding the 5 year supply of gypsy sites.

Background to the Appeals

5. The site lies in the countryside near to the hamlet of Baughton. It is enclosed by the M25 to the east, the A4104 to the south and fields to the north and west. It was subject to an appeal Inquiry¹ in December 2015. At that time 6 pitches had been partly laid out, but an injunction prevented the occupation of the remaining 6 pitches. The Inspector found the site could not be considered as sustainable, that it suffered from noise problems from the motorway and lacked suitable sewerage. The latter two problems could not be overcome by conditions as lack of information on the necessary acoustic fence and package treatment works would offend the Wheatcroft principle. However, there was an

¹ APP/J1860/C/14/2223436 etc, issued 14 April 2016

unmet need for gypsy sites in the area, which added to the personal circumstances of the 6 families that were on the site meant the Inspector issued a split decision, allowing the occupied half of the site to remain for 5 years. This time period ran out in April 2021.

6. The enforcement notice requires the cessation of the use of the site for the 6 existing pitches, so the ground (a) appeal is for those, while the s78 appeal is for the remaining undeveloped 6 pitches, which would bring the total up to the originally envisaged 12. Both appeals rely on each other, and I was advised they should not be separated.
7. The appellant has provided a noise survey and plans for an acoustic fence which the Council accept will overcome the noise problem for the whole site. He has also provided a report recommending the installation of a packet treatment plant for foul water disposal and plans showing where it would be located and connections to the mobile homes. These also have been accepted by the Council. It was also agreed that although a small part of the site was covered by flood zone 3 this could be mitigated by a flood management and evacuation condition. Finally, it was agreed there were no ecological issues.

The Appeal on Ground (a) and the s78 Appeal

Sustainability of the site

8. The site lies outside of Baughton, which is not classified as category 1-3 village in the local plan as it has no facilities other than a pub. The nearest primary school is 4.6km away and other facilities are available in Upton which is 4km away. The nearest bus stop is 2.1km away. The previous Inspector unsurprisingly found the site not to be sustainably located as nearly all journeys would have to be undertaken by private car. Obviously, nothing has changed in terms of distance to facilities since then.
9. The Council's gypsy site policy is SWDP17 which contains 11 criteria against which proposals for sites will be assessed. It was agreed that not all the criteria have to be met, but equally failure to meet a single criterion could be fatal, depending on the degree of failure and importance of the criterion. Two criteria are relevant here, (i) which asks "*whether the site is within, or on the edge of, a town or Category 1, 2 or 3 settlement*" and (x) which asks "*whether the site has reasonable access to health services, schools and employment*".
10. It would seem to me that criterion (i) is a matter of fact, and it is agreed the site fails that criterion, whereas criterion (x) is more matter of judgement, and it was agreed the site does not offend that criterion. As a consequence, the Council were arguing the site was not sustainably located but it did have reasonable access to facilities. This paradox goes to the heart of the issue of sustainable location of gypsy sites. Many gypsy sites are in the countryside, and this is accepted by PPTS². Paragraph 25 notes that sites in the open countryside away from existing settlements or outside of areas allocated in the development plan should be strictly controlled. This implies that even in these areas some sites are acceptable. This site is not "*away from*" an existing settlement, and the previous Inspector noted it had "*some support from paragraph 25 insofar as it relates to protection of the countryside*"³.

² Planning Policy for Traveller Sites

³ Paragraph 15 of the decision letter

11. When PPTS talks of sustainability it does so at paragraph 13 and does not mention reducing travel by private car. Many decisions on gypsy appeals accept that gypsy sites will not necessarily be located within walking distance of facilities and that providing a settled base in itself helps as it reduces travel for the occupiers of the site.
12. During the process of drawing up their traveller DPD, the Council undertook a call for sites, but could not find any that did not offend criterion (i). In a more recent call for sites and following discussion with the local plan Inspector, they have modified (i) to be within 2.5km of a school. The Council clearly accept therefore that any new sites are likely not to be within walking distance of facilities. If the appeal site was 2.5km from Upton, the occupiers would still rely on the private car for their access to facilities, as they do now. I accept they are further away than that, but 4km is not that isolated.
13. Drawing all this together the site is contrary to criterion (i) and would rely heavily on the use of the private car (although one could cycle to Upton fairly easily), but that does not necessarily make it contrary to SWDP17. I agree that it is the degree of conflict that is important and in this case I do not think it is sufficient to suggest the site is contrary to the policy when read as a whole, and so is sustainable in the context of SWDP17 and PPTS.

5 year supply of sites

14. The Council accept they do not have a 5 year supply of sites. Their figures show there is currently a shortfall of 6 pitches. The implications of the Lisa Smith⁴ judgement were discussed. The court held that to differentiate between gypsies who travelled and those who had stopped travelling permanently for reason of ill health, age or educational needs, as PPTS does, was discriminatory. While the court was at pains to make it clear it was not striking down the definition in PPTS, nevertheless, the decision is not to be challenged so it remains the case that the definition is discriminatory. Thus, although the Council may well be following government policy in maintaining that differentiation, that policy is tainted by discrimination which means it is untenable to carry on as if nothing has happened. The effect of this is that if not now, then at some point in the future, the Council will need to find sites for all the gypsies in the area as a matter of policy, not just those who meet the definition. For Malvern Hills this means a further 10 pitches are required, which makes the shortfall even greater.
15. The Council are progressing their traveller DPD and intend to submit it for examination after their local plan, so that the two will be considered in tandem. They anticipate this will happen in early 2024. In it they seem to be relying heavily on requiring gypsy sites as part of large strategic allocations, of which there are 3 in the South Worcestershire area, one of which is in Malvern Hills. The concept plans for these sites include the gypsy sites, so it is hoped they will definitely come to fruition. However, the plan is at a very early stage, and the planning applications for these sites are even further off. In the meantime the Council are relying on windfall sites to meet their obligations. As a consequence I conclude they do not have a 5 year supply of sites and are unlikely to achieve one for many years.

⁴ Lisa Smith v Secretary of State LUPH&C and others [2022] EWCA Civ 1391

Conclusions

16. The appellants are not relying on the specific circumstances of the occupants as they consider they have a good case without. I have concluded the site is in accord with SWDP17 and is not unsustainably located. Also that there has been a failure of policy by the Council who do not have a 5-year supply of sites. Consequently, according to policy H of PPTS, planning permission should be granted for a 12-pitch gypsy site subject to the conditions discussed below.

Conditions

17. A list of agreed conditions was supplied as part of the SOCG. These are to ensure the site is reserved for gypsies and travellers in general, to control the number of caravans on each pitch, control commercial activities, the erection of fences and floodlighting, to implement a SUDS scheme and flood evacuation plan and a children's play area.
18. The condition concerning sewerage needs to be amended as no package treatment plant exists at the moment. Conditions for the use of bound materials where the access meets the highway and setting back the gates are unnecessary as these are already in place. The condition concerning the acoustic fence needs to refer to the report and plan in the evidence from the consultants. It was suggested a landscape scheme might not be necessary as site is already bounded by mature hedgerows. But the acoustic fence and the treatment plant might require additional screening so such a condition is still required.
19. Because the ground (a) appeal is for the original 6 pitches and the s78 appeal is for the new 6 pitches, I shall add a condition restricting the maximum number of pitches on the overall site to 12.
20. Subject to those conditions I shall quash the notice and grant planning permission for the ground (a) appeal and grant planning permission for the s78 appeal.

Simon Hand

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr Timothy Jones (of counsel)

Dr Simon Ruston

FOR THE LOCAL PLANNING AUTHORITY:

Miss Wakeman (of counsel)

Miss Claire Bull

Miss Duggan

Mr Clarke

Annex A Conditions

1. Unless where required or allowed by other conditions attached to this permission, the development hereby approved shall be carried out in accordance with the following plans —
GS19-Block Rev A (Feb 2020) - Proposed Site layout
GS19-SLP - Site Location Plan
All materials shall be as described in the document PA16 Materials.
2. The site shall not be occupied by any persons other than Gypsies and Travellers, defined as persons of nomadic habit of life whatever their race or origin, including such persons who on grounds only of their own or their family's or dependants' educational or health needs or old age have ceased to travel temporarily or permanently, but excluding members of an organised group of travelling showpeople or circus people travelling together as such.
3. No more than 2 caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968, of which no more than 1 shall be a static caravan, shall be stationed on any pitch at any time.
4. The maximum number of pitches on the extended caravan site known as Baughton View and outlined in red on the plan accompanying the enforcement notice shall be 12.
5. Prior to first occupation of Pitches known as pitches 7 - 12 all 12 pitches shall be connected to a Package Treatment Plant as shown on plan Foul Drainage Phase 2 002 Rev A (July 2018).
6. No more than one commercial vehicle per pitch shall be kept on the land for use by the occupiers of the caravans hereby permitted, and it shall not exceed 3.5 tonnes in weight.
7. No commercial activities shall take place on the land, including the storage of materials.
8. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no fences, gates or walls or other means of enclosure shall be erected, and no areas of hardstanding installed, other than those specifically allowed or approved by other conditions of this permission.
9. No works or development shall take place until infiltration tests have been carried out in accordance with BRE Digest 365, or such other guidance as may be agreed in writing by the Local Planning Authority. The results of the tests shall be submitted to and agreed in writing by the Local Planning Authority and the agreed recommendations shall be implemented in full prior to the occupation of Plots 7-12 of the development hereby approved.
10. Within three months from the date of this permission a SuDS management plan which will include details on future management responsibilities, along

with maintenance schedules for all SuDS features and associated pipework has been submitted to and approved in writing by the Local Planning Authority. This plan shall detail the strategy that will be followed to facilitate the optimal functionality and performance of the SuDS scheme throughout its lifetime. The approved SuDS management plan shall be implemented in full in accordance with the agreed terms and conditions prior to the occupation of Plots 7-12 of the development hereby approved.

11. Within 3 months of the date of this permission, a Flood Evacuation Management Plan shall be submitted to the local planning authority for approval in writing showing how a safe pedestrian evacuation route can be provided in case of flooding and maintained thereafter for the life time of the development. The Flood Evacuation Management Plan should identify a flood level that will initiate evacuation of people and vehicles, and any subsequent closure of the site. This trigger level should be when the access/egress is still 'dry' i.e. flood-free, to avoid any question of what is an acceptable level of flood risk to occupants. The approved scheme shall be implemented within 2 months of written approval.
12. Prior to the occupation of pitches 7 -12 hereby permitted full details of the proposed acoustic fence including specification, colour, materials and an elevational drawing showing the how the fencing varies with the site levels, all in accordance with the Noise assessment produced by SLR reference 422.05084.00001, dated February 2017, shall be submitted to and approved in writing with the Local Planning Authority. The approved scheme shall be implemented before the first occupation of pitches 7 - 12.
13. Within 3 months of the development hereby approved, a scheme of landscape proposals shall be submitted to for approved in writing by the Local Planning Authority, which shall include full plans and specifications for all hard and soft landscape works, a timetable for the implementation of hard landscaping and indications of all existing trees and hedgerows on the land, including those to be retained together with measures for their protection in the course of the development. All planting, seeding and/or turfing comprised in the approved details of landscaping shall be carried out in the first available planting and seeding seasons, and any trees, shrubs, hedges or plants which within a period of five years from the completion of 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, unless the Local Planning Authority gives written consent to any variation. All hard landscaping comprised in the approved details shall be carried out in accordance with the timetable submitted.
14. Within 3 months of the development hereby permitted, full details of children's play area and outdoor amenity space (including any grass seeding/turfing, planting, fencing, safety surfacing, play equipment, seats, litter bins and lighting) shall be submitted to and approved in writing by the Local Planning Authority. The scheme so approved shall be fully implemented in accordance with an implementation programme which will have been submitted to and approved in writing by the Local Planning Authority prior to the occupation of pitches 7 -12 of the development hereby permitted. The approved children's play area and outdoor amenity space shall be retained thereafter for no other purpose.

- 15.No external floodlighting, security lighting or other external means of illumination of the site shall be provided, other than that shown on drawing number 1674/01C and as specified on PA17: Samples of lighting fittings.

End of Conditions