



Appeal Decision

Hearing held on 9 February 2023

Site visit made on 9 February 2023

by G J Fort BA PGDip LLM MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 07 March 2023

Appeal Ref: APP/T2405/W/22/3307816

Field Number 4073, Countesthorpe Road, Whetstone, Leicester, Leicestershire LE8 6LD

- 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 Martin McCarthy against the decision of Blaby District Council.
 - The application Ref 21/1455/FUL, dated 29 November 2021, was refused by notice dated 3 May 2022.
 - The development proposed is the change of use of land to use as a residential caravan site for 3 Gypsy families, each with 2 caravans including no more than one static caravan/mobile home, together with laying of hardstanding and erection of two amenity buildings.
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Decision

1. The appeal is allowed and planning permission is granted for the change of use of land to use as a residential caravan site for 3 Gypsy families, each with 2 caravans including no more than one static caravan/mobile home, together with laying of hardstanding and erection of two amenity buildings at Field Number 4073, Countesthorpe Road, Whetstone, Leicester, Leicestershire LE8 6LD in accordance with the terms of the application, Ref 21/1455/FUL, dated 29 November 2021, subject to the conditions in the schedule to this decision below.

Procedural Matters

2. I conducted a formal accompanied site visit following the closure of the hearing on 9 February 2023. Prior to that I conducted an unaccompanied site visit to publicly accessible areas in the environs of the site on the afternoon of 8 February 2023.
3. At the time of my visit on 9 February touring caravans were stationed on the site albeit not in the layout shown on the submitted plans subject to this appeal – and other aspects of the appeal scheme such as the amenity buildings had not been implemented. A previous appeal decision¹ relating to the site granted planning permission for a residential pitch comprising two static caravans with storage for one touring caravan. The Council is of the view that this permission is no longer extant, but is yet to progress enforcement action given the ongoing consideration of the scheme subject to this appeal. I acknowledge that the appellant's assessment of whether or not the previous

¹ APP/T2405/W/18/3198896

permission relating to Traveller provision at the site diverges from that of the Council on this matter.

4. The site layout plans show a stable block, but no other details have been provided of this structure. At the time of my site visit the stable block was not in situ, but I am mindful that a previous planning permission relating to the site encompasses such a structure. Whilst noting that the stable block had not been built in its appeal statement, the Council did not seek to demonstrate that the permission relating to it is no longer extant. I will therefore deal with the appeal on the basis of the development as described above, and in line with the details that have been provided.
5. At the hearing, the appellant provided an updated plan relating to visibility splays taking into account the latest speed survey data produced by the Council. Sufficient time was given to the Council to consider the material in an adjournment ahead of discussion of the highway safety implications of the proposed development. Consequently, I consider that no prejudice would occur to the interests of any parties as a result of me taking the material into account in my assessment of the appeal.
6. The Council suggested additional conditions at the hearing, which had not been previously circulated. Sufficient time was given for consideration and discussion of these at the hearing. Accordingly, no prejudice would arise as a result of me taking them into account.
7. At the hearing, we discussed the implications of the Court of Appeal judgement *Lisa Smith v Secretary of State for Levelling Up, Housing and Communities* [2022] EWCA Civ 1391 (the Smith judgement). Amongst other things, the Smith judgement could have a material bearing on the wording of occupancy conditions relating to Traveller accommodation. Differing forms of words for an occupancy condition were put forward at the hearing, though the Council was not in a position at that point to reach a definitive position on those suggested formulations. Consequently, I allowed a limited amount of time after the closure of the hearing for the Council to provide written comments on the occupancy condition, and sought final comments from the appellant on this matter. I will take this material into account.

Background and Main Issue

8. The application that led to this appeal was refused for three reasons, two relating to highway safety and access arrangements and one relating to the sewerage, drainage and water supply aspects of the site. At the hearing, the Council confirmed that appropriately worded conditions would address the reason for refusal relating to sewerage and drainage, and that other permitting regimes would deal appropriately with water supply. It is common ground that the future occupants of the site would meet the definition of the term "traveller" for planning purposes as set out in the Government's Planning Policy for Traveller Sites (PPTS) – and from the material before me I have no reason to take a different view.
9. No allocations for Traveller sites are included in the development plan for the District, though Policies CS9 (of the Local Plan Core Strategy (adopted February 2013) (the Core Strategy)) and SA4 (of the Local Plan (Delivery) DPD (adopted February 2019) (the Delivery DPD)), set out appropriate locations for pitches and criteria against which proposals are to be assessed. It is common

ground that the appeal scheme would accord with these policies in all respects apart from Policy CS9's criterion relating to the highway safety aspects of proposals.

10. Accordingly, against this background, I consider the main issue in this appeal to be the effect of the appeal scheme on highway safety, including whether a safe and suitable access to the site can be achieved.

Reasons

11. Situated on a field bounded by a dense hedgerow adjacent to Countesthorpe Road, the appeal site is broadly level with an existing access which slopes gently down to the highway. The appeal site shares the existing highway access with the land to the rear, which is apparently in agricultural use, with a telecommunications mast also present. To one side of the proposed access, the road curves under a motorway bridge, towards another bridge further down the highway. To the other side, no similar obstructions exist, but the road gently curves away from the site. I have been supplied with data from both parties on observed speeds in the vicinity of the site access, which demonstrate 85th percentile speeds considerably below those permissible by the national speed limit applying to the road. As described above, the appeal scheme would see the change of use of the land to provide 3 residential pitches.
12. Previous permissions relating to the site were granted without giving rise to highway safety concerns subject to appropriately worded conditions. Indeed, the local highway authority's comments on the permission relating to stabling found that appropriate visibility splays could be achieved based on Manual for Streets and Manual for Streets 2 (MfS/MfS2) standards, as opposed to those included in the Design Manual for Roads and Bridges (DMRB). Moreover, the local highway authority's comments on the application for a single Traveller pitch at the site considered its proposed access improvements would demonstrate that large vehicles would be able to enter and exit the site effectively, and that the material cumulative impact of the proposal on the highways network would not be severe. A condition is attached to the previous permission relating to the site for a single Traveller pitch, requiring implementation of proposed access improvements – however, these improvements have not been carried out.
13. I concur with the Council that the appeal scheme would be likely to result in increased vehicular movements in relation to the site, when compared to either a single residential pitch, or the stabling use. Nevertheless, given the differing patterns of daily vehicular movement associated with Traveller sites when compared with 'bricks and mortar accommodation' the former of which can involve a number of households sharing transport to work, or for other purposes, I am not persuaded that this would be anything other than a modest increase. Moreover, the movement of touring caravans to and from the site would likely be more limited still and based on seasonal patterns of travel. I consider also that the larger vehicles and trailers that would use the site would not be materially different to those associated with a single Traveller pitch, or with the stabling use, or those uses of the land to the rear that share the existing access. For these reasons, it has not been demonstrated, on the basis of either the type of vehicles or the amount of their movements, why the differing and more onerous standards established by the DMRB, and incorporated into the Leicestershire Highway Design Guidance (LHDG) would be

relevant to the current proposal, when they were not applied to the previous permissions relating to the site. Neither have I any substantive evidence before me sufficient to demonstrate that there have been material increases in traffic movements along Countesthorpe Road since the dates of the previous planning permissions relating to the site.

14. I readily accept that the LHDG includes definitions relating to the type of highway where its expectations in relation to visibility splays, which are commensurate to those of the DMRB, would be relevant – and that Countesthorpe Road is one such road. I am also mindful that the visibility splays the LHDG expects in relation to roads with speeds as recorded both by the appellant and the local highway authority would seem to be unachievable given the position of the motorway bridge to the left of the access. Nevertheless, it was confirmed by the local highway authority that this aspect of the LHDG pre-dates the publication of MfS2. MfS2 is clear that the less stringent standards it sets out in relation to visibility splays are applicable to non-trunk roads such as Countesthorpe Road. As a consequence, reliance on MfS guidance, as a starting point for assessment is fully justified in this case.
15. Taking these considerations together with the nature of the road, the planning history of the site in terms of the visibility standards to be applied to the access, and the modest overall increase in traffic that the appeal scheme would entail, I consider that the visibility splays available from the access would adequately serve the proposed development.
16. In arriving at this view, I have taken into account that there are no physical impediments to prevent overtaking under the motorway bridge on the approach to the site access. Nevertheless, the curving nature of the highway, its width, and its speed limit would tend to deter overtaking manoeuvres in that part of the road. In these respects, the absence of any recorded accidents in the vicinity of the site as demonstrated by the CrashMap data referred to by the appellant, and uncontested by the Council, is a relevant consideration, and one which adds further weight to the potential for the access, which has been in active use for the range of uses touched on above, over the period covered by the data, to facilitate safe movement both onto and off the carriageway, and to avoid harm to any pedestrians who may use the adjacent highway verges.
17. Notwithstanding the above, conditions attached to the previous planning permission for Traveller accommodation required the delivery of improvements to the access, which have not been implemented. I concur with the Council that the way the access is currently arranged would not allow for convenient two-way movement of larger vehicles including those towing trailers or caravans, and I saw that there was some evidence of overrunning of the full height kerbs and highway verge adjacent to the existing dropped kerb. Furthermore, the angle of the existing access could create difficulties for vehicles, particularly those towing trailers or caravans, when exiting the site. Taking these things together, it is not clear that the existing access would avoid vehicles overhanging the highway when attempting to enter the site, or that vehicles exiting it could do so in a way that would avoid straddling both lanes of Countesthorpe Road. As a consequence, the existing arrangement falls some way short of the safe and suitable access to developments which the National Planning Policy Framework (the Framework) expects to be provided.

18. Nevertheless, two differing access designs have been presented, one on the site layout plan, and another in the appellant's Transport and Highways Technical Note. The Council indicated at the hearing, as both of those alternatives were in the planning application boundary, that appropriate details, which addressed the design points set out immediately above could be secured through the imposition of an appropriately worded condition.
19. Some concerns have been raised about the drainage of the site and potential for surface water to discharge onto Countesthorpe Road. However, appropriately worded conditions relating to drainage would be an effective means to deal with such issues.
20. I note that previous appeals² relating to the use of the appeal site for Traveller accommodation were dismissed by the Secretary of State due to the highway safety implications of the schemes. However, those decisions were made in advance of the updated national guidance included in MfS, which is a material consideration to which I attach significant weight in this case.
21. Consequently, for the reasons set out above, and subject to appropriately-worded conditions, I conclude on this main issue that the appeal scheme would not give rise to an unacceptable impact on highway safety, and would achieve a safe and suitable access to the site. Accordingly, the appeal scheme would not conflict with Policy CS9 of the Core Strategy, and the Framework, insofar as, taken together and amongst other things they seek to ensure that sites are capable of being accessed without detriment to highway safety.

Other Matters

22. Some interested parties are of the view that, due to an extant permission³ for Traveller accommodation elsewhere in the District, there is no need for any further sites to be provided. However, the Council supplied evidence at the appeal stage outlining emerging findings from the latest Gypsy and Traveller Accommodation Assessment (GTAA), indicating a need of 26 pitches for Travellers meeting the PPTS definition in the period 2022 to 2026, which would not be met fully by that extant permission. Moreover, Policies CS9 and SA4 do not seek to place a cap on development figures, instead setting out that the development management process is to *take into account* the most up-to-date GTAA. In this way, the policies are consistent with PPTS (per paragraph 4(h)) insofar as that sets out the Government's aim of increasing the number of Traveller sites in appropriate locations with planning permission, to address under provision and maintain an appropriate level of supply. For these reasons, the extant planning permission relating to another site in the District does not weigh against the appeal scheme.
23. The appeal site is of limited extent, well-screened and already incorporates access arrangements and hard standing. Its immediate environs include the M1, and a mobile telecommunications mast. Moreover, the proposed development would see the siting of relatively small, single-storey structures which would have a very limited visual effect on the wider surroundings. I therefore consider that the proposal would not cause harm to the character and appearance of the site or its surroundings, or lead to a material loss of green space in the District.

² Appeal references: APP/T2405/A/04/1149307 and APP/T2405/A/05/1184057 Decision date: 18 January 2006

³ Council reference: 14/0498/1/PX

24. I have considered the proposal on the basis of the material as presented including the description of development. Moreover, conditions can be attached which specify that any approved development is in line with the submitted plans, and which place limitations on the amount of caravans to be stationed at the site. Consequently, comments relating to the potential for the site to accommodate more pitches and caravans are outside the scope of the parameters of the development which is subject to this appeal.
25. The appeal site is set at some distance from the Great Central Walk, and there is no substantiated evidence before me to suggest that the proposed development would have adverse impacts on that route in access or biodiversity terms. What is more, appropriately worded conditions can be attached to ensure that biodiversity interests are taken into account as part of the appeal site's development.
26. The Council supplied a recent appeal decision⁴ relating to dismissal of a proposal for the provision of Traveller accommodation on a site elsewhere in the Borough. However, the main issues relevant to that appeal substantially differ to the proposal before me in this case, and all cases should be considered on their own individual merits in any event. For these reasons, that appeal decision does not weigh against the proposed development subject to this appeal.
27. The proposed development would lead to only a very minor increase in the number of residents in the area, and thus the effect of any increased demand for local services would likely be minimal.
28. Although I am mindful of assertions relating to the potential effect of the proposed development on house prices in the neighbouring settlement, I have been supplied with no substantive evidence in these regards. Moreover, as the Government's Planning Practice Guidance⁵ establishes, the UK courts have in general taken the view that as planning is concerned with land use in the public interest, the protection of purely private interests such as the impact of development on the value of a neighbouring property could not be a material consideration.
29. Representations have made references to potential criminal activity, anti-social behaviour, and environmental issues such as litter. However, no substantive evidence has been provided that points to a link between these issues and the proposal before me in this appeal.
30. For these reasons, none of these other matters weighs against the appeal scheme to any material degree, or leads me to a different view to that of the Council in terms of the proposal's compliance with the other criteria of Policy CS9 not covered in the reasons given on the main issue above.

Conditions

31. I have considered the conditions suggested by the Council in the light of the Framework (at paragraph 56), which sets out that they should only be imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects. Whilst

⁴ APP/T2405/W/20/3264047 decision date: 21 November 2022

⁵ 'Determining a planning application' Paragraph:008 Reference ID:21b-008-20140306 Revision date: 06 03 2014

aspects of the proposal have not been implemented, it appears that the use of the land for stationing of touring caravans is ongoing, and as a consequence, the conditions attached take these considerations into account. Where necessary, in the conditions imposed I have made amendments from the wording suggested by the Council, to ensure that they would meet the Framework 'tests' and in the context of the current status of the appeal site.

32. As the use of the site for stationing of caravans has commenced, I have not attached the standard implementation condition in this case. In the interests of certainty, I have imposed a condition which specifies the approved plans. In the interests of the character and appearance of the area, a condition is attached, which specifies the materials to be used in the operational development relating to the proposal. I have attached a condition which prevents the carrying out of commercial activities in the interests of the character and appearance of the site and its surroundings.
33. In the interests of the residential amenity of the occupants of the appeal site, and to ensure that the completed scheme accords with the description of development and other submitted details, conditions are attached which specify the number of static and touring caravans to be stationed at the site, and their layout. Taking these conditions together with the description of development imparts precision as to the use of the individual pitches of the site, and it is thus unnecessary to include in the conditions that the caravans should be 'single unit homes'.
34. The site is outside of a settlement boundary, and the appeal scheme is a type of use that is permissible as an exception to the generally more restrictive approach of the development plan to such locales. It is therefore necessary to attach a condition relating to its future occupancy. The condition attached encompasses the definition of 'traveller' given in the PPTS, but also widens this definition to include those who have ceased to travel permanently to avoid the potential for unlawful discrimination following the Smith judgement. Attachment of the condition also ensures that the appeal scheme would meet identified needs for this type of accommodation.
35. I have attached a condition which requires the submission of a scheme of development to cover a number of outstanding matters, which are necessary in order to ensure that the appeal development would be acceptable in planning terms. As the appeal development relates to a use that has already commenced, the condition is worded in a way to ensure that details are provided in a timely manner and implemented in accordance with a timetable, as standard negatively worded pre-commencement conditions would be ineffective and unenforceable in this case. The condition requires the maintenance and retention of the items included in the scheme, in line with the agreed details.
36. The scheme of development required by the condition deals with the following items:
 - first, the provision of appropriate measures for drainage of surface and foul water;
 - second, the provision of a safe and suitable access through the submission of details including its proposed width, radii, gradient, surfacing and drainage;
 - third, in the interests of the character and appearance of the site, its contribution to biodiversity, and the residential amenity of its occupants, the

landscaping measures to be undertaken including the retention of any existing trees and hedgerows;

fourth, although I concur with the appellant, due to the scale and nature of the site that the suggested condition relating to waste management matters is unreasonable in this case, the National Planning Policy for Waste (at paragraph 8) expects non-waste development to make sufficient provision for waste management, and facilitate a high quality, comprehensive and frequent household collection service. In these terms, and with highway safety considerations also in mind, I consider it necessary for this condition also to require details of the collection presentation points for household waste relating to the site;

fifth, the appeal site includes suitable habitat for sett building or foraging activities of badgers⁶, and in order to ensure that the development activity pursuant to the appeal scheme avoids interference with badger setts, the scheme of development requires the carrying out and submission of a badger survey, and that development takes place in accordance with its recommendations;

and finally, details of any external lighting at the site, in order to limit any light pollution that could be caused by the scheme in the interests of the character and appearance of the site and its surroundings.

By combining these elements into one condition, the Framework objective (per paragraph 56) of keeping planning conditions to a minimum would also be met.

37. The timescale in the 'scheme of development' condition differs from that set out by my colleague in a similar condition that was attached to the previous permission relating to the site. However, the period set out in the condition I have imposed is justified in this case to give an adequate amount of time to conduct the badger survey – an item that was not included in relation to the previous permission. As the contents of the scheme and its timetable for implementation are subject to the Council's approval, I see no overriding reason to attach further conditions or wording which would add additional specificity relating to visibility splays or landscaping matters, or additional timescales for their implementation. Moreover, the layout of the site and its level of occupancy are clear from the submitted plans, the description of development and the conditions attached in relation to these matters, and these aspects of the scheme would allow adequate space for on-site manoeuvres which would enable vehicles to exit in forward gear. It follows that it is not therefore necessary to attach a condition relating to parking and turning arrangements in this case.
38. As we discussed at the hearing, matters relating to the supply of fresh water to the site are the subject of different regulatory regimes, and it is consequently unnecessary to attach a condition relating to this subject.

⁶ A species protected by the Protection of Badgers Act 1992

Conclusion

39. The appeal scheme would not conflict with the development plan insofar as the policies that have been drawn to my attention are concerned. In reaching my decision on the appeal, I have ensured that the best interests of children who may reside at the appeal site are primary considerations, including in my assessment of the proposal's highway safety implications; and have had due regard to the three aims of the Public Sector Equality Duty⁷. Accordingly, for the reasons set out above, and taking fully into account all other matters raised, I conclude that the appeal should succeed.

G J Fort

INSPECTOR

⁷ As established by s149 of the Equality Act 2010 (as amended)

Schedule of Conditions

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans:
Site Location Plan;
Site Layout Plan;
Amenity Block Plans and Elevations;
Details of boundary fencing (PBA2);
Fencing Details (PBA3).
- 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 6 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 3 shall be static caravans shall be stationed on the site at any time.
- 4) The caravans shall be sited in accordance with the Site Layout Plan.
- 5) No commercial activities are to take place on the land, including the external storage of materials.
- 6) The development hereby permitted shall be constructed in the materials specified in section 9 of the submitted planning application form except where otherwise approved by the local planning authority in details pursuant to the site development scheme subject to condition (7).
- 7) The use hereby permitted shall cease and all caravans, structures, equipment and materials brought onto the land for the purposes of such use shall be removed within 28 days of the date of failure to meet any one of the requirements set out in i) to iv) below:
 - (i) Within 6 months of the date of this decision a scheme for:
the means of foul and surface water drainage of the site;
the means of vehicular access to the site, including details of its proposed width, radii, gradient, surfacing and drainage;
landscaping including indications of all existing trees and hedgerows on the land identifying those to be retained;
the completion of a badger survey of the site including any recommendations for measures relating to the protection of badgers or their setts during the construction phase of the development;
the identification of a presentation point for collection of household waste relating to the site; and
details of any external lighting
(hereafter referred to as the site development scheme) shall have

- been submitted for the written approval of the local planning authority and the scheme shall include a timetable for its implementation.
- (ii) If within 14 months of the date of this decision the local planning authority refuse to approve the scheme or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
 - (iii) If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.
 - (iv) The approved scheme shall have been carried out and completed in accordance with the approved timetable.

Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter be maintained and retained in accordance with the approved scheme.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

*****End of Conditions*****

APPEARANCES

FOR THE APPELLANT:

George Bailes
Philip Brown BA(Hons)
Martin McCarthy

The Transportation Consultancy
Philip Brown Associates Ltd
Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Charles Ebden
Cat Hartley

David Hunt

Nick Mlotshwa BSc MSc

Senior Planning Officer
Group Manager
Planning & Strategic Growth
Senior Transport Planner
Leicestershire County Council
Contaminated Land Officer

DOCUMENTS RECEIVED AT AND AFTER THE HEARING

1. Paper copies of the appeal and notification letters
2. Revised Proposed Site Access Plan (Drawing Number 210545-01) including additional details on visibility
3. Signed Statement of Common Ground
4. Wording for ecological conditions
5. Written responses on suggested conditions