



Appeal Decision

Inquiry opened on 21 February 2023

Site visits made on 21 and 23 February 2023

by Philip Major BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9th March 2023

Appeal Ref: APP/D0840/W/22/3299411

Dragon's Corner, St Neot, Cornwall PL14 6PZ

- 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 Dykes against the decision of Cornwall Council.
 - The application Ref: PA21/06770, dated 16 June 2021, was refused by notice dated 1 December 2021.
 - The development proposed is the change of use of land for the stationing of 2 No caravans for the purposes of human habitation and associated works including car parking, foul drainage, boundary treatment and retention of existing shed and polytunnels.
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Preliminary Matters

1. This appeal follows on from earlier decisions taken at appeal in relation to the same site. Those previous decisions were taken in different circumstances, and the most recent of them dates from 2018. At that time the Appellant was self-represented, there was a dispute in relation to his gypsy status, and the cases preceded the Lisa Smith judgement¹. Additionally, the previous cases related to enforcement action taken to deal with the use of, and state of, the land upon which the Appellant currently resides. The proposal before me, although relating to the same site, has different details in respect of the layout of the development. Furthermore there is significant new information available, which is undisputed, in relation to the Appellant's health. The Council does not now dispute that the Appellant benefits from gypsy status, and that is a position with which I concur. These changes in circumstances are substantial and are material to my consideration of the case.
2. The proposal was described on the submitted application form as recited above. At the inquiry it was clear that the Appellant would intend, in reality, to rely on a single static caravan being located on the land, with some associated smaller structures. This was confirmed by the proposed conditions attached to the statement of common ground. That is the basis on which I have considered the appeal. The submitted drawings included details of potential elevational and layout treatment of a 'chalet' style static caravan structure. However, those details were withdrawn, in writing, during the inquiry. The plans of the proposal which are retained include a proposed layout of the site, but without indicating specific details of the proposed static caravan or ancillary structures. It was agreed that such matters could be controlled by condition,

¹ Lisa Smith v SoSLUHC and Others [2022] EWCA Civ 1391

and I address this later in the decision. I am satisfied that these changes to the details considered in the appeal (single static caravan and ancillary structures, and withdrawal of some details) do not prejudice the interests of any party who has taken part in the case, either orally or in writing.

Decision

3. The appeal is allowed and planning permission is granted for the change of use of land for the stationing of 1 No caravan for the purposes of human habitation and associated works including car parking, foul drainage, boundary treatment and retention of existing shed and polytunnels at Dragon's Corner, St Neot, Cornwall PL14 6PZ in accordance with the terms of the application, Ref: PA21/06770, dated 16 June 2021, and the plans submitted with it and not subsequently withdrawn, subject to the conditions set out at the end of this decision.

Main Issues

4. The main issues in the appeal are:
 - (a) The requirement for, and supply of, sites for gypsies and travellers;
 - (b) The effect of the proposal on the character and appearance of the surrounding countryside, bearing in mind its location within an Area of Outstanding Natural Beauty (AONB);
 - (c) Whether the site is located in an acceptable location in relation to access to services and facilities;
 - (d) The personal needs and circumstances of the Appellant, Human Rights matters, and the Public Sector Equality Duty.

Reasons

Requirement and Supply

5. It is agreed between the parties that in November 2015 there was a requirement in Cornwall for the supply of 318 traveller pitches. This is imported into Policy 2a: Key targets of the Local Plan². Since then (until June 2022) provision had been made for 113 pitches, leaving a shortfall of 205.
6. Planning Policy for Traveller Sites (PPTS) issued in August 2015 sets an expectation that Local Authorities will identify and update annually a supply of specific deliverable sites to provide 5 years' worth of supply against their locally set targets. This has not happened and it is agreed that the Council cannot demonstrate a 5 year supply of traveller sites. Furthermore, at the inquiry I heard that the Council does not at present seek to identify a supply of sites, instead relying wholly on 'windfall' provision coming forward through individual applications. This is a situation which has persisted since at least 2018 despite the fact that the Local Plan indicates that a site allocations Development Plan Document (DPD) will identify and manage a network of sites. It was confirmed at the inquiry that no such DPD has been produced and nor was it suggested that it is in the course of preparation. The Council's reliance on planning applications to identify land and seek to meet supply in the absence of a 5 year supply is clearly contrary to the expectations of the PPTS.

² Cornwall Local Plan, adopted November 2016

7. At the present rate of supply it is apparent that during the Local Plan period to 2030 there is no prospect of the identified requirement for pitches being satisfied, even if the current rate of supply is maintained, which cannot be a certainty. The Local Plan indicates that the Council is “proactively seeking to deliver improved provision to meet the accommodation needs of travelling communities.” However, in response to questions, I have been given no evidence of that claimed proactivity. In my judgement the Council has signally failed to live up to the expectations of national policy and the assurances of its own Local Plan. This is a serious failure of policy which attracts substantial weight in favour of the proposal.

Character and Appearance

8. The decision of the previous Inspector in 2018³ found that the development present at that time caused considerable harm to the AONB. I can well understand that finding given that the decision makes it clear that many of the negative features of the site leading to that conclusion are still evident today. These include the many old tyres which are used as boundary ‘structures’. It is also understandable that he did not consider the harm could be rectified by conditions, given that he likely had no indication of what that might entail. But, as I have noted above, the proposal is now different.
9. The proposal now, in effect, is to clear the site of the extraneous materials such as the tyres, and to reorganise the structures such that a static caravan would be located towards the rear of the site, with ancillary structures and parking in other locations. A second access which has been created would be blocked up. The Appellant’s landscape evidence provides detail of how a scheme of landscaping could be implemented, which would be designed to reduce the visual impact of the development and minimise its effect on the character of the locality.
10. Key characteristics of the AONB hereabouts, identified in both landscape character studies and AONB management plan, include the isolated and wild nature of the open moorland. But it cannot be ignored that the appeal site is within an area of coniferous plantation which is not characteristic of the AONB. Indeed the AONB management plan regards these plantations as being anomalous. In addition, any tranquillity which is otherwise characteristic of the AONB is severely depleted by the presence of the nearby A30. Even in February during my site visits, and with relatively light traffic flows, the road was a distinct and noticeable intrusion through both movement and noise. I have little doubt that such intrusion is magnified at other times of the year.
11. That said it cannot be reasonably argued that the proposed development has no impact on the character of the AONB. Clearly the impact would be negative. In place of open rural land there would be a site which would include some structures not characteristic of the locality. On the other hand the Appellant has indicated a willingness to provide a Cornish hedge to the site frontage, a feature recommended in the landscape evidence. Although the Council has concerns that this would be out of place I do not agree. There are examples of Cornish hedges nearby, and many locations in the area where these features have degraded over time. They are an historic characteristic of the area and the appeal site appears to have had a Cornish hedge feature at some time along the roadside. Replacement of that feature, which could be ensured with

³ APP/D0840/C/17/3192446

a suitable condition, would be an enhancement of the character of the locality. Hence, although the overall impact of the development on character would not be positive, the harm would be minor to moderate at worst.

12. Turning to the visual impact of the proposal, concern was expressed that the felling of trees on the site had left a gap in the conifer plantation which is an incongruous feature. Again, I disagree. From any vantage point the gap is simply an open area between stands of trees. It is not incongruous or visually jarring. Indeed natural woodland would not be seen in serried rows of trees of similar height. The felling of trees can be argued to have introduced a more natural visual experience to some extent.
13. However, I do agree that the visual impact of the proposal overall would be adverse. That adverse impact would be most apparent when immediately adjacent to the site on the C-class road which passes by, and from the open access land immediately to the west. It is unlikely that many people would choose to walk close to the site on the open access land since it is enclosed and gaining access to and egress from the land would entail walking a nearby public right of way which is a more convenient route across the area. Recreational users are rightly afforded high sensitivity when enjoying the AONB, but there are limited visual viewpoints where the development would be prominent. I also take note of the fact that the positioning of any caravans and structures would be likely to result in them being at a lower height than those currently experienced, and being at least partly hidden by a Cornish hedge.
14. The land to the north of the A30 rises up and affords some panoramic views. But in these views the appeal site barely registers. It is difficult to pick out the existing development, and the proposed development would be less noticeable. The same is true from viewpoints close to the A30 and from the A30 itself. Even from the small area of open access land to the east the site does not have great prominence. Hence it is only in close proximity immediately to the west that there would be any noteworthy impact. Even from the closest position, and subject to the imposition of suitable controls by condition, the visual impact of the development would be moderately adverse at worst.
15. Drawing these findings together it is my judgement that this proposal (which as I have explained is not the same as that considered at previous appeals) would have a minor to moderate impact on landscape character and a similar level of impact on the appearance of the locality.
16. The AONB has the highest level of protection and that must be afforded great weight. Policy 23 part 2(a) of the Cornwall Local Plan (one of the two acknowledged most important policies alongside Policy 11) indicates that great weight will be given to conserving the landscape and scenic beauty of the AONB. It was argued that the proposal, as an improvement on the existing situation, would have at worst a neutral impact on the AONB, and would therefore conserve it. I am not persuaded by that stance. The baseline must realistically be taken to be the situation prior to the Appellant moving on to the site. In that regard there would be harm to the character and appearance of the AONB from the current proposal, though the harm could be mitigated to some extent by controlling the development with conditions. As a result I find conflict with Policy 23 part 2(a). That conflict will be carried forward into the planning balance and my conclusions.

Location

17. The appeal site is acknowledged to be about 3.7 miles from the settlement of St Neot. It is also about 7 miles from the edge of Bodmin. Policy 11 of the Local Plan deals with gypsy and traveller sites and criterion 3 is engaged here. That indicates that sites should be located so as to ensure reasonable access by a range of transport modes to services including health care, education and shops. Reasonable access is defined as approximately 3 miles for transit sites and less for permanent sites (my emphasis).
18. On the face of it, therefore, this proposal falls foul of criterion 3 of Policy 11. But I see little merit in trying to be prescriptive in defining acceptable distances in this case for 3 reasons. First, because the Council is making no attempt to identify locations for sites and is therefore reliant on locations being advanced over which it has no prior influence. In addition the policy is described in terms of approximate distances. Secondly, because the circumstances of each proposed site or applicant are likely to differ. Thirdly, because although PPTS requires strict limits on new traveller sites in open countryside away from existing settlements or areas allocated in the development plan there is no indication of what that should mean in practice. Appeal decisions over time consider the circumstances of each case, and that must be the right approach as no 2 cases are likely to be the same. In other words, a judgement has to be made.
19. In this case there are significant considerations which mean that I do not find the site to be unacceptably remote. The first and principal of these is that the Appellant would in any event not be able to use public transport even were it to be available (which it is not in any reasonable form) because of his medical issues. He is already reliant on personal transport for his needs. Secondly the site is close to the A30 with direct and easy links to Bodmin, as opposed to a deeply rural location which may be within 2 or 3 miles of some services but be difficult to access because of highway configuration, topography, and the like. Therefore, in considering this proposal these are matters to which I have had regard, and as a result I do not consider that the apparent variance with criterion 3 of Policy 11 means that it conflicts with the policy as a matter of pragmatic judgement. The site can reasonably be regarded as being 'approximately' 3 miles or less from services. As there is no suggestion that there are any conflicts with the other 6 criteria of that policy I am satisfied that this proposal does comply with the policy overall.

Personal Need and Circumstances, Human Rights and the Public Sector Equality Duty

20. In this issue is a further illustration of the significantly different material considerations in play compared with previous appeals. In particular I have the benefit of a detailed report from a respected consultant clinician. The report highlights details of the Appellant's medical conditions which it is not necessary to recite in dealing with this case.
21. Suffice to say that there are good reasons why the Appellant is in need of a single pitch at which he can live. There is no dispute in relation to the contents of the medical report, and it is clear that a place on a communal site would not be appropriate for the Appellant. It is common ground here that there are no alternative options available in any event.

22. Dismissal of the appeal would interfere with the human rights of the Appellant in relation to Article 8 of the European Convention on Human Rights (ECHR). He has no alternative accommodation to which he could move, and would be likely to be forced into a roadside or itinerant existence. The Council suggests that it would be considerate in taking any further action, but there is nothing before me which gives confidence that action would not be harmful to the health of the Appellant.
23. The Public Sector Equality Duty (PSED) places a duty on decision makers to have due regard to the 3 aims of S149 of the Equality Act. One of these aims is to advance equality of opportunity between people who share a protected characteristic and those who do not. It seems to me in this case that the failure of the Council to engage with the necessity to identify suitable locations for traveller pitches does not advance equality of opportunity. It must also be open to question as to whether the failure to provide for gypsy and traveller accommodation needs is discriminatory.
24. Taking these matters in the round it is clear to me that the Appellant's personal circumstances are such that he has a pressing need for a permanent site and that there are no suitable, affordable and acceptable sites which are available. Dismissing the appeal would make him homeless and would engage Article 8 of the ECHR. Additionally I am bound to consider my duty under the PSED to advance equality of opportunity and avoid discrimination. These matters carry substantial weight.

Planning Balance and Conclusions

25. There are a number of matters which must be assessed in the overall planning balance. These are:
- The fact that there is an acknowledged need for gypsy and traveller sites which is not being met, and for which the Council is making no provision through the development plan process. This is a matter of substantial weight;
 - That there would be harm to the character and appearance of the AONB as a result of the proposed development, and conflict with Policy 23, Part 2(a) of the Local Plan. Great weight attaches to the conservation of the landscape and scenic beauty of the AONB and this weighs against the proposal;
 - The site is located in an acceptable location in the circumstances of this case and there is no conflict with Local Plan Policy 11 as a whole;
 - The Appellant has a personal need for a site, there are no alternatives available to him, and the dismissal of the appeal would interfere with his Article 8 rights. Furthermore the PSED requires me to advance equality of opportunity and avoid discrimination. These matters are of substantial weight.
26. In my judgment the interference with the Article 8 rights of the Appellant would be disproportionate in this case. He would have nowhere to go, his health would almost certainly suffer, and the proposal could make allowance, through the imposition of conditions, for the site to be significantly less intrusive than it is at present. My duty under the PSED also requires me to seek to advance equality of opportunity and avoid discrimination. Despite the conflict with

Policy 23, Part 2(a) the matters which weigh in favour of the proposal, namely the need for sites, the Appellant's personal circumstances, human rights and PSED matters, together carry such weight that they clearly outweigh the conflict with the development plan and harm to the AONB. Hence this is a case, judged on its own merits, in which that conflict and harm is outweighed by other material considerations such that planning permission can be granted.

27. In reaching this conclusion I stress that it is based on the fact that the scheme as presented to me has the potential to improve the current situation and mitigate harm. That is subject to the imposition of conditions to which the Appellant must have regard and with which he will be expected to comply. I turn next to those conditions.

Conditions

28. The parties helpfully agreed a list of potential conditions which was attached to the statement of common ground. Others were discussed at the inquiry. I have made it clear that planning permission is being granted in large part because of the personal needs and circumstances of the Appellant. For that reason, and because there is nothing before me which suggests there is any intention to erect permanent buildings on the site, a permission personal to the Appellant and his dependents is reasonable. It is also reasonable to restrict the use to a single caravan with ancillary structures, as agreed in the statement of common ground, in order to minimise impact. Because of the sensitive location it is also necessary to restrict commercial activities and size of vehicles on the site. A composite condition to require the use to cease unless site arrangements and detailed matters are agreed and implemented is necessary in order to secure the necessary environmental improvements. This includes requirements relating to colours of structures and external lighting in view of the sensitivity of the location.

Other Matters

29. Some other matters have been mentioned during the course of the inquiry and in writing. These include the potential for impact on the enjoyment of users of Colliford Lake. However, with the improvements which can be secured by condition this is not a matter which would weigh against the proposal. The Council raised at a late stage the matter of intentional unauthorised development. However as there is simply nowhere else for the Appellant to go this is not a matter which weighs against the proposal. The land to the north of the A30 is a site of special scientific interest (SSSI) and the appeal site itself is within the SSSI potential risk zone. But I have no evidence that there would be any adverse impact on the SSSI. No other matters brought to my attention are sufficient to outweigh the considerations which have led me to my decision.

Overall Conclusion

30. For the reasons given above I conclude that the appeal should be allowed.

Philip Major

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The occupation of the site hereby permitted shall be carried on only by Mr Martin Dykes or a widow or widower or surviving civil partner of such person and to any resident dependants.
- 2) When the land ceases to be occupied by those named in condition 1) above the use hereby permitted shall cease and all caravans, structures, materials and equipment brought on to or erected on the land, and/or works undertaken to it in connection with the use, shall be removed and the land shall be restored to its condition before the development first took place in accordance with a scheme to be submitted to and agreed in writing by the local planning authority.
- 3) No more than 1 caravan as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 as amended shall be stationed on the site at any time.
- 4) No vehicle over 3.5 tonnes shall be stationed, parked or stored on this site.
- 5) No commercial activities shall take place on the land, including the storage of materials.
- 6) 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 3 months of the date of failure to meet any one of the requirements set out in i) to iv) below:
 - i) Within 3 months of the date of this decision a scheme for:
 - the internal layout of the site, including the siting and levels of caravans or other structures, hardstanding, access roads, parking and amenity areas;
 - any proposed external lighting within the site;
 - the proposed type and colour of finish to the caravan and other structures;
 - landscaping including tree, hedge and shrub planting and retention of existing vegetation, including details of species, plant sizes and proposed numbers and densities;
 - the building of a Cornish hedge to the roadside boundary.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. All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in accordance with the approved timetable, and any tree or plants which within a period of 5 years from 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.
 - ii) If within 11 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 retained.

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.

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

[illegible]

He called

Mr J Lee HND CPS Senior Planning Officer, Cornwall Council Appeals Team

FOR THE APPELLANT:

Mr S Cottle Counsel for the Appellant

He called

Mr R Crandon BA(Hons) DipLA	Director, TDA Environment and Landscape Design
Dr A Murdoch BA(Hons) MSC PhD MA MRTPI	Murdoch Planning Ltd, Agent for the Appellant

DOCUMENTS HANDED IN AT THE INQUIRY

- 1 Appellant's opening statement
2 Council's opening statement
3 Appeal decision APP/Y9507/C/15/3062034
4 R v Wealden District council [2014] EWHC 4081 (Admin)
5 Note withdrawing various plans
6 Closing submissions of the Council
7 Closing statement of the Appellant