



Appeal Decision

Hearing held on 22 November 2022

Site visit made on 22 November 2022

by Mr W Johnson BA(Hons) DipTP DipUDR MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 April 2023

Appeal Ref: APP/C3105/W/21/3272481

Land south of Widnell Lane, Arncott, Bicester, Oxfordshire OX25 1AE

- 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 Patrick Foster against the decision of Cherwell District Council.
 - The application Ref 20/01122/F, dated 23 April 2020, was refused by notice dated 15 October 2020.
 - The development proposed is a material change of use of land to use as a residential caravan site for 12 gypsy/traveller families, each with 2 caravans, including improvement of access, laying of hardstanding and the installation of package sewage treatment plant.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. Since the determination of the application, a recent judgment¹ relevant to the appeal has been issued. Although the Planning Policy for Traveller Sites 2015 (PPTS) itself was not the subject of the litigation, and has not been quashed or declared unlawful, the thrust of the judgment was that the PPTS definition of gypsies and travellers was unlawfully discriminatory. The main parties were both given the opportunity to comment on this judgment at the event. Thus, no party would be prejudiced if this judgment was taken into consideration in the determination of this appeal.

Applications for costs

3. An application for costs was made by Cherwell District Council against Mr Patrick Foster. This application is the subject of a separate Decision.

Main Issues

4. The main issues of this appeal are:
 - the effect of the proposal on the character and appearance of the appeal site and surrounding area;
 - the effect of the proposal on biodiversity and protected species; and,
 - the effect of the proposal with regard to flood risk, with particular regard to surface water drainage.

¹ Smith vs Secretary of State for Levelling Up, Housing and Communities and Others [2021] EWHC 1650 (Admin) (31 October 2022)

Reasons

Character and appearance

5. The site comprises nearly 1.0Ha of agricultural land, located off the southern side of Widnell Lane, close to the junction with the B4011 to the west. Access to the site is off Widnell Lane, where I noted the existing access was gated. I also travelled along Widnell Lane in both directions and along the B4011, but due to the presence of mature trees and hedgerows it was evident that the site would not be readily visible from the wider area. Although, I accept that limited views of the proposal would be likely from the site access and the access to the adjacent land to the east, and a number of vantage points along the B4011. Consequently, I am satisfied that I saw everything I need to assess the impact of the development.
6. Policy ESD13 of the Cherwell Local Plan Part 1, 2015 (LP) seeks for development to respect and enhance local landscape character, securing appropriate mitigation where damage to the local landscape character cannot be avoided, amongst other things. LP Policy ESD15 requires all new development to meet high design standards. 'Saved' Policy C8 of the Cherwell Local Plan, 1996 (SLP) seeks to protect the character of the open countryside from sporadic development. SLP Policy C28 seeks to ensure that development is in harmony with the general character of its surroundings and is sympathetic to the environmental context.
7. It is agreed by the parties that the proposal could cause visual harm, but the parties disagree on the extent of this harm and whether this could be mitigated. The site is free from built development, although I note that hardcore appears to have been deposited on the ground. Thus, in this instance, the effect of the proposal would be limited to more localised viewpoints that would also be restricted to an extent, due to the surrounding landscape features.
8. The site benefits from a previous consent that was granted at appeal² (the previous scheme). The Council have questioned whether this scheme has been implemented as Condition no.8 has not been discharged, which it considers to be a condition precedent. In any event, the proposal is for a similar type of development, in a similar location, albeit with an increase from 6no. to 12no. pitches. I still consider the previous scheme to represent a material consideration when considering the principle of development as the policies listed on the Council's decision notice for the proposal were applied to the previous scheme³.
9. I accept that the proposal would extend further into the countryside than the previous scheme and would result in more development than that previously approved. Consequently, there could be some adverse landscape and visual effects caused by the proposal. However, I am satisfied that otherwise unacceptable development could be made acceptable in this instance, through the imposition of suitably worded conditions to secure a suitable landscaping scheme to overcome the localised impact of the proposal.
10. For the reasons given above, I conclude that the proposal would not harm the character and appearance of the appeal site or surrounding area. Therefore,

² APP/C3105/W/18/3209349

³ Listed in the Officer Report for 17/01962/F.

the proposal complies with LP Policies ESD13, ESD15, SLP Policies C8, C28, which collectively seek to secure the maintenance of the rural character, enhancement of the character and appearance of the landscape, respect for an area's unique built, natural and cultural context, maintaining the attractive, open and has a high standard of development, amongst other things. The scheme would also accord with the requirements of the National Planning Policy Framework (The Framework).

Biodiversity

11. Since the determination of the planning application the appellant has provided further reports⁴ that were commissioned to address pre-commencement conditions attached to the previous scheme. However, whilst I accept that the content within these documents is of some relevance, they are not specific to the proposal subject of this appeal. Additionally, the documents⁵ submitted with the planning application all relate to different schemes and date from 2017. LP Policy ESD10 seeks the protection and enhancement of the biodiversity and the natural environment and relevant habitat, and species surveys and associated reports will be required to accompany planning applications which may affect a site, habitat or species of known or potential ecological value, amongst other things.
12. The Council has also raised concern about the age of the documents provided in support of the application and has provided an Advice Note from CIEEM⁶ to support its position on this matter. The reports that accompanied the planning application dated from 2017. In such circumstances the guidance from CIEEM for data over 3 years old is that *'The report is unlikely to still be valid and most, if not all, of the surveys are likely to need to be updated (subject to an assessment by a professional ecologist, as described above)'*.
13. During the event, I was made aware that 2 no. ponds adjacent to the site have been filled in. These ponds have been referenced in the CWS reports that have been supplied in support of the proposal. The appellant was of the view at the event that whilst unfortunate, this now favoured the proposal as suitable habitat for Great Crested Newts (GCNs) had been removed. However, during further discussions, it was established that another pond is situated to the west of the site, which is shown on submitted drawings and has not been previously identified in the submitted reports. Given that GCNs have previously been recorded in the locality of the site, the possibility of another unrecorded pond within 500m of the site, where refuges are also present within 500m of the site, the supporting reports are insufficient to demonstrate that no harm to GCNs would occur as a consequence of the proposal.
14. For the reasons given above, I conclude that it has not been demonstrated that the proposal would not harm protected species, with particular regard to GCNs. Therefore, the proposed development fails to comply with LP Policy ESD10, which seeks protection and enhancement of biodiversity and the natural environment, amongst other things. The scheme would also fail to accord with the requirements of the Framework.

⁴ Cotswold Wildlife Survey (CWS) - Landscape & Ecological Management Plan, 2022 and CWS - Great Crested Newt Mitigation Strategy, 2022.

⁵ CWS - Preliminary Ecological Appraisal, 2017; CWS - Botanical Survey, 2017 and CWS - Great Crested Newt Survey, 2017.

⁶ Chartered Institute of Ecology and Environmental Management - The Lifespan of Ecological Reports and Surveys, April 2019.

Flood risk

15. It is not disputed by the main parties that the site is situated within Flood Zone 1⁷, which is considered to have less than 0.1% annual probability of river or sea flooding. However, it is also accepted that the northern part of the site is identified as being prone to surface water flooding. Footnote 55 of the Framework advises that a site-specific flood risk assessment (FRA) should be provided for land in Flood Zone 1, where it is subject to other sources of flooding, and where its development would introduce a more vulnerable use. LP Policy ESD6 has a similar requirement, amongst other things. As the planning application was not accompanied by a FRA or a Surface Water Management Strategy in line with local standards, these are misgivings related to the proposal.
16. I accept that the approach on the previous scheme was to impose a condition, but this was based upon the view that a drainage system based on part (or full) infiltration to ground may be viable. Recently, the appellant has tried to discharge the drainage condition⁸, but to date this has not been possible. It is stated by the Council that it has not been proven that infiltration is feasible or that an alternative outfall from the site has been identified. In relation to the soakage test, the comments in the Officer Report for the previous scheme have been noted. Whilst these comments were available to the Inspector⁹ on the previous scheme, the complications associated with discharging the drainage condition could not have been foreseen at the time of his decision. Additionally, whilst there are similarities in the proposal and previous scheme, there are marked differences such as the number of pitches and the size of the site. It was also advanced orally at the event by the appellant that the land directly to the west of the site (the adjoining land) is in the ownership of the appellant and could be used for drainage purposes.
17. I accept that the adjoining land could be utilised for drainage purposes. Although, whilst accepting its proximity to the site and likelihood that it would have similar soakage rates as the site itself, this can only be assumed on the given data. Furthermore, it is accepted by the main parties that the previous soakage tests undertaken were only just within acceptable limits. It is also claimed by the Council that the tests were not in accordance with BRE 365 standard. In any event, it remains that the soakage tests undertaken for the previous scheme do not include all of the land that would be included in the proposal. Consequently, on the evidence before me, I am not satisfied that a positive drainage solution can be provided for the site and the flood risk particularly from surface water can be adequately addressed. In this instance, otherwise unacceptable development could not be made acceptable, through the imposition of a suitably worded condition.
18. For the reasons given above, I conclude that the proposal would result in an unacceptable risk of flooding to the detriment of the living conditions of future occupiers. The proposed development fails to comply with LP Policy ESD6, which seeks to demonstrate that surface water will be managed effectively on site and that the development will not increase flood risk elsewhere, amongst other things. The scheme would also fail to accord with the requirements of the Framework.

⁷ Table 1: Flood Zones – Paragraph; 078 Reference ID: 7-078-20220825 – Revision date 25 August 2022

⁸ Condition no.8 on 17/01962/F

⁹ APP/C3105/W/18/3209349

Other Matters

19. The main parties agree that there is an unmet general need for pitches within the District. However, the appellant considers there to be a marked difference and a much greater need, due to a failure in the methodology of the Gypsy, Traveller and Travelling Showpeople Accommodation Assessment, 2017 (GTAA). The Council contends the findings of the GTAA to be robust.
20. The appellant directs my attention to many matters, including the closure of Newlands Caravan Park in 2017 with the loss of 36 existing and/or approved traveller pitches, the approval of planning permission to re-develop Station Caravan Park in Banbury with the loss of 10no. traveller pitches. The number of interviews carried out in the GTAA has also been raised as a concern, as only 12 interviews were undertaken out of 61 households. This results in a low overall percentage in the number of households interviewed, of which 49no. are listed as unknown. On these matters alone, there is a strong likelihood of underestimation surrounding need within the District. Additionally, the recent judgment may also serve as a factor in increasing the need too. The appellant has submitted a number of appeal decisions¹⁰ to support his case, which I have had regard to as material considerations.
21. Local residents and Piddington Parish Council have also expressed a wide range of concerns including, but not limited to the following; unauthorised works, location, highway safety, lack of facilities/public transport, utilities, proximity to the military and prison sites, dominance of the nearest settlement, amongst other things. However, I note that these matters were considered where relevant by the Council at the application stage and did not form part of the reason for refusal, which I have dealt with in the assessment above. Whilst I can understand the concerns of local residents, there is no compelling evidence before me that would lead me to come to a different conclusion to the Council on these matters.

Planning Balance and Conclusion

22. The adverse impacts of the development would relate to protected species and flood risk/drainage, both of which would create very significant harm. Weighing against those impacts, the scheme would provide much-needed gypsy and traveller pitches in the district. There would also be moderate economic benefits through the construction phase and the future occupation of the site. I am therefore clear that the adverse impacts of granting planning permission in this instance would significantly and demonstrably outweigh the benefits. The proposal would be contrary to the development plan and there are no material considerations that outweigh this conflict.
23. Consequently, for the reasons given above, I conclude that the appeal should be dismissed.

W Johnson

INSPECTOR

¹⁰ APP/X0360/C/16/3153193 and APP/J0405/W/18/3193773

APPEARANCES

FOR THE APPELLANT:

Phillip Brown

Agent

FOR THE LOCAL PLANNING AUTHORITY:

Andrew Thompson

Cherwell District Council

Charlotte Watkins

Cherwell District Council

Sean Tilbury

Cherwell District Council

INTERESTED PARTIES:

Adam Littler

Oxfordshire County Council

Cllr Mario Terzino

Piddington Parish Council

HEARING DOCUMENTS

The following documents were submitted and accepted at the Hearing:

ON BEHALF OF THE LOCAL PLANNING AUTHORITY:

- Officer Report for planning application 17/01962/F