



Appeal Decision

Site visit made on 3 May 2023

by Nick Davies BSc(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1st June 2023

Appeal Ref: APP/D0840/W/22/3303252

Land to the south of Little Hallaze, Penwithick, St Austell PL26 8YW

- 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 S & N Crocker & Richards against the decision of Cornwall Council.
 - The application Ref PA21/08697, dated 24 August 2021, was refused by notice dated 16 February 2022.
 - The development proposed is use of the land as a private Romani gypsy site consisting of four pitches including 4 mobile homes, 4 touring caravans and hard standings.
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Decision

1. The appeal is allowed and planning permission is granted for use of the land as a private Romani gypsy site consisting of four pitches including 4 mobile homes, 4 touring caravans and hard standings at Land to the south of Little Hallaze, Penwithick, St Austell PL26 8YW in accordance with the terms of the application, Ref PA21/08697, dated 24 August 2021, and the plans submitted with it, subject to the conditions in the attached schedule.

Main Issues

2. The main issues are:
 - a) The effect of the development on the natural character and appearance of the countryside;
 - b) Whether the scale of the proposal would dominate the nearest settled community;
 - c) The impact of the development on best and most versatile agricultural land; and,
 - d) If any harm is caused regarding these matters, whether this is outweighed by material considerations.

Background and Policy

3. The site lies approximately 200 metres to the east of the main built-up edge of Penwithick. Whilst it is adjacent to an existing Gypsy and Traveller site, it is common ground that the site lies in the countryside. It is proposed that the Appellants and members of their families would occupy the four pitches. It is not disputed that they fall within the definition of Gypsies and Travellers as set out in Annex 1 to the government's Planning Policy for Traveller Sites, August 2015 (the PPTS).

4. Policy 11 of the Cornwall Local Plan Strategic Policies 2010 – 2030 (the Local Plan) says that proposals for new Gypsy and Traveller sites, and extensions to existing sites, will be approved where they meet seven criteria. None of those criteria rule out a countryside location. Whilst the PPTS states that decision-makers should “*very strictly limit new traveller site development in open countryside that is away from existing settlements*”, neither it, nor the National Planning Policy Framework (the Framework) prohibit Gypsy and Traveller sites in the countryside. Consequently, there is no basis in local or national policy to consider that the proposed use of the site is unacceptable in principle.
5. The Council’s reason for refusal refers to conflict with one of the seven criteria set out in Policy 11 of the Local Plan, and this is set out as the second main issue above. It is not disputed that the proposal complies with the other six criteria. Nevertheless, the Local Plan must be read as a whole and, although Policy 11 is the specific one concerning Gypsy and Traveller sites, there are other overarching policies that must be considered.

Reasons

Character and appearance of the countryside

6. The appeal site comprises the northern section of a rough grass and gorse field next to an existing permanent Gypsy and Traveller site. The wider field slopes down from the north to meet Hallaze Road to the south. It is enclosed on all sides by hedgerows and trees. Consequently, it is visually well separated from the adjoining site, and uninfluenced by any other development. It therefore appears as part of the wider countryside to the east of Penwithick. The area does not carry any landscape designation, but Policies 2 and 23 of the Local Plan seek to ensure that development recognises and respects the landscape character of both designated and undesignated landscapes. Furthermore, paragraph 174 of the Framework says that planning decisions should contribute to and enhance the natural and local environment by recognising the intrinsic character and beauty of the countryside.
7. Although the site is not widely visible, it can be seen from the higher land to the southeast, on the opposite side of Hallaze Road. It was also visible through the roadside vegetation from Hallaze Road. Glimpsed views were also possible from the Public Right of Way to the north of the site, albeit that from here, any development would be seen between existing buildings. From all of these viewpoints, the use of the land to station four mobile homes, four touring caravans, along with a tarmac road, and the paraphernalia associated with the residential use would be an incongruous encroachment into the countryside. The mobile homes depicted on the plans are smaller than the definition of a caravan, so there is potential for larger units to be installed. I am also mindful of the Council’s suggestion that future proposals for dayrooms would be difficult to resist. As a result, the overall impact on the landscape may be greater than that envisaged through the submitted scheme.
8. The planting shown on the submitted plans would take many years to establish and mature. Even then, it would not fully assimilate the proposal into the surrounding countryside. Consequently, whilst the impact of the development would be limited by the largely concealed nature of the site, from those points where it would be visible, there would be harm to the rural landscape.

9. I therefore conclude that the proposed development would harm the natural character and appearance of the countryside, albeit that the harm would be limited. Accordingly, the proposal would be contrary to Policies 2, 12 and 23 of the Local Plan. These policies require, amongst other things, that development proposals maintain and enhance Cornwall's distinctive natural character, and is of a scale, mass and design that recognises and respects both designated and undesignated landscapes.

Nearest settled community

10. Paragraph 14 of the PPTS says that, when assessing the suitability of Gypsy and Traveller sites in rural or semi-rural settings, local planning authorities should ensure that the scale of such sites does not dominate the nearest settled community. This aim is broadly reflected in criterion 1 of Policy 11 of the Local Plan. The evidence indicates that the existing site comprises of 23 pitches. The addition of four pitches would not, therefore, represent a fundamental change in its scale.
11. The Council's reason for refusal refers to the dominant impact on the settled community at Little Hallaze. The evidence indicates that Little Hallaze is, in fact, a single dwelling. However, I saw that Hallaze is a loose scatter of about 10 dwellings fronting Hallaze Road. It does not have any defined form, or community facilities and, although there are place name signs at either end of the broken line of dwellings, there is no real sense that it is a distinct community. The nearest dwellings in the row are only separated from the built edge of Penwithick by about 45 metres, and when approaching from the west, they are not visually detached from the main settlement to any great degree. Consequently, they are physically and functionally so closely associated with Penwithick, that they cannot reasonably be disassociated from it for the purposes of assessing the proportionate scale of the Gypsy and Traveller site.
12. I have not been provided with evidence of the population of Penwithick, but it is a substantial village with some community facilities and quite extensive areas of housing. The area of the appeal site would be very small in comparison with the extent of the settlement, even when considering it in accumulation with the existing site. Furthermore, the evidence does not indicate that the additional occupants of four pitches would result in an imbalance with the much larger settled population, or place undue pressure on local infrastructure or services.
13. It is contended that, in combination with the existing site, the development would envelop the houses at Hallaze, resulting in a visual dominance. However, there is a considerable separation between the houses fronting Hallaze Road and the existing site to the north. Whilst the existing caravans can be seen when looking through the gaps between the houses, the proposed development would not be readily visible from any of the dwellings. Consequently, there would be no perceivable change to any visual dominance in respect of these dwellings. Furthermore, the existing and proposed sites would not be easily seen together from any public viewpoints, so there would be no apparent increase in visual dominance as a result of the development.
14. For the above reasons, I conclude that the scale of the proposal would not dominate the nearest settled community. The development would, therefore, accord with Policy 11 of the Local Plan and the advice in the PPTS.

Best and most versatile agricultural land

15. The Glossary to the Framework defines best and most versatile agricultural land (BMV land) as land in grades 1, 2 and 3a of the Agricultural Land Classification. Paragraph 174 advises that planning decisions should recognise the economic and other benefits of BMV land. Policy 21 of the Local Plan says that the economic and other benefits (including food production) of Grade 1, 2 and 3a agricultural land will be taken into account, and, where significant development of agricultural land is demonstrated to be necessary, poor-quality land should be used in preference to that of higher quality. There is, therefore, no basis in local or national policy to consider that the use of relatively small areas of BMV land is unacceptable in principle, where there is a need for an alternative use. Rather, a balancing exercise is necessary, that takes account of the importance of BMV land.
16. In this case, the evidence is inconclusive on whether the site is BMV land, as it is unclear whether it is Grade 3 or 3a. Even if I were to take a cautious approach, and assume that it was 3a, the area of land, at 0.34 Hectares, could not reasonably be described as the significant development of BMV land under the terms of Policy 21 of the Local Plan. Consequently, if there was a demonstrable need for the development, the Policy would not require a site with a lower grade agricultural classification to be sought. However, the importance of BMV land as a finite resource should still be weighed in the balance.
17. To conclude on this issue, national and local planning policy requires that the loss of BMV land should be avoided where possible. The harm resulting from the proposal, in this regard, would be limited by the uncertainty of its classification and the limited scale of the loss. Whether this loss is outweighed by the need for the development is a matter that I will return to later in my decision.

Material considerations to outweigh harm

18. Section 38(6) of the Planning and Compulsory Purchase Act 2004 says any determination must be in accordance with the development plan unless material considerations indicate otherwise. The conflicts with development plan policies that I have identified above must be balanced against other material considerations, such as government advice in the PPTS. Furthermore, the Local Plan must be read as a whole, so weight should also be given to other parts of the Plan that pull in a different direction.
19. Paragraph 7b) of the PPTS states that local planning authorities should prepare and maintain an up-to-date understanding of the likely accommodation needs of their areas over the lifespan of the development plan. Paragraphs 10a) and b) state they should identify, and update annually, a supply of specific deliverable sites sufficient to provide 5 years' worth of sites against their locally set targets, together with a supply of specific, developable sites, or broad locations for growth, for years 6 to 10 and, where possible, for years 11-15.
20. In preparing the Local Plan, in 2015, the Council commissioned "Supporting an Assessment of the Accommodation Needs of Gypsies and Travellers in Cornwall" (the GTAA). The study showed that demand exceeded supply by 139 pitches at that time, and that the need would increase to 318 pitches by 2030. This figure is a Key Target for delivery in Policy 2a of the Local Plan. However,

no sites were allocated, so achieving this target is dependent on sufficient sites coming forward that meet the criteria-based requirements of Policy 11.

21. The Council's own monitoring figures show that since November 2015, 143 new permanent residential pitches have been permitted at an average of 20.4 per year. If this rate of delivery continues to the end of the plan period, there would be a shortfall of 32 pitches. I have been provided with details of three other current applications for pitches that were undetermined at the time of the Council's statement, but each of these was for an individual unit, so would not radically alter the current position of under delivery. No evidence has been provided to demonstrate that there is a 5-year supply of specific deliverable sites to meet the remaining need identified by the GTAA.
22. It has been suggested by the Council that the need may be overstated, as the GTAA was carried out prior to the change to the definition of Gypsies and Travellers to exclude those who have ceased to travel permanently. The Council also says that it intended to update the GTAA in Autumn 2022. However, I have not been provided with any evidence of progress on this. Meanwhile, the existing GTAA is now over seven years old. I have no evidence to indicate that it overstates the current need, and I similarly cannot rule out that the need is now higher. This leads me to conclude that the Council's GTAA is not up-to-date and that the Council is unable to demonstrate a 5-year supply of deliverable sites.
23. Policy 11 of the Local Plan is positively worded – it says that proposals for new residential and transit sites and extensions to existing sites will be approved where they meet the seven criteria. In this case, I have found that the scale of the proposal would not dominate the nearest settled community. As the other six criteria were not at issue, I therefore conclude that the proposal would accord with Policy 11. In view of the under delivery to date, and the lack of identified sites to remedy the shortfall, this attracts substantial weight in support of the development in the overall planning balance.
24. I am mindful that the Council has expressed concern about a relative concentration of new sites in the central area of the county, with less provision in the west. However, Policy 2a of the Local Plan sets a pitch provision target for the whole county, with no specific requirements or limits on provision for particular areas. The Council indicates that it is seeking to revisit the spatial distribution, but in the absence of an up to date GTAA demonstrating that there is no unmet need for sites in the central area, I do not see this as a reason to withhold permission for a development that would go some way towards addressing the overall shortfall in accommodation.
25. I am mindful that an application was previously made to remove the condition that limits occupancy of the caravans on the adjacent site to Gypsies and Travellers. However, that application was subsequently withdrawn. It is also alleged that some of those caravans are not currently occupied in accordance with the condition, but I have not been provided with any evidence to prove this is the case. In any event, neither of these matters demonstrates a general lack of need for Gypsy and Traveller sites. Indeed, it is acknowledged in both the Council's Committee Report and Statement of Case that there is an identified need to provide sites.

Other Matters

26. Access to the site would be via the same route as the existing site. The addition of four pitches to the existing 23 would not result in a significant increase in traffic movements beyond those that already exist. Consequently, it is unlikely that there would be a noticeable increase in noise and traffic as a result of the proposal.
27. Concerns have been raised regarding foul and surface water issues. The application form indicates that foul drainage would be connected to the mains sewer, and that surface water would be disposed of via soakaways. There is no evidence from expert consultees to suggest that these arrangements would be unsatisfactory.
28. There is a dwelling close to the north-eastern corner of the appeal site. However, it is at a higher level, and set behind a substantial hedgebank, such that there would be no loss of privacy as a result of the development. Other dwellings to the north and southeast are too distant to be overlooked from the proposed caravans.
29. Concerns have been raised regarding the proximity of a County Wildlife Site. However, the evidence indicates that it lies on the opposite side of Hallaze Road, so is unlikely to be significantly affected by the development.

Conditions

30. In accordance with the legislation, I have imposed a condition limiting the period within which the development must commence. I have also included a condition specifying the relevant plans, as this provides certainty. The Council has submitted a schedule of suggested conditions to cover other matters, and the appellant has not contested any of these. Nevertheless, I have considered them against the advice in the Planning Practice Guidance (the PPG). Where I have agreed that they meet the relevant tests, I have altered some of them, in the interests of clarity and precision, to better reflect the guidance.
31. A condition is necessary to restrict occupation of the site to those defined as Gypsies and Travellers, to accord with the terms of the application and the policies of the development plan. I have worded the condition to take account of the Court of Appeal's decision in *Smith v SSLUHC*¹, which held that the exclusion of Travellers who have ceased to travel permanently is discriminatory and has no legitimate aim. I do not consider that a further condition requiring the maintenance of a register of the owners/occupiers of each caravan on the site would meet the tests laid out in the PPG. Compliance with the occupancy condition could not be proven simply with reference to a list of names, so such a condition would serve no useful purpose and would be an unnecessary burden.
32. A condition limiting the number of pitches and associated caravans is necessary in the interests of controlling the activities on the site, and to accord with the terms of the application. In the interests of the appearance and character of the area, it is necessary to ensure that there is no commercial activity on the site, to prohibit external lighting unless details have been first approved, and to secure the landscaping shown on the approved plans.

¹ *Smith v SSLUHC & Ors* [2022] EWCA Civ 1391

33. Finally, in the interests of flood prevention, a condition is necessary to ensure that the surface water drainage scheme is provided in accordance with the approved plans.

Conclusion

34. There is a shortfall in the provision of Gypsy and Traveller sites to meet the Key Target of Policy 2a of the Local Plan. The proposal would provide four pitches which would contribute towards meeting the deficit, and it would also accord with the criteria set out in Policy 11 of the Local Plan, which specifically addresses Gypsy and Traveller sites. As there is a demonstrable need for the development, the use of a limited area of BMV land would not conflict with Policy 21 of the Local Plan.
35. The proposal would, however, be contrary to the overarching policies of the Local Plan that seek to protect the countryside and undesignated landscapes. The proposal therefore conflicts with the development plan when read as a whole.
36. In weighing the overall planning balance, I find that the material considerations in support of the proposed development outweigh the limited harm to the natural character and appearance of the countryside, and the consequent conflict with Policies 2, 12 and 23 of the Local Plan. I therefore conclude that determination should be made otherwise than in accordance with the development plan in this regard, and planning permission should be granted.
37. For the reasons given above, I conclude that the appeal should be allowed.

Nick Davies

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 01 – Topographic Survey; 02 – Proposed Block Plan; 03 – 1:1250 scale Site Location Plan.
- 3) None of the caravans hereby permitted shall be occupied until the system for the disposal of surface water drainage has been completed in accordance with the details on Drawing No 02. The system shall be permanently retained thereafter, and maintained in accordance with the maintenance details set out on the approved drawing.
- 4) The tree planting shall be carried out in accordance with the details shown on Drawing No 02 in the first planting season following the occupation of the caravans or the completion of the development, whichever is the sooner; and any trees which, within a period of 5 years from the 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.

- 5) There shall be no more than 4 pitches on the site, and on each of the 4 pitches hereby approved no more than two caravans (as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 as amended) shall be stationed at any time, of which only one caravan shall be a static caravan.
- 6) 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.
- 7) No commercial activities shall take place on the land, including the storage of materials.
- 8) No external lighting shall be installed on the site other than in accordance with details which have first been submitted to, and approved in writing by, the local planning authority.

END OF SCHEDULE