



Appeal Decision

Hearing held on 21 March 2023

Site visits made on 21 and 22 March 2023

by Bhupinder Thandi BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4 July 2023

Appeal Ref: APP/H1840/W/21/3279365

Land Off, Kemerton Road, Kemerton GL20 7EN

- 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 and Mrs Smith against the decision of Wychavon District Council.
 - The application Ref 20/02640/FUL, dated 18 November 2020, was refused by notice dated 4 May 2021.
 - The development proposed is for the use of land to provide gypsy/traveller pitch and associated works including mobile home, touring caravan, amenity block and hardstanding.
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Decision

1. The appeal is allowed and planning permission is granted for the use of land to provide a gypsy/traveller pitch and associated works including mobile home, touring caravan, amenity block and hardstanding at Land off Kemerton Road, Kemerton GL20 7EN, dated 18 November 2020, subject to the conditions set out in the schedule to this decision.

Preliminary Matters

2. The application form refers to the site as 'First track on left leaving Bredon in easterly direction after Queensmead turn', however, the Council have referred to the site as 'Land off Kemerton Road, Kemerton'. The site address used by the Council is more accurate and I have borne this in mind when making my decision.

Main Issues

3. The main issues are:
 - The effect of the development upon the designated Local Green Space (LGS) and Local Gap (LG); and
 - Whether any harm would be clearly outweighed by other considerations, including personal circumstances so as to amount to the very special circumstances necessary to justify the proposal.

Reasons

Whether the development would cause harm to the LGS and LG

4. The appeal site comprises a former market garden, known as Long Furlong Allotments, located to the south of Kemerton Road. The allotments are accessed via an unmade track. The site has been cleared and is largely laid out to hardstanding bounded by timber fencing. At the time of my visit, it appeared that only a handful of allotments were cultivated with some overgrown and some being used to store miscellaneous items.
5. In terms of the wider area, my attention has been drawn to the works of the writer John Moore who wrote about life and the rural landscape around the village of Bredon between the wars. The landscape was characterised by pastures of orchards and market gardens which provided a living for villagers which resulted in a mosaic of cultivated land.
6. The market gardens have vanished, but the remnants of the former market gardens and orchards remain which has created a fragmented but verdant environment encompassing extensive woodland and Kemerton Lake. This landscape provides the rural setting for the village of Bredon and the hamlet of Westmancote.
7. The Bredon Parish Neighbourhood Plan (NP) was 'made' in 2017 and forms part of the development plan. Policy NP2 sets out that the LG aims to prevent coalescence between these two settlements and to maintain rural character. Proposals should ensure the open character of the LG is retained. The supporting text states that land within the LG will be kept open and free from development but permits development such as open land uses where it would not harm its function or purpose.
8. Policy NP13 designates LGSs which includes the area in which the appeal site sits. The LGS is designated on account of its environmental, cultural and historical significance. The policy states that new development will not be permitted in such areas except in very special circumstances. The supporting text includes some examples of development which may be permissible, but this does not include traveller sites.
9. The appellants, who it is accepted are Romany Gypsies, contend that Policy NP13 conflicts with the National Planning Policy Framework (the Framework) and the Planning policy for traveller sites (PPTS) on account of it being a more restrictive policy by precluding traveller sites from being located in the LGS.
10. The Framework, at paragraph 103, states that policies for managing development within a LGS should be consistent with those for Green Belts. The Framework states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.
11. Policy E of the PPTS states that traveller sites, either temporary or permanent in the Green Belt are inappropriate development.
12. The current version of the Framework was published in 2021 and states that existing policies should not be considered out-of-date simply because they were adopted or made prior to the publication of it. Due weight should be given to them, according to their degree of consistency with the Framework.

13. Whilst Policy NP13 precludes a number of types of development including dwellings and traveller sites its aim is to protect the LGS from inappropriate development. In my judgement this is broadly consistent with the objectives set out in the Framework. As such, the development represents inappropriate development within the LGS as set out in paragraph 103 of the Framework, the PPTS and Policy NP13.
14. One of the defining features of the LGS and LG is its openness. Openness is the absence of development notwithstanding the degree of visibility of the land in question from the public realm. Openness has both visual and spatial aspects.
15. The proposed development is for the siting of a mobile home, touring caravan and day room. The development would be positioned a reasonable distance away from the road frontage and visually would be partially screened by the existing fence and planting. Views of the development would be localised, largely limited to views from along the track and users of the allotments. Conditions relating to the number of caravans, site layout, commercial use and vehicles, lighting and hard and soft landscaping would also serve to mitigate its visual impact. Taking the above into account I find that the proposal would result in moderate harm to openness in visual terms.
16. Whilst little of the original allotment plot remains, its open nature positively contributes to the openness of the area and its rural character. The proposed development would be materially more intensive, with comings and goings to schools and other day-to-day activities, extending into the evening.
17. Despite the overall size of the LGS and LG and the limited size of the development the effect through the change of use and the siting of a mobile home, day room and associated paraphernalia would erode the historic market garden landscape qualities. This would undermine the contribution the site makes to the spatial openness of the LGS, the function of the LG and the verdant rural character of the surrounding landscape contrary to Policies NP2 and NP13. This would result in significant harm to the LGS and LG in spatial terms.
18. Despite the modest size of the site and localised extent of the area from which any harm would be appreciated the development would result in harm to the character and appearance of the area. In my judgment the proposal would result in a significant impact which is the level of harm required for conflict to be found with Part iv of Policy SWDP 17 of the South Worcestershire Development Plan (2016).
19. Furthermore, the Framework states that policies for managing development within the LGS should be consistent with those for Green Belts, therefore I am compelled to give this harm substantial weight.

Other Matters

20. There is no substantive evidence that the access and track is unsuitable or that the proposal would adversely affect highway safety.
21. In respect of protected species there is no substantive evidence that the development would result in material harm. A condition for bat roosting and bird nest boxes has been imposed to mitigate any potential impact of the development.

22. Comments have been made that the proposal would set a precedent for similar proposals in the area. However, every appeal is considered on its own merits and there is no credible information to indicate that it would result in a precedent.
23. Matters such as easements are not relevant to planning and as such have not been taken into account when making my decision.

Other Considerations

Supply of gypsy and traveller pitches

24. Paragraph 148 of the Framework states that when considering any planning application, local planning authorities should ensure that substantial weight is given to any harm to the Green Belt and in turn the LGS. Very special circumstances will not exist unless the potential harm by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations.
25. The PPTS sets out that local planning authorities should use a robust evidence base to establish the accommodation needs to inform the preparation of local plans and make planning decisions. At paragraph 10, it states that local plans should identify and update annually 5 years' worth of deliverable sites for gypsies and travellers.
26. Policy SWDP 17 relates to proposals for travellers and travelling showpeople pitches. Whilst it identifies the need for pitches in South Worcestershire it is based on a Gypsy and Traveller Accommodation Assessment (GTAA) carried out in 2014. The Council advise that the figures outlined in the SWDP have now been superseded by a GTAA undertaken in 2019.
27. The 2019 GTAA shows a need for 14 pitches in Wychavon compared to a need of 19 outlined in the SWDP during the period 2019-2023. The Council have taken the requirement as those that meet the definition of Gypsies and Travellers as set out in Annex 1 of the PPTS. However, the GTAA indicates that the pitches required to meet the needs of those defined as 'Ethnic Gypsies' is much greater standing at a minimum of 52 pitches.
28. At the hearing the Council advised that they have produced two 5-year housing supply figures for both the PPTS definition and the 'Ethnic' definition. Against the PPTS definition the Council have an excess of 34 pitches, but against the 'Ethnic' definition there is a shortfall of 4 pitches.
29. Despite the Council's confidence that this shortfall will be addressed by the end of the year, the fact remains that at present the Council cannot demonstrate 5 years' worth of deliverable sites for gypsies and travellers based on the 'Ethnic' definition. To me, the need arising from those defined as 'Ethnic Gypsies' has not been fully provided for. I am also mindful that the figures are not a cap, but a minimum. In addition, the Council advised that there were approximately 80 people on the public waiting list for pitches. Therefore, there is limited options for gypsies and travellers in need of pitches in the local area and who wish to have a settled base. In these circumstances, the shortfall of pitches and the lack of alternative pitches to meet need is afforded great weight in favour of the scheme.

30. SWDP Policy 17 sets out an intention to produce a Traveller and Travelling Showpeople Site Allocations Development Plan Document (DPD) to assess the suitability of proposals and planning applications. However, it is apparent that this document has not been forthcoming. Therefore, there has largely been a reliance on the delivery of windfalls sites rather than a plan led approach of allocating public and private sites to meet need. This carries moderate weight in the overall balance.
31. The Council advise that they are undertaking a DPD, as part of the review of the SWDP, which would allocate sites for pitches including as part of sustainable urban extensions. However, I give very limited weight to the emerging plan given it is yet to be submitted for examination and could be subject to modification.

Personal circumstances

32. Article 8 of the European Convention on Human Rights as enshrined in the Human Rights Act 1998, concerns a right to respect private and family life. The Public Sector Equality Duty was introduced under the Equality Act 2010 which requires at section 149 that a public authority or person exercising a public function must, among other requirements, foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
33. The appellant's Romany origins are a protected characteristic. A nomadic way of life is an integral part of gypsy and traveller culture, and whilst the appellants have ceased to travel temporarily, they intend to resume travelling in due course. Despite the representations received the main parties agreed that the appellants fall within the definition of gypsies and travellers as set out in the PPTS, and I have no reason to find differently.
34. Article 3(1) of the United Nations Convention on the Rights of the Child provides that the best interests of the child shall be a primary consideration in all actions by public authorities concerning children.
35. At the hearing the appellants explained that they previously resided on a pitch in Cleeve Prior before it was closed down and are currently living in bricks and mortar accommodation in Bredon. Mr and Mrs Smith have three children, who attend schools locally. I was also told that one of the children has specific educational and health needs and requires routine and open space for their wellbeing.
36. Whilst the appellants are currently living in bricks and mortar accommodation, I was advised that they are effectively doubling up with a relative. I heard that the house is cramped and does not provide suitable living conditions, particularly in respect of the needs of the children. They also explained that there was a specific need to remain in the village including the children's and Mrs Smith's connection to local schools. As such, the interests of the children would, in my view, be best served by having a settled base that is more conducive to their personal needs and their culture.
37. The Council contend that the appellants did not provide evidence relating to their search for other sites. The appellants advised that they had indeed looked into other land and pitches, but many were financially out of reach, or the landowners were unwilling to sell to them. Moreover, it was established at the

hearing that the appellants have been on the Council's waiting list for some 14 years without being offered a pitch.

38. I note representations have been received offering the appellants a 'land swap'. I, however, give this negligible weight as the land does not benefit from planning permission for a gypsy and traveller pitch, nor am I aware of the submission of a planning application for such a use. In any event there is no certainty that the land would meet the needs of the appellants and their family. Therefore, I am satisfied that there are no alternative pitches currently available to the appellants.

Planning Balance

39. Drawing these matters together the proposed development would conflict with Policies NP2 and NP13 being inappropriate development and resulting in harm to the character and appearance of the area.
40. I acknowledge that against the 'Ethnic' definition the shortfall is marginal at 4 pitches. However, there is an unmet need for gypsy and traveller pitches in the district. The absence of a five-year supply of deliverable sites and the Council's failure to make appropriate provision carries great weight in the appellant's favour.
41. Whilst I give the specific personal circumstances for a settled base in respect of the adult occupiers moderate weight, the personal circumstances of their child dependants are a primary consideration. I have also taken into consideration that the refusal of planning permission is likely to lead to the appellants continuing in accommodation which is not suitable or appropriate or culturally respectful of their needs. In addition, there is currently a lack of alternative options. This is of substantial weight in favour of the development.
42. The other considerations, including the best interests of the children, when taken together do not outweigh the harm caused by reason of inappropriateness and harm to the LGS and LG, sufficient to justify the grant of a permanent permission.
43. A permanent permission would consolidate a residential use over a long time representing a further erosion of the historic market garden landscape. However, given the relatively short-term nature of the needs of the children and the scale of the shortfall, it is reasonable to consider whether a temporary or personal permission would be appropriate.
44. The appellant has not sought a temporary permission, but this is an option to me, and it was discussed at the hearing. In the case of the grant of temporary permission, the harm to the LGS and LG would be for a limited period. In addition, the extent of the shortfall is not substantial and a temporary permission for between 3 and 5 years would likely allow the Council to bring forward sites. However, taking into account the ages and educational and health needs of the children it is unlikely that a temporary consent would be conducive to their requirements. Moreover, there is no certainty that other sites coming forward would be suitable for the appellants and their resident dependants.
45. The Planning Practice Guidance (PPG) states that planning permission usually runs with the land and it is rarely appropriate to provide otherwise. But it goes on to state there may be exceptional occasions where development that would

not normally be permitted may be justified on planning grounds because of who would benefit from the permission¹.

46. A personal permission would be a proportionate response in respect of protecting the environment and respecting the appellants and their family's human rights. Taking into account all the matters raised, I conclude that a permission personal to the appellants and their resident dependants should be imposed.
47. The Framework makes clear that inappropriate development should not be approved except in very special circumstances and that very special circumstances will not exist unless the harm to the LGS by reason of inappropriateness and any other harm resulting from the proposal, is clearly outweighed by other considerations.
48. Taken together and having regard to the above, in my judgement, the harm caused by reason of inappropriateness and any other harm, is clearly outweighed by other considerations in these particular circumstances, so as to amount to the very special circumstances necessary to justify the development on a basis personal to the appellants and their resident dependants.

Conditions

49. I have considered these in relation to the contents of both the Framework and PPG. In the interests of precision, clarity and brevity I have undertaken some rationalisation of the conditions suggested by the Council.
50. In addition to the standard three-year time limit condition for implementation; it is necessary to specify the approved plans in the interests of certainty. Since the conclusions of this decision is that only a personal permission is justified a condition restricting the occupancy of the site to the appellants and their dependants is necessary.
51. Conditions relating to the number of caravans, site layout, commercial vehicles, hard and soft landscaping, boundary treatments, materials of the day room and external lighting have been imposed to ensure the satisfactory appearance of the development.
52. A condition requiring details of refuse facilities has been imposed in the interests of highway safety and ensuring adequate living conditions for occupiers.
53. In the event that unexpected contamination to human health is identified during the works a condition for a scheme of land remediation has been imposed.
54. The Council has suggested a condition for sheltered, secure and accessible cycle parking. The site is within a sensitive rural landscape and covered cycle storage would not be appropriate as it would introduce further paraphernalia into the site. Furthermore, the development is for a single-family pitch and it is likely that ownership or use of bicycles would not be hindered by the absence of dedicated cycle storage. Therefore, the condition has not been imposed.
55. The Council suggested a condition for submission of details of mains electricity generation. However, no clear justification, as set out in the PPG, has been

¹ Paragraph: 015 Reference ID: 21a-015-20140306

provided for the suggested condition. Therefore, I do not find that it would be reasonable and has not been imposed.

Conclusion

56. For the reasons set out above the appeal succeeds.

B Thandi

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: Location Plan Drawing Number 27AS 401 and Block Plan Drawing Number 27AS 400.
- 3) The occupation of the pitch hereby permitted shall be occupied only by the following and their resident dependants: Mr Tom Smith and Mrs Abi Smith.
- 4) No more than 2 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 1 shall be a static caravan shall be stationed on the site at any time.
- 5) No vehicle over 3.5 tonnes shall be stationed, parked or stored on this site.
- 6) No development shall commence until details of the soft landscape works together with an implementation programme and scheme of maintenance, have been submitted to and approved in writing by the local planning authority. All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the site or the completion of the development, whichever is the sooner in accordance with the agreed implementation programme. The completed scheme shall be maintained in accordance with the approved scheme of maintenance; and any trees or plants 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.
- 7) No development shall commence until details of the hard landscaping, boundary treatment and materials of the proposed utility block shall have been submitted to and approved in writing by the local planning authority. These details shall include an implementation programme. The development shall be carried out in accordance with the approved details.
- 8) The development hereby permitted shall not be occupied until details of refuse facilities have been provided in accordance with details that have first been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details and retained thereafter.
- 9) The development shall not be occupied until, details of bat roosting features and bird nesting boxes (including a timetable for implementation) have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details and timetable and retained thereafter.
- 10) No external lighting shall be installed and brought into use until details of its nature and luminance have first been submitted to and approved in writing, and any external lighting shall then be installed and used in accordance with the approved details only.

- 11) Any contamination that is found during the course of implementation of the approved development that was not previously identified shall be reported immediately to the local planning authority. Development on the part of the site affected shall be suspended and a risk assessment carried out and submitted to and approved in writing by the local planning authority. Where unacceptable risks are found remediation and verification schemes shall be submitted to and approved in writing by the local planning authority. These approved schemes shall be carried out before the development is resumed or continued.

APPEARANCES

FOR THE APPELLANT:

Mr Smith Appellant

Mrs Smith Appellant

Dr Simon Ruston Ruston Planning

FOR THE LOCAL PLANNING AUTHORITY:

Gillian McDermott Principal Planning Officer

Denise Duggan Senior Planning Officer (Policy)

INTERESTED PARTIES:

Adrian Darby

Matthew Darby