



Appeal Decision

Hearing Held on 20 June 2023

Site visit made on 20 June 2023

by Claire Searson MSc PGDip BSc (Hons) MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 26 July 2023

Appeal Ref: APP/J0405/W/21/3266853

Nash Park, Winslow Road, Nash, Buckinghamshire MK17 0FD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr Christopher Mongan against the decision of Buckinghamshire Council.
 - The application Ref 19/02438/APP, dated 2 July 2019, was refused by notice dated 13 July 2020.
 - The appeal relates to planning permission Ref 15/02233/APP, dated 11 August 2016. The condition in dispute is No 2 which states that: *"There shall be no more than 11 pitches on the site and on each of the 11 pitches hereby approved except Pitch 10, no more than 2 caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 shall be stationed at any time, of which only 1 caravan shall be a static caravan. On Pitch 10 no more than 4 caravans shall be stationed at any time, of which no more than 2 shall be static caravans."*
 - The reason given for the condition is: *"For the avoidance of doubt, to safeguard the rural character of the area, and to accord with advice in the National Planning Policy Framework."*
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Decision

1. The appeal is allowed and planning permission is granted at Nash Park, Winslow Road, Nash, Buckinghamshire MK17 0FD in accordance with the application Ref 19/02438/APP dated 2 July 2019 without compliance with condition number 2 previously imposed on planning permission Ref 15/02233/APP dated 11 August 2016 and subject to the attached schedule of conditions.

Background and Preliminary Matters

2. The change of use of the site for 11 pitches was permitted at appeal on a temporary basis in 2011.¹ An application was subsequently permitted in 2016 to remove condition 2 on that permission to allow for the permanent occupation of the mobile homes on site.² The effect of that consent was to grant a new permission, albeit the original permission remains intact and unamended. As part of the second permission, a number of conditions were attached, including condition 2, which restricted the number of pitches on the

¹ APP/J0405/A/11/2148930

² 15/02233/APP

site to no more than 11. Permission was refused by the Council in 2020 to vary the condition to 12 pitches and it is that condition which is subject to the current appeal.

3. The use of the additional pitch subject to this appeal has commenced since the Council's determination of the application in 2020, although the hardstanding and dayroom have not been laid out or erected. The wider site is also in permanent use, in accordance with the application ref 15/02233/APP, however I note that matters such as the site layout, and conditional matters such as landscaping (which was discharged by letter in 2017 on the basis of submitted detailed plans), have not been implemented in accordance with the approved plans or details. Enforcement action has not been taken by the Council, who confirmed that they were waiting on the outcome of this appeal.
4. The permanent use has clearly commenced and the enforcement issues at the site has been and continues to be for the Council to pursue against the 2016 consented scheme. Any future action would be unaffected by my determination of this appeal.
5. Following the close of the Hearing an additional 'site development scheme' plan was submitted (ref 10_372B_012) which highlights the additional plot in purple and shows wider landscaping and the layout of the whole site. The purpose of this plan is to depict the additional plot clearly, so that any conditions can be secured to the additional pitch as relevant. This additional plan is a minor clarification and I consider that there is no prejudice caused by this change.
6. While the submitted plans for this appeal (including the additional plan) do not reflect the existing layout of the whole site, for the avoidance of doubt, and as agreed at the Hearing, I have dealt with this appeal on the basis of the submitted plans. Conditions have been drafted and agreed so that should any future action be required to be taken at the site in respect of these appeal proposals, they would be enforceable. These are further discussed below.
7. The application form, appeal form, appeal documentation, as well as the previous appeal decision and planning decision at the site all reference different versions of the site address. It was agreed at the Hearing that the accurate address for the site is Nash Park, Winslow Road, Nash, Buckinghamshire MK17 0FD. References to the plot, the incorrect road (Nash Road) and incorrect settlement (Great Horwood) have thus been omitted/corrected for the avoidance of doubt.
8. Following the determination of the application, the Vale of Aylesbury Local Plan (VALP) was adopted in September 2021, superseding the policies within the previous Local Plan. The parties were aware of this change and were given an opportunity to comment on the proposals against the Policies in the VALP.
9. There was a dispute between parties as to whether the policies within the VALP are applicable under s55 of the Town and Country Planning Act 1990. The appellant considered that the variation of condition would not constitute development nor a change to the operational use of the land, as this is extant. Case law was submitted following the close of the Hearing and parties given a further opportunity to comment on this matter.³

³ Hearing document 4

10. Having considered this issue, I accept that the most important policies, with the exception of Policy S6, all refer to development. However, the proposals would also involve operational development including the creation of hardstanding and the erection of a dayroom. I therefore consider the policies in the VALP are applicable. However, even if the VALP were considered not to apply, it would still be a very important material consideration, a point which the appellant accepted at the Hearing.

Main Issues

11. The main issues are:

- i) the effects upon the character and appearance of the area;
- ii) the accessibility of the site to local services and facilities; and,
- iii) whether or not there are other considerations weighing in favour of the proposed development.

Reasons

Planning Policy

12. VALP contains two specific policies for the location of Gypsy and Traveller sites, policies S6 and D11.
13. Policy S6 sets out the need, specifying 84 additional pitches for travelling or unknown Gypsies and Travellers. The policy also states that existing sites will be safeguarded. The supporting text to this policy sets out a number of allocations. The Gypsy and Traveller Accommodation Needs Assessment (GTAA) 2017 underpins this policy.
14. Policy D11 is a criteria-based approach to assess applications for this type of accommodation, including expanding existing sites. This states that such sites will be supported where it can be demonstrated that there is an identified need and a number of criteria are met, including having reasonable access to local services and facilities, no adverse highway safety effects, not have a significantly adverse impact on environmental assets such as the countryside, landscapes (amongst other such matters listed). The policy criteria also states that sites should remain small in scale (no more than 15 pitches) and the layout and design should be suitable and have enough space to accommodate the proposed number of caravans, landscaping, vehicles and ancillary work areas.
15. Planning Policy for Traveller Sites (2015) (PPTS) and the National Planning Policy Framework (the Framework) are also material considerations.

Character and appearance

16. Firstly, it is important to note that the baseline for my assessment of character and appearance is the extant planning consents at the site. While the existing site conditions are not as approved, as previously stated that is for the Council to enforce and my determination is based upon the plans submitted as part of this appeal.
17. In granting temporary permission in 2011, the original Inspector found significant harm to the character and appearance of the countryside. The Council's assessment of the subsequent application to make the site permanent states that the impact upon character and appearance should be afforded

- moderate negative weight in the planning balance. This was based on conditions which could assist in mitigating the visual intrusiveness of the site.
18. The appeal site is around 2 hectares in size. It is accessed from Winslow Road. The additional pitch which is subject to this appeal is located to the north of the access road into the site, adjacent to Wilmslow Road. It is in an area which, based on the previously approved landscape plans for the site, would have been tree planting.
 19. The site is surrounded by agricultural fields. There are other small pockets of development along Winslow Road, including another Gypsy and Traveller site as well as dwellinghouses and farmsteads.
 20. While glimpses of the whole site can be seen in the wider area, the site is relatively well contained in landscape terms. The parties also agree that visibility of the additional pitch is limited to a short stretch along Winslow Road due to the presence of mature hedgerows. I agree with that position. The loss of this area as a landscaped wooded area as previously approved would give rise to further intensification and urbanisation. However, the effects would be extremely localised to passing views along this short stretch of public highway.
 21. I am also persuaded that such effects could effectively be mitigated by landscaping. In particular there would be room to accommodate planting around its perimeter and within the pitch itself. This would help assist assimilation and mitigation of the whole site, and thus the original aims to mitigate would not be undermined by the addition of a further pitch in this location. Details of this along with implementation and compliance with the approved plans/details could be secured by condition and could be enforced if this became necessary.
 22. VALP Policy D11 requires that sites should not have a significantly adverse impact on the countryside and in this regard, I consider that the addition of a single further pitch in this location would not conflict with this requirement. The proposals would also accord with NE4 which seeks to minimise impact on visual amenity.

Accessibility

23. VALP Policy D11 also includes a criterion which requires that sites have reasonable access to existing local services and facilities. Sites should be within or close to existing sustainable settlements or with good access to classified roads and/or public transport. Policy S2 sets out a spatial strategy for growth and Policy S3 sets out a settlement hierarchy for the scale and distribution of development. Together these seek to deliver development in the most sustainable settlements, with good access to local services and facilities by sustainable transport modes. Nash, at around 0.5km from the site is classified by Policy S3 as a smaller village, while Great Horwood is classified as a medium village with a greater level of services and facilities and is around 2km from the site.
24. There are no public transport services accessible in the vicinity of the site. The roadway is also unlit and has no footpath along it and thus opportunities to use sustainable transport modes would be limited and would necessitate the use of a private car.

25. However, most such trips are likely to be short, to access the facilities in Nash, and the greater range in Great Horwood or other nearby settlements. I am also mindful that this is a single additional pitch within a wider site, whereby there would be opportunities for car sharing. In addition, both PPTS and the Framework recognise that in rural areas, opportunities to maximise sustainable transport are more limited and that community needs in rural areas may have to be found adjacent to or beyond existing settlements.
26. When examining this matter in the round, there would also be benefits from the further provision of a settled site in terms of access to health and educational services and reducing the need for long distance travelling and environmental effects caused by unauthorised encampments.
27. Overall, I find that there would be no conflict with Policies D11, S2 and S3.

Other considerations

28. At the Hearing, detailed discussions were held on a number of other considerations, however, in light of my conclusions above relating to compliance with the development plan on the matters referenced in the Council's decision notice, I need not make any detailed findings on these issues. I do, however, note that in respect of need, irrespective of the differences between parties in respect of need and supply, VALP policies S6 and D11 does not provide a cap on the provision of Gypsy and Traveller pitches. This was acknowledged by the Council.
29. As part of the appeal, the Council also sought to argue intentional unauthorised development. However, the original application was submitted before the site was occupied and only after the appeal was submitted did the appellant's move onto the site, having lived in unauthorised encampments, including a Council car park. This was also during the Covid-19 pandemic where there were restrictions on movement.
30. While the additional pitch is unauthorised, the site is an existing Gypsy and Traveller site and the plot in question was never landscaped in accordance with the submitted details which were agreed before this application was made, nor has the Council sought to enforce. There is also no evidence that the appellant intended the development to be unauthorised or actively sought to harmfully breach planning control. Taking these factors together, I consider that intentional authorised development is not demonstrated in this case.

Other Matters

Biodiversity

31. This was a matter raised by the Council as part of the appeal proceedings, based on the new policy requirements contained within NE1 of the VALP which states that a net gain will be sought. However, the parties agreed at the Hearing that based on the Biodiversity Net Gain Report submitted by the appellant, this is a matter that could be adequately dealt with by the imposition of a condition. I agree with that permission and find no policy conflict.

Living conditions

32. As the proposal is for an additional pitch and a personal permission is not sought, concerns relating to living conditions of future residents, with regard to

the specific occupants, this matter falls away. This pitch is smaller than those elsewhere within the site, but I saw that there would be adequate room for the hardstanding, landscaping, dayroom and mobile homes. In any case, it would be open to the Council to enforce should the pitch be occupied by more than the permitted number of caravans.

Conditions

33. In allowing this appeal, the effect is to grant a new planning permission which is separate from the previous permission and conditions which were attached to it are not automatically be carried over.
34. Accordingly, the conditions were discussed at the Hearing, and an amended list submitted following its close, reflecting the discussions held. These were all largely agreed between parties other than some minor differences in the wording.
35. It is necessary to impose conditions restricting occupation to Gypsies and Travellers, as well as restricting the number of pitches and caravans, and requiring compliance with the approved plans for certainty and in order to accord with development plan policy (conditions 1-3).
36. A condition securing details such as drainage, lighting, hardstanding, biodiversity enhancements, planting and enclosure is necessary in the interests of character and appearance of the area and in terms of biodiversity considerations. This is written as a sanctions type condition given that the additional pitch is currently being occupied (condition 4) and references the additional plan to make it clear it relates to the additional pitch.
37. As the permission relates to the whole site, a condition is necessary to ensure that maintenance of proposed planting at the site is secured. This should not simply be restricted to the additional pitch, but as part of the whole site (condition 5).
38. Conditions relating to commercial activities/storage are also necessary to protect the character and appearance of the area (conditions 6-7).
39. Conditions relating to the retention of previously approved drainage details, access road, lighting and visibility splays are also necessary in order to ensure long term environmental protections and in the interests of highway safety (conditions 8-9).

Conclusion

40. I have found that, subject to conditions, there would be no conflict with the development plan in respect of character and appearance and access to services and facilities.
41. For the reasons set out above I therefore conclude that the appeal should be allowed.

C Searson
INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Matthew Green	Green Planning Studio
Christopher Mongan	Pitch 12 owner
Susan Mongan	Pitch 12 owner

FOR THE LOCAL PLANNING AUTHORITY:

Phillip E Hughes MRTPI	PHD Chartered Town Planners
Louise Anderson	Principal Planning Policy Officer

DOCUMENTS

- 1 Full version of Vale of Aylesbury Local Plan 2021
- 2 Officer Report to application 15/02233/APP
- 3 Sunset Park Appeal Decisions APP/J405/W/22/3295746
- 4 Bundle of judgments provided by the Appellant: (1) Cotswold Grange Country Park LLP v SoS CLG & Tewkesbury BC [2014] EWHC 1138 (Admin); (2) Winchester City Council v Secretary of State for Communities and Local Government [2015] EWCA Civ 563
- 5 Appellant's tracked changes to Council's draft list of conditions
- 6 10_372B_012 Site Development Plan

SCHEDULE OF CONDITIONS

- 1) 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.
- 2) There shall be no more than 12 pitches on the site and on each of the 12 pitches hereby approved except Pitch 10, no more than 2 caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968, shall be stationed at any time, of which only 1 caravan shall be a static caravan. On Pitch 10 no more than 4 caravans shall be stationed at any time, of which no more than 2 shall be static caravans.
- 3) Unless alternative arrangements are approved under condition 4, the development hereby permitted shall be carried out in accordance with approved drawings:

10_372B_005
10_372B_001
10_372B_003
10_372B_012

- 4) The use of the additional pitch identified by the area of light purple on plan 10_372B_012 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 the requirements set out in (i) to (iv) below:
 - i. within 3 months of the date of this decision a scheme covering the additional pitch identified by the area of light purple on plan 10_372B_012 for:
 - a) the means of foul and surface water drainage of the area of light purple on plan 10_372B_012;
 - b) proposed and existing external lighting on the boundary of and within the area of light purple on plan 10_372B_012;
 - c) the construction and surfacing of the hardstanding with the area of light purple on plan 10_372B_012;
 - d) a scheme of biodiversity enhancement within the area of light purple on plan 10_372B_012;
 - e) tree, hedge, and shrub planting including details of species, plant sizes and proposed numbers and densities within the area of light purple on plan 10_372B_012;
 - f) all fencing, gates and other means of enclosure including provision for the permanent removal of such items not included within the area of light purple on plan 10_372B_012

shall have been submitted for the written approval of the local planning authority and the said scheme shall include a

timetable for its implementation.

- ii. within 11 months of the date of this decision the site development scheme shall have been approved by the local planning authority or, if 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 site development 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.
- 5) At the same time as the site development scheme required by condition 4 above is submitted to the local planning authority there shall be submitted a schedule of maintenance for a period of four years of the proposed planting at the appeal site beginning at the completion of the final phase of implementation as required by that condition; the schedule to make provision for the replacement, in the same position, of any tree, hedge or shrub that is removed, uprooted or destroyed or dies or, in the opinion of the local planning authority, becomes seriously damaged or defective, with another of the same species and size as that originally planted. The maintenance shall be carried out in accordance with the approved schedule.
- 6) No vehicle over 3.5 tonnes shall be stationed, parked or stored on this site.
- 7) No commercial activities shall take place on the land, including the storage of materials.
- 8) The area contained within a visibility splay to the north of the access between a point 2.4 metres along the centre line of the access measured from the edge of the carriageway and a point 148 metres along the edge of the carriageway measured from the intersection of the centre line of the access shall be kept free of any obstruction exceeding 0.6 metres in height above the nearside channel level of the carriageway, to the extent that these are within the control of the site occupants.
- 9) The details of drainage, lighting, and access road approved under condition 3 of planning permission 15/02233/APP shall be retained as approved unless alternative details are subsequently permitted in writing by the local planning authority.