



Appeal Decision

Hearing Held on 13 September 2023

Site visit made on 13 September 2023

by Matthew Jones BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29th September 2023

Appeal Ref: APP/P1133/W/23/3319543

Land at Ngr 280016 72763, Bickington, Devon TQ12 6JU

- 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 J Penfold against the decision of Teignbridge District Council.
 - The application Ref 21/01603/FUL, dated 6 July 2021, was refused by notice dated 6 January 2023.
 - The development proposed is change of use of land to a Gypsy site.
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Decision

1. The appeal is allowed and planning permission is granted for change of use of land to a Gypsy site at Land at Ngr 280016 72763, Bickington, Devon TQ12 6JU under the terms of the application Ref 21/01603/FUL, dated 6 July 2021, and subject to the conditions in the attached schedule.

Application for Costs

2. An application for costs was made by Mr J Penfold against Teignbridge District Council before the hearing and was added to at the hearing itself. This application is the subject of a separate decision.

Procedural Matters

3. I have taken the site address from the appeal form as it offers the most detailed and precise location of the appeal site.
4. The Council confirmed at the hearing its agreement that the appellant has gypsy and traveller status, both in terms of the definition of such as set out within the 2015 Planning Policy for Traveller Sites (PPTS) and as a Romany Gypsy. I have no reason to reach any different finding on this matter.

Main Issues

5. The main issues are:
 - the effect of the proposal on the settings of heritage assets, with reference to the Grade I Listed building Church of St Mary the Virgin, the Grade II* Listed building Church House and Dove Cote and the Grade II Listed building Church Hall, and the non-designated heritage asset Forge Cottage;
 - the question of the need for and supply of gypsy / traveller sites; and,
 - the personal circumstances of the appellant.

Reasons

The heritage assets

6. The site is the east side of a sloping field in the countryside at the edge of the village of Bickington. To the south, Old Hill is the historic route into the settlement. To the north is Bickington Road, originally a 19th Century turnpike built in order to bypass the village. The Church, Church House and Dove Cote and Church Hall form part of an intimate group of buildings at the historic core of Bickington, close by to the appeal site, up the field slope to the southwest. I am mindful of the special attention that should be paid to the desirability of preserving the settings of these listed buildings.
7. The countryside around the listed buildings generally contributes to each of their settings. This is both in its bucolic character as attractive farmland, and in outward views from around the historic group. Of these views perhaps the most sensitive are across to Dartmoor to the north, from the road aside the Church and the churchyard, which look directly over the field containing the appeal site. The farmland around Bickington is also important as the source of donations which facilitated the building of the Church House and Dove Cote.
8. The Church is dominated by its 15th Century two stage tower. The might and height of this element, together with its purposely prominent siting, was clearly intended to convey the Church's supreme authority to its parishioners and the wider community. The significance of its setting is thus more wide ranging insofar as its tower is an important local landmark.
9. The appellant's field is obviously an important component of the setting of each of these listed buildings, but its role becomes less pronounced as its slopes away to the northeast. Indeed, the far corner of the field is about 7m below the Church and cannot be easily seen from the Church grounds beyond the crown of the slope. The field here is more part of the Bickington Road scene; now a more modern and engineered roadway environment with pavements, signage and laybys. It is also punctuated by noisy, fast-moving vehicles and modern development, including mobile homes. Given such, the part of the appeal site which is proposed for the pitch makes a neutral contribution to the significance that each of the listed buildings take from their immediate 'bucolic' settings.
10. The provision of the hedgebank across the field would conceal the pitch and caravans from intervisibility with the historic group. This element has been criticised in of itself. However, the appellant's heritage evidence sets out how the field layout has already been subject to significant bisection by Bickington Road, and conversely was once part of a larger field to the east. It is therefore already marked by change. I also note from the landscape evidence, and saw for myself, that the landscape around Bickington is partly characterised by an irregular patchwork of smaller fields typically enclosed by hedgebanks. On this basis, I do not consider that the subdivision of the field would be harmful.
11. That said, the site's thin roadside hedge to Bickington Road offers broken and filtered views of the Church tower, particularly as one travels westwards towards the settlement. Bickington Road postdates the Church by centuries and was built to avoid it, so clearly these views are not as historic as those from older routes into the village, such as picturesque view down Old Hill. Nonetheless, the glimpsed views of the tower do make a modest contribution to the Church's setting in its role as a landmark.

12. The pitch, with associated access, hardstanding, domestic paraphernalia and the caravans, would urbanise the foreground of a filtered view of the Church and detract from the primacy of its tower. The effect would be fleeting and modest and eventually, with the augmentation of the roadside hedge, would likely all but cease. Moreover, the field boundary becomes more open to views of the tower after one passes the site of the proposed pitch, so the views that would be lost are not even the best on offer along Bickington Road. Even so, slight harm to the significance the Church draws from its setting would arise.
13. Forge Cottage is a dwelling attached at the north side to the listed building Church House and Dove Cote. The parties agree that it should be considered a non-designated heritage asset for the purposes of policy. As it is part and parcel of the historic group of buildings around the Church, its setting is likewise defined by the bucolic qualities of the surrounding farmland. For the reasons I have already set out, the proposal would not harm this setting.
14. Bringing my assessment together, whilst I conclude that the proposal would not harm Church House and Dove Cote, the Church Hall and Forge Cottage, I conclude that harm would arise to the significance of the Church of St Mary the Virgin. The proposal falls into conflict with the heritage objectives of Policies S2 and EN5 of the Teignbridge Local Plan 2013-2033 (the Local Plan).

The question of the need for and supply of gypsy / traveller sites;

15. The PPTS states that local planning authorities should prepare and maintain an up-to-date understanding of the likely accommodation needs of their area over the lifespan of the development plan. The PPTS also states that local planning authorities should identify a five-year supply of specific deliverable sites.
16. Paragraph 25 of the PPTS requires decision makers to very strictly limit new traveller site development in open countryside that is away from existing settlements. Whilst technically in the open countryside, the appeal site is very close to Bickington, so I do not consider this policy applicable in this case.
17. At the local level, gypsy and traveller site provision is addressed principally by Policy WE6 of the Local Plan. Amongst other things, it states that proposals for additional gypsy and traveller pitches in the open countryside will be permitted provided that there is not a five-year supply of permitted or allocated pitches. There is no dispute between the parties about any other criteria of the policy in relation to the proposed development.
18. The Council has submitted a land supply statement dated April 2023 which sets out that it has a five-year supply of sites, based on the targets in the Local Plan and pursuant to a Gypsy and Traveller Accommodation Assessment (GTAA) from 2012. However, whilst the statement sets out that there are 12 available sites, the Council could not explain to me at the hearing where these are, aside from four pitches at Ilsington allowed on appeal last year¹. The Teignbridge Gypsy Traveller Forum gave evidence disputing the availability of 12 pitches.
19. Moreover, the April 2023 statement does not correlate with the raw evidence of need and supply provided in 2022 as part of the evidence base for a new but, as yet unpublished, GTAA, which supports the policy approach set out in the emerging Teignbridge Local Plan 2020–2040 (the eLP). The 2022 data identifies a zero-land supply of sites and a need for 49 pitches in Teignbridge

¹ Appeal Ref: APP/P1133/W/19/3223657

for the five-year period between 2022-2027. Of the 49, 27 families meet the PPTS definition, 14 do not, and the status of 8 families is unknown. The total unmet need from now until 2045 is given as 91 pitches.

20. The Council considers that limited weight should be attributed to this evidence because the eLP has yet to be submitted for examination. I find this a problematic stance to take, as the progress of the eLP is a discrete issue unrelated to the integrity of the 2022 GTAA data itself. The Council has been unable to direct me to any shortcoming in the data at any stage of the appeal, which is unsurprising given that it is the Council's own data. I have therefore no clear reason why I should not simply take it at face value at this point.
21. As such, even with the 12 pitches identified in the April 2023 statement, the evidence before me points to a conclusion that there is not presently a five-year supply of permitted or allocated pitches both in relation to PPTS compliant families and those who are not. Also, the 2022 data indicates that the level of unmet need up to 2027 and over the remaining period of the Local Plan is likely to be high. These are significant factors in favour of the proposal.
22. The appellant and his wife currently live on an unauthorised site at a farm. There is a single Council site in the district, at Middleton Park. It is full and I understand only provides for New Travellers in any event. The pitches at Ilington are earmarked for a large family group. The appellant has animals which need to be kept, which may also preclude any potential pitches which do not have the land to do so. Given such, the evidence shows, and the Council accepted at the hearing, that despite the appellant's endeavours, there is an absence of suitable, affordable alternative sites available to him at this time. This carries significant weight in favour of the appeal.
23. The criteria-based approach in Policy WE6 to the delivery of windfall sites in the Local Plan only applies in instances where the Council is willing to accept it has not a five-year supply of sites. I find this likely to stifle the supply of windfall sites which would contribute to addressing need and may otherwise be acceptable. This situation, together with the starkly different picture of need and supply set out by the 2022 GTAA, data suggests a degree of policy failure has taken place. I attribute this matter moderate weight.
24. The Council were unable to give me any estimation for the submission of the eLP. Even so, I understand that the policy approach is, as currently drafted, predicated on the definition of gypsies and travellers within the PPTS. It is not for me to be drawn on the merits of an emerging plan. However, the Lisa Smith judgment² found the PPTS definition to be unlawfully discriminatory. There have been no changes to this definition at a national level, and it remains in place as part of national policy. At the hearing the Council described this as putting the eLP into a state of limbo. In these circumstances, suffice to say that it is doubtful that a new, plan led solution to meet the full needs of the gypsy and traveller community is likely to exist in Teignbridge any time soon.
25. Consequently, I find that the absence of an up-to-date five-year supply of sites in Teignbridge leads the proposal to accord with the objectives of Policy WE6 of the Local Plan. Moreover, I have found there to be likely significant unmet need, no realistically available alternative site for the appellant at the current

² Smith v SSLUHC & Ors [2022] EWCA Civ 1391

time, a degree of policy failure, and little indication that the situation may improve in at least the short to medium term.

The personal circumstances of the appellant

26. The Human Rights Act 1998 (HRA) establishes a right to respect for private and family life and the Public Sector Equality Duty (PSED) requires that a public authority must foster good relations between persons who share a relevant protected characteristic and those who do not. The appellant is registered with a local doctor surgery. He has ties to Bickington from birth and was Christened and he and his wife were married there. It is clearly in their interest for the site to provide a settled base. I understand that the farm where they are living is to be sold soon, which casts significant jeopardy on the security of this already insecure situation. It means that the dismissal of this appeal could almost immediately oblige the couple to resort to a roadside existence. This is a matter which carries significant weight in favour of the appeal.

Heritage Balance

27. In the parlance of the National Planning Policy Framework (the Framework) the harm to the Church would be less than substantial. For the reasons I have already set out, the level of harm would be small in practical terms.
28. Nonetheless, there is a strong presumption against development that would have a harmful impact upon the setting of a listed building through S.66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990. In practice this means that I must attribute considerable importance and weight to the desirability of preserving the setting of the Church. The Framework explains that harm to the significance of a designated heritage asset requires clear and convincing justification. Great weight should be given to the conservation of a designated heritage asset, the more important of which, the greater the weight should be. In this case we are dealing with an asset of the highest significance.
29. Paragraph 202 goes on to require decision makers to weigh any less than substantial harm to such an asset against the public benefits of the scheme. The proposal would make a small but valuable contribution to addressing the significant unmet need for gypsy and traveller sites, in the context of an inadequate supply and little scope for the situation to improve. This is a matter of significant weight. I attribute significant weight as a public benefit to the provision of a settled base for the appellant and his wife, instead of the constant strain of a roadside existence, within the context of my responsibilities to the public interest pursuant to the PSED and the HRA. Allowing this appeal would also serve the public interest in reducing unauthorised sites.
30. Consequently, the public benefits offer a clear and convincing justification for the scheme and outweigh the great weight I assign to the less than substantial harm to the significance of the Church of St Mary the Virgin.

Other Matters

31. The site is within a Landscape Connectivity Zone connected to the South Hams Special Area of Conservation (SAC); a European protected site designated for its populations of greater horseshoe bat. The site is also within 100m of a site of lesser and greater horseshoe bat roosts. However, the ecological evidence before me identifies that the site and its existing hedgerows do not form a foraging site nor any type of movement corridor for these bats. Given the

integral measures proposed within the scheme, such as those relating to new hedgerow planting and lighting, I can ascertain at the screening stage that likely significant effects on the integrity of the SAC, and any adverse effect on protected species, can be ruled out.

32. Bickington is a somewhat dispersed settlement and, whilst I am aware that gypsy and traveller development has taken place around the village, it appears sporadic and there is no sense that it has come or would come to dominate the settled community. With reference to access, the expert evidence before me indicates that there would not be an unacceptable effect on highway safety. Additional traffic movements within Bickington Road would be negligible.

Planning Balance

33. The harm that would be caused to the historic environment draws the proposal into conflict with the development plan read as a whole. However, the other considerations before me, particularly the personal circumstances of the appellant, are of such magnitude that they compel me to make a decision that is not otherwise in accordance with the development plan in this case.

Conditions

34. I have considered the conditions suggested by the Council and discussed at the hearing. Some have been amended for the sake of clarity and precision. Aside from the standard time condition, a condition is necessary to specify the approved plans in the interest of certainty. In the interest of the character and appearance of the area, a condition shall ensure that the access to the field off Old Hill is removed and the hedge restored. To prevent the further subdivision of the field with potentially harmful means of enclosure, the relevant Permitted Development Right must be removed by a condition.
35. In order to prevent offsite flooding, a condition shall ensure that surface water soakaways are provided on the site. So as to certify the integrity of the SAC and protected bats, conditions shall ensure that there is no harmful external lighting, that the proposed landscaping shall be carried out, and that the other recommendations set out in the appellant's ecological evidence are adhered to.
36. As the personal circumstances of the appellant have been instrumental in my decision, I must impose a condition restricting the occupation of the site to the appellant and his family including any resident dependents. This introduces the requirement that the site is restored to its previous condition if or when the appellant and his family move on. In the interest of certainty, a condition shall also restrict the occupation of the site to those with gypsy or traveller status.
37. Given the fairly expansive size of the site as shown on the Site Location Plan, and in the interest of the character and appearance of the area, a condition will preclude commercial activity and for the same reasons a further condition shall restrict the number of caravans on the site to the quantum applied for.

Conclusion

38. For the reasons outlined above, and taking all other matters raised into account, I conclude that the appeal should be allowed.

Matthew Jones
INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Dr Simon Ruston MRTPI	Agent
Nichola Burley MRTPI, IHBC	Heritage Specialist
James Penfold	Appellant
Sheridan Penfold	Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Artur Gugula	Planning Officer
Patrick James BSc Arch MA MRTPI	Principal Planning Officer

INTERESED PERSONS

Claire Penfold	Teignbridge Gypsy and Traveller Forum
Hannah Cameron	Interested Person

DOCUMENTS SUBMITTED DURING THE HEARING

Document 1	Appeal ref: APP/D0840/W/21/3255090
Document 2	Signed Statement of Common Ground

Schedule of Conditions

- 1) The development hereby permitted shall begin before the expiry of three years from the date of this permission.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: JP21-SLP Site Location Plan, 761/02 Details and Notes, 761/03 REV B Site Layout
- 3) Prior to commencement of the development hereby approved, details of a scheme to remove the access and hardstanding in the southeast corner of the site shall be submitted to and approved in writing by the Local Planning Authority. The access and hardstanding shall be removed and the site restored to its former condition in accordance with the approved scheme prior to first occupation of the development.
- 4) Notwithstanding the provisions of Class A of Part 2 to Schedule 2 of the General Permitted Development Order 2015 (as amended) (or any order revoking and re-enacting that Order with or without modification), no means of enclosure other than those approved by this permission shall be erected on the site.
- 5) Prior to the occupation of the development hereby approved, surface water drainage shall be provided by means of soakaways within the site which shall comply with the requirements of BRE Digest 365. The drainage scheme shall be retained.
- 6) Notwithstanding Section 55(2) of the Town and Country Planning Act 1990, details of any external lighting shall be submitted to and approved in writing by the local planning authority before the use hereby permitted takes place. Development shall be carried out in accordance with the approved details.
- 7) The new tree and hedge planting shall be undertaken within the first planting season following the completion of the development or the occupation of the site, whichever is sooner, and shall be retained in accordance with drawings numbered 761/03 B and 761/02.
- 8) The development hereby permitted shall be undertaken in accordance with the precautionary, mitigation and enhancement measures set out within the Wildlife Survey Report (by Butler Ecology dated 8th July 2020)
- 9) The occupation of the site hereby permitted shall be carried on only by the following and their resident dependants: Mr James Penfold and Mrs Sheridan Penfold.

- 10)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.
- 11)When the land ceases to be occupied by those named in condition 9 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 took place in accordance with a scheme of work that shall first have been submitted to and approved in writing by the Local Planning Authority.
- 12)No commercial activities shall take place on the land, including the storage of materials.
- 13)The site shall accommodate no more than one gypsy and traveller pitch at any time and shall be occupied by no more than one household. Any static caravan unit stationed on the site at any time must meet the definition of a caravan as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968. There shall be no more than 1 touring caravan parked/stored on the site.