



Appeal Decision

Hearing Held on 8 November 2023

Site visit made on 8 November 2023

by David M H Rose BA(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4th December 2023

Appeal Reference: APP/G2435/W/17/3174630

Aylesbury Gardens, Newton Road, Swepstone, Coalville, Leicestershire, LE67 2SH

- 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 Amos Willshire against the decision of North West Leicestershire District Council.
- The application Reference 16/00305/VCU, dated 8 March 2016, was refused by notice dated 22 December 2016.
- The application sought planning permission for the use of the land as a traveller's site with six touring caravans without complying with conditions attached to planning permission Reference 14/01090/VCI, dated 31 March 2015.
- **The conditions in dispute are:**
 - No 2** *'The use hereby permitted shall be for a limited period, until 15 April 2017. At the end of this period the use hereby permitted shall cease, the 6 touring caravans, buildings, structures, materials and equipment brought on to, or erected on the land, or works undertaken to it in connection with the use shall be removed, and the land restored to its former condition in accordance with a scheme of work, including an implementation period previously submitted to and approved in writing by the local planning authority in accordance with Condition 9'; and*
 - No 4** *'The development hereby permitted within 6 months of the date of this decision shall be laid out in accordance with: the approved location plan at a scale of 1:2500 (received in respect of planning permission ref: APP/G2435/A/12/2182019 (12/00003/RET); the proposed site plan drawing no 11.48.04 C (Landscaping Plan) received 26 November 2014 (position of caravans, day room/amenity block and additional hardsurfacing only); and the WC, laundry, day room details drawing no 11.48.03 (received in respect of planning permission ref: APP/G2435/A/12/2182019 (12/00003/RET). This permitted layout shall be maintained as such.'*
- **The reasons given for the conditions are:** in respect of condition 2 'A permanent development would result in the interests of the character and visual amenities of the countryside' [sic]¹ and in respect of condition 4 'To determine the scope of this permission'.
- **This decision supersedes that issued on 23 November 2018. That decision on the appeal was quashed by order of the Court of Appeal.**

¹ Taken from original decision

Decision

1. The appeal is allowed and planning permission is granted for the use of the land as a traveller's site with six touring caravans at Aylesbury Gardens, Newton Road, Swepstone, Coalville, Leicestershire, LE67 2SH in accordance with the application Reference 16/00305/VCU dated 8 March 2016, without compliance with the conditions numbers 2 and 4 previously imposed on the planning permission Reference 14/01090/VCI, dated 31 March 2015 subject to the conditions set out in the Schedule to this decision.

Preliminary Matter

2. At the beginning of the Hearing, I announced that I had viewed the locality of the site, unaccompanied, in mid-October. I also confirmed that I would undertake an accompanied site visit immediately following the Hearing.
3. The Hearing was attended by representatives of Swepstone and Newton Burgoland Parish Council. During the discussions, one of the members referred to the overgrown nature of the 'abandoned' sections of the former county road which abut the south-western and north-western boundaries of the appeal site. These remain public rights of way and the Parish Council had been seeking, for some time, the clearance of the overgrown vegetation.
4. In undertaking my visit, immediately following the Hearing², attended by representatives of the Appellant and the District Council, it proved possible to trample a route along the north-western leg of the former road to assess the proposal. However, it was agreed that the south-western section was impassable.
5. By letter dated 18 November 2023, the Parish Council asked the District Council to clear, as a matter of urgency and prior to my site visit, the overgrown vegetation referred to above. I have not been notified of any resultant clearance. From what I saw from both ends of the former road, and from within the appeal site itself, I am satisfied that I do not need to delay this decision and to make a repeat visit at an uncertain future date.

Background

6. The application that forms the subject of this appeal seeks to remove condition 2 on planning permission 14/01090/VCI to allow the permanent use of the land as a traveller's site; and to vary condition 4, which specifies the approved plans, to allow the construction and retention of a day room that is larger than that originally approved.
7. The site has a lengthy planning history which I record in brief. First occupation occurred in December 2011 when six touring caravans were brought on to the site. Temporary use of the site, for a period of four years, and the erection of an amenity block³ was allowed on appeal in April 2013.
8. An application to retain the use and to enlarge the approved day room was refused by the Council in December 2016. An appeal was dismissed in October 2018 and a challenge to that decision was dismissed by the High Court in June 2021.

² Document H7 sets out the extent of the site visit immediately following the Hearing

³ Referred to as the day room in the subsequent application

9. However, the Court of Appeal, in October 2022, allowed the initial challenge and quashed the 2018 appeal decision on the grounds that the effect of excluding '..... settled travellers from the PPTS⁴ regime was discriminatory in both its intention and its effect⁵.
10. Accordingly, the appeal against the Council's decision (December 2016) is to be redetermined. Both the original and further representations are before me, and these have been taken into account.
11. Prior to the Hearing, the Council and the Appellant issued a Statement of Common Ground which was updated following the close of the Hearing to reflect matters discussed. I refer to the Statement where appropriate in my analysis of the main issue as set out below.

Main Issue

12. The main issue⁶ is whether or not the disputed conditions are reasonable and necessary having regard to:
 - (i). The extent of the need for Gypsy and Traveller accommodation in the district; the personal circumstances of the occupants of the site and any alternatives available to them; and the measures in place to address any general shortfall or personal needs.
 - (ii). The effect of the proposal on the character and appearance of the area. [Local Plan Policies S3(j)(i), H7(4)(f) and En3(4)]
 - (iii). Whether the occupants of the site would have reasonable access to a range of services and facilities or public transport. [Local Plan Policies S3(j)(vi) and H7(4)(a)]
 - (iv). The effect of the proposal on the River Mease Special Area of Conservation. [Local Plan Policies H7(6), En1(2)(a) and En2]
 - (v). Whether the general or personal need for Gypsy and Traveller accommodation would outweigh any identified harmful effects of the development which could not be met by planning conditions to secure appropriate mitigation.

Reasons

The first main issue: unmet need

13. Based on the Statement of Common Ground, and the questions I asked at the beginning of the Hearing, it is confirmed that there is a current and longer-term unmet need for Gypsy and Traveller accommodation in the district. At the present time, the unmet need is for at least 20 pitches and the Council does not have a five-year supply of specific deliverable sites. The pitch requirements of Policy H7 (part 1) are out of date. So too are parts 2 and 3, since the intended Development Plan Document⁷, and identification of sites, has not been pursued.

⁴ Planning Policy for Traveller Sites

⁵ Lisa Smith v SSLUHC (Appeal) [2022] EWCA Civ 1391 (Brief Summary)

⁶ The references to best and most versatile agricultural land and intentional unauthorised development alleged in the Council's Response dated 10 May 2023 were not pursued and thus removed from the sub-issues identified at the beginning of the Hearing

⁷ Gypsy and Traveller Site Allocations Development Plan Document

14. It is also evident that there has been a longstanding lack of progress in identifying sites to meet unmet need. Additionally, work on identifying sites for Gypsies and Travellers through the Local Plan Review is in its initial stages and there is no short-term prospect of securing additional pitches through the Review process. The Council also accepts that allowing this appeal would immediately contribute to the unmet need, generally and specifically.
15. It is not disputed that all those people living on the site are ethnic Gypsies or Travellers; and their undeniable personal circumstances are acknowledged. The Council confirms that there are no alternative public, or private, sites that would meet the needs of the occupants.
16. The Council also recognises that the most likely outcome, if the occupants are removed from the appeal site, would be a transient roadside way of life. It agrees that this would not be in the best interests of the extended family, particularly the resident children, some of school age, and those with health conditions and/or disabilities and care responsibilities.
17. The circumstances before me differ from those outlined in the quashed decision in terms of the planning status of the extended family as a result of the Court of Appeal decision; the abandonment of the intended Development Plan Document; the level of unmet need; and the continuing absence of an alternative site for the extended family.
18. In light of the above, I conclude that there is a clear-cut general and personal need for the site, each of which carries substantial weight.

The second main issue: character and appearance

19. In the previous appeal decisions, and in the quashed decision now before me for redetermination, each Inspector found harm to the character and appearance of the area. Some years have passed, and it is incumbent on me to assess the impact of the development based on my own observations.
20. The appeal site, for ease of description, is triangular in shape. It is heavily bound on each side with mature vegetation, including native trees and hedgerows consistent with other roadside and field boundaries.
21. Its south-western and north-western margins abut the former line of the county road which is heavily overgrown. I acknowledge that, with judicious clearing, accessible right of way could be reinstated. However, given the depth and density of the site boundaries, and the compact grouping of the caravans and the location of the day room, I consider that the continued use of the site would not be unduly evident.
22. In terms of the public right of way from Newton Burgoland, which joins the western apex of the site, and from the accessible woodland to the west, successive 'layers' of vegetation impede views into the site and no material harm would arise.
23. Along the frontage to Newton Road, the hedgerow is less dense and, in places, somewhat intermittent, thus providing glimpsed views into the site which would be more frequent and apparent in winter months and in the hours of darkness. Whilst the day room is largely inconspicuous, the location of the caravans (as previously approved) are noticeable and uncharacteristic elements of the immediate locality. There are similar views available from the seemingly well-used public right of way, that crosses open farmland to the east, linking Swepstone with Newton Burgoland.

24. Policy S3(j)(i) and H7(4)(f) make provision for Gypsy and Traveller sites where they are compatible with the appearance and character of the landscape. Similarly, the PPTS advises '*Local planning authorities should very strictly limit new traveller site development in open countryside'. When considering applications weight should be attached to '..... sites being well planned or soft landscaped in such a way as to positively enhance the environment and increase its openness'*
25. In my opinion, when viewed from Newton Road and the public right of way to the east, it cannot be said that the development is compatible with the appearance and character of the countryside landscape or that, in its present form, it positively enhances the environment.
26. Nonetheless, the principles set out in the revised site layout and landscape strategy plan⁸ would provide the opportunity to adjust the site layout to render the caravans less conspicuous from these well-used and critical directions. Additional planting within the site, and the rationalisation of the parking area, would also be beneficial. Most importantly, the proposed native understorey buffers would reinforce the roadside hedgerow.
27. These proportionate measures, subject to agreement on precise details, implementation and subsequent management could be secured by condition. In my view, this would be sufficient to offset the harm that I have identified and to secure compliance with the policies and guidance referred to above. Additionally, the measures would be consistent with the aims of Policy En3(4) relating to development within the National Forest.
28. In reaching this conclusion, I am satisfied that even if, or as and when, those parts of the county road are cleared of vegetation, in accordance with the wishes of the Parish Council, sufficient depth and density of planting on the boundaries of the site would remain to mitigate, to an adequate degree, the presence of the use based on the generalities of the revised site layout and landscaping strategy plan.
29. For completeness, I consider that, with the implementation of the revised strategy, the ongoing use of the site would not undermine the physical and perceived separation between Swebstone and Newton Burgoland; the site would not appear as deliberately isolated from the rest of the community; and it would create the opportunity for healthy lifestyles.

The third main issue: accessibility

30. The appeal site is located more-or-less mid-way between the villages of Swebstone and Newton Burgoland. Both settlements are categorised as 'small villages', under Policy S2, with very limited services and where new residential development will be restricted.
31. The Statement of Common Ground records the relative distances to those limited facilities. I note that the primary school in Newton Burgoland (attended by one of the children on the site) is approximately 1km from the site and the nearest bus stop, with a two-hourly service Monday to Saturday, is some 680 metres distant.

⁸ TDA.2861.01 May 2023

32. The site is technically within walking distance of both settlements, albeit Newton Road lacks footways, street lighting and is subject to the national speed limit.
33. The nearest secondary schools are in Market Bosworth and Ashby-de-la-Zouch. Two children from the site attend the former, travelling by car, as the county bus does not pass the appeal site. Weekly shopping for those in the locality is generally attributed to Ashby-de-la-Zouch and the nearest health care facilities are in Measham.
34. I am aware that the Inspectors who determined earlier appeals concluded that it was likely that residents would be heavily dependent on use of the private car in the absence of genuinely sustainable alternative modes of transport. That is clearly the current situation.
35. The National Planning Policy Framework sets out to promote sustainable transport. It indicates that *'significant development should be focused on locations which are or can be made sustainable, through limiting the need to travel and offering a genuine choice of transport modes'*. It goes on to say *'However, opportunities to maximise sustainable transport solutions will vary between urban and rural areas, and this should be taken into account in both plan-making and decision-making'*.
36. It also qualifies that the ability to ensure appropriate opportunities will depend on the type of development and its location. Local Plan Policy S3(j)(vi) recognises that Gypsy and Traveller sites in the countryside can be supported where *'the proposed development is accessible, or will be made accessible, by a range of sustainable transport'*.
37. That translates into Policy H7(4)(a) which requires such sites to *'be located with reasonable access to a range of services, such as shops, schools, welfare facilities or public transport'*.
38. The apparent tension between the wording of those policies rests in favour of the latter development type specific policy. This is consistent with paragraph 4j of the PPTS which explains that one of the Government's aims in respect of Gypsy and Traveller sites is *'to enable the provision of suitable accommodation from which travellers can access education, health, welfare and employment infrastructure'*.
39. Neither the Framework, the PPTS nor the specific Local Plan policy require development of the nature proposed to have the opportunity for *'genuinely sustainable travel choices'* as referenced in paragraph 22 of the quashed appeal decision. Further, there is no imperative for sites to be served by public transport if they would otherwise have reasonable access to services and facilities which support daily life. Ultimately, that is a matter of planning judgement.
40. In the quashed decision, the Inspector recognised that *'any journeys to services would be off-set against the provision of a settled base, thereby reducing the need for long distance travelling in line with paragraph 13 of the PPTS'*. In turn she found that the proposal was not consistent with Policy H7.
41. Revisiting Policy H7(4)(a), the underlying test is expressed in terms of *'..... reasonable access or public transport'*. Acknowledging that the site is not well served by public transport, taking policy and guidance in the round, I am not convinced that the distance to various services and facilities is

beyond the bounds of 'reasonable access' in the context of this case, especially when considered against the realistic alternative of a transient existence.

The fourth main issue: River Mease Special Area of Conservation (SAC)

42. The appeal site lies within the catchment area of the River Mease Special Area of Conservation⁹ which was designated in 2005. It is said that discharge from the sewage treatment works within the SAC catchment area is a major contributor to the phosphate levels in the river.
43. Natural England published advice in 2022 to mitigate against impacts to achieve nutrient neutrality. This is to be secured by developer contributions for new dwellings, under the River Mease Developer Contributions Scheme (DCS1 and 2), in the form of a planning obligation. However, the site has had a long-standing, and continuing, connection to the public sewer and, in turn, to Snarestone Treatment Works.
44. The latest advice from Natural England post-dates previous planning permissions on the site and its consultation response, raising no objections, to the application leading to this appeal. Although the nutrient neutrality advice created a new 'baseline', there is nothing to suggest that the discharge from the site has not already been accounted for at the treatment works.
45. Whilst the occupation of the site has continued well-beyond its temporary permission, it is evident that allowing this appeal, for continuing use, would not result in an increase in the number of households within the SAC. It follows that the proposal would not have a significant effect on the SAC and there would be no conflict with Policies H7(6), En1(2)(a) and En2. Hence, there would be no impediment to granting planning permission; and it would be neither reasonable nor necessary to require a developer contribution secured by a planning obligation.
46. The Addendum to the Final Statement of Common Ground¹⁰ confirms that there is no requirement to now mitigate the foul drainage that has been discharging from the six caravans on the appeal site and there is no requirement for contributions under the River Mease Developer Contributions Scheme (DCS2).

The fifth main issue: The planning balance

47. The Statement of Common Ground confirms that there would be no adverse impacts on a number of other considerations including the scale of the proposal, the amenities of nearby residents, highway safety, protected species, trees and hedgerows and biodiversity net gain. In this regard, there would be no conflict with Policy H7(4)(b-e and g). Having reviewed all the representations received, I am satisfied that there are no other matters of significance beyond the identification of the main issue and its components.
48. My consideration of issues (ii),(iii) and (iv) leads me to conclude that the proposal would be in accordance with the development plan when read as a whole, and also with national guidance, subject to the imposition of a condition, amongst others, to secure the implementation of the revised site layout and landscape strategy plan. On this basis, there is no need for me to rehearse issue (i), beyond the general unmet need, insofar as it would only add substantial weight to my conclusion.

⁹ The SAC is also a Site of Special Scientific Interest

¹⁰ Hearing Document H4

49. Consequently, I shall allow the appeal and grant planning permission for the use of the land as a traveller's site with six touring caravans without complying with conditions 2 and 4 attached to planning permission Reference 14/01090/VCI, dated 31 March 2015 on the basis that those conditions are no longer reasonable and necessary. The effect will be to create a new planning permission and I now turn to the conditions which need to be imposed.
50. Having reviewed the conditions suggested by the parties at the Hearing, generally following those on the now expired temporary permission, the need for some drafting revisions was agreed. I invited the parties to discuss these outside the Hearing and to submit revised schedules which would cover the possible scenarios of a permanent permission; a personal permission; a further time-restricted permission; and with and without a site development scheme (landscaping scheme)¹¹.
51. First of all, I am satisfied that it would be appropriate to grant a permanent planning permission having regard to the accepted shortfall in provision and on the basis that there would be no conflict with the development plan and national guidance. The permission will be subject to a condition requiring occupation by Gypsies and Travellers as defined, based on the general unmet need for such accommodation.
52. Although I asked at the Hearing whether a personal condition would be appropriate to protect the interests of Mrs Smith and her family, it has been confirmed that Mrs Smith's occupation is subject to a rental agreement and, in turn, the provisions of the Mobile Homes Act 1983, including security of tenure, apply¹². As such, it is not necessary to restrict occupancy to named persons.
53. Conditions 2 – 5, relating to the number of caravans, the approved plans and the approved method statement repeat earlier conditions for the avoidance of doubt, to determine the scope of the permission and to prevent an adverse impact on the River Mease SAC. Similarly, condition 6, involving access, is restated in the interests of highway safety.
54. Condition 7, requiring the agreement, implementation and management of a site development scheme, is to be imposed to secure the overall enhancement of the site, reflecting the principles of the revised site layout and landscape strategy plan, as discussed above.
55. Conditions 8, 9 and 10, again carried forward, preclude the use of standalone generators, restrict the size of vehicles, and prevent commercial activities and the storage of materials on the site in order to protect residential and visual amenities.
56. I am satisfied that no additional conditions are necessary and, having considered all other matters, the appeal is to be allowed.

David MH Rose

INSPECTOR

¹¹ Hearing Documents H5 and H6

¹² Document H3

Schedule of Planning Conditions 1 - 10

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. No more than 6 touring caravans (and no static caravans), as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 shall be stationed on the site at any time.
3. The development hereby approved shall hereafter be retained in accordance with:
 - (i) the approved location plan at a scale of 1:2500 (received by the local planning authority on 28 March 2012 in respect of planning permission reference APP/G2435/A/12/2182019 (12/00003/RET) unless otherwise required by a condition of this decision;
 - (ii) the proposed site plan (Discharge of Conditions Plan) received by the local planning authority on 8 March 2016; and
 - (iii) the drawing entitled 'Day Room for Aylesbury Gardens' received by the local planning authority on 8 March 2016.

This permitted layout shall be retained as such (other than as required by any other condition to this permission).

4. The development hereby approved shall hereafter be retained in accordance with the details of surface water drainage works shown on Drawing No. 11.48.04 C (Landscaping Plan) received by the local planning authority on 19 July 2013 in respect of planning permission reference APP/G2435/A/12/2182019 (12/00003/RET) other than the surface water system for the day room/amenity block which shall be in accordance with the details shown on the Discharge of Conditions Plan received on 8 March 2016.
5. The development hereby approved shall be carried out in accordance with the Method Statement received by the local planning authority on 13 July 2013 and the details of site spill kits received by the authority on 1 July 2013 in respect of planning permission reference APP/G2435/A/12/2182019 (12/00003/RET).
6. Both vehicular and pedestrian access to the site shall be restricted solely to that set out on Drawing No. 11.48.04 C (Landscaping Plan) received by the local planning authority on 19 July 2013 in respect of planning permission reference APP/G2435/A/12/2182019 (12/00003/RET).
7. The use 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 of the requirements set out in i) to iv) below:

- (i) Within 3 months of the date of this decision, a scheme for the location of the six touring caravans, soft and hard landscaping (including means of enclosure, exterior lighting and materials for the areas of hard surfacing), a timetable for their implementation and details of the management of the soft landscaping shall have been submitted for the written approval of the local planning authority.
- (ii) If within 11 months of the date of this decision 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 scheme shall have been approved by the Secretary of State.
- (iv) The approved schemes shall have been carried out and completed in accordance with the approved timetable.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

- 8. The connection to mains electricity shall be retained and there shall be no use of any standalone generators.
- 9. No vehicle over 3.5 tonnes shall be stationed, parked or stored on this site.
- 10. No commercial activities shall take place on the land, including the storage of materials.

End of Schedule

APPEARANCES

For Mr A Willshire and Mrs Lisa Smith

Dr Simon Ruston MRTPI ¹³	Chartered Town Planner
Rhodri Crandon BA(Hons) Dip LA	Tirlun Design Associates Ltd
Alec Statham	Agent

For North West Leicestershire District Council

Andrew Murphy	Stansgate Planning
Jenny Davies	North West Leicestershire District Council

Interested Persons

Councillor Andrew Milner	Chair Swepstone and Newton Parish Council
Councillor Jo Coleman	Swepstone and Newton Parish Council
Nick Makin	Local resident
Nicky Dadswell	Local resident
Paul Davis	Local resident

DOCUMENTS SUBMITTED AT THE HEARING

- H1 Final Statement of Common Ground (November 2023)
- H2 Suggested Conditions (November 2023)

DOCUMENTS SUBMITTED AFTER THE HEARING

- H3 Email dated 10 November 2023 from Dr Simon Ruston providing clarification on security of tenure for Mrs Smith and her family
- H4 Addendum to Final Statement of Common Ground
- H5 Suggested Conditions (Amended Version)
- H6 Suggested Conditions in event of landscaping plan being required
- H7 Email dated 20 November 2023 from NWLDC enclosing request from Swepstone and Newton Burgoland Parish Council dated 18 November 2023

¹³ A full list of qualifications is set out in paragraph 1 of the Statement of Dr Simon Ruston MRTPI