



Appeal Decision

Hearing held on 14 November 2023

Site visit made on 14 November 2023

by Helen Hockenhull BA (Hons) B.PI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5 January 2024

Appeal Ref: APP/E0915/W/23/3317287

Millers Paddock, Broomfallen Road, Scotby, Carlisle, Cumbria, CA4 8DE

- 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 Mrs Coralena Miller against the decision of Carlisle City Council.
 - The application Ref 22/0143, dated 17 February 2022, was refused by notice dated 24 August 2022.
 - The development proposed is change of use of land to residential for a single family group comprising siting of 1 no. mobile home, 3 no. touring caravans, 1 no. utility room, 1 no. storage shed, 1 no. dog kennel, formation of hardstanding and installation of sewage treatment plant (part retrospective).
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. On 1 April 2023, Carlisle City Council was dissolved and merged with other Councils to form one Unitary Authority known as Cumberland Council. The development plans for the merged local planning authorities will remain in place for the area within the new authority until such time as they are revoked or replaced. For the purposes of this appeal, the development plan comprises the Carlisle District Local Plan 2015-2030 (CDLP).
3. The appeal proposal is part retrospective in that a change of use of land, the siting of a static caravan, the provision of a shed and kennel and the installation of a sewage treatment plant have already taken place. The utility room has not been constructed. I have considered the appeal on this basis.
4. On the 19 December 2023 a revision to Planning Policy for Traveller Sites (PPTS) was issued. This changed the definition of Gypsies and Travellers in Annex 1 of the document in light of the Lisa Smith¹ case, reverting back to the definition in the 2012 PPTS. I take account of this in my decision. There is no dispute between the parties that the appellant meets this definition and I concur.
5. A revised National Planning Policy Framework (the Framework) was also published on 19 December 2023. The changes have no bearing on the issues raised in this appeal. The references in my decision to the paragraphs in the Framework relate to this new document.

¹ Smith v SSLUHC & Ors [2022] EWCA 31 October 2022

Main Issues

6. The main issues in this case are:

- the effect of the proposal on highway safety with particular regard to users of the public right of way;
- whether the proposed development would result in significant effects, either alone or in combination with other plans and projects, on the integrity of the River Eden Special Area of Conservation (SAC);
- whether there are other material considerations which outweigh the conflicts with the development plan and any other identified harm resulting from the appeal proposal.

Reasons

Highway safety

7. The appeal site forms a parcel of land to the east of the M6 motorway near the village of Scotby. It lies approximately 470 metres south of Broomfallen Road and is accessed by a public bridleway. The bridleway forms an unlit single track lane. From the junction with Broomfallen Road, the bridleway gives access to a cattery and four recently constructed dwellings. After about 90 metres, the route descends and turns sharply in an 'S' bend and then continues in a generally straight line, becoming slightly wider with grass verges either side and mature hedgerow boundaries. The appeal site is located to the south west of the straight section of the bridleway with other approved gypsy sites to the north and south.
8. The bridleway has evolved over time. It has been widened in parts, a tarmac surface has been laid and speed bumps introduced on the straight section. I am advised that the majority of these works have been undertaken without the consent of the local highway authority. I observed on my site visit that the bridleway has no formal passing bays but informal areas allowing a vehicle to pull in and let another vehicle pass are provided at certain points.
9. There is no dispute between the parties in terms of highway capacity. The appellant's Transport and Highways Technical Note confirms that the bridleway is lightly trafficked with an average daily two-way traffic flow of just under 200 vehicles. In the peak hour, 17 vehicles were recorded using the route, equating to one vehicle every three minutes. The concern of the Council and local residents relates to highway safety and the potential for conflict between vehicles and other users of the bridleway.
10. I am aware of the many planning permissions and appeal decisions for developments accessed from the bridleway. Planning permissions were granted on appeal in 2016 for four sites². In allowing the appeals, the Inspector concluded that the 'very upper limit of what would be acceptable' had been reached. In another appeal at Oak Meadow³, in allowing the appeal, the Inspector concluded that the modest increase in use of the bridleway was 'just about acceptable'. Despite the above conclusions, I note that a further 4 pitches have been approved on appeal and by the Council since 2016. The

² APP/E0915/W/15/3127903,3127905,3127907 and 3130384

³ APP/E0915/W/18/3202754

most recent appeal in March 2023 at Mannory⁴ was however dismissed, with the Inspector finding that 'the level of traffic on the lane has now reached a tipping point'.

11. In light of the above, I make my own judgment on highway matters having regard to the evidence submitted in this appeal and my observations on my site visit. I note that the local highway authority has objected to the scheme raising concerns about highway safety.
12. The appellant's Transport and Highways Technical Note states that there are no accident records for the bridleway for the last 24 years, as far back as the records go. The appellant argues that this demonstrates that there are no highway safety issues for users of the public right of way. The Highway Note goes on to show that there is adequate forward visibility for the four informal passing points on the route, particularly the three in proximity to the 'S' bend. The Note concludes that these provide for the safe passing of traffic and users of the bridleway.
13. It was clear on my site visit that the passing points vary in width and size and are substandard. Visibility of other road users at the 'S' bend is in places restricted by the curvature of the lane, fence posts and hedgerows. As a pedestrian, I experienced a feeling of vulnerability when walking around the tight bends. In my assessment, a pedestrian or cyclist would have to be at the bend before they would be clearly seen by an oncoming vehicle, giving the driver little advance notice of their presence.
14. I acknowledge that vehicle speeds are low and that most drivers on the bridleway are aware of the nature of the route and the possibility of pedestrians, cyclists or horse riders coming in the other direction. The appellant has argued that the number of non-car users on the bridleway is low and that the likelihood of conflict with a vehicle is therefore also low. However, on my site visit I witnessed other walkers on the bridleway and noted the footpath link from the new houses on Broomfallen Road which joins the route close to the 'S' bend, facilitating pedestrian access to the bridleway and other routes connecting to the wider area. The concern from local residents and the Parish Council suggests that the route is valued for walking/ cycling/horse riding.
15. The route is a public bridleway and non-car users should be able to feel safe and enjoy a pleasant environment. An increase in traffic on the lane would result in a deterioration of the quality of the route, deter current and future users, and increase the potential for conflict between vehicles and other users. The bridleway is not in my view an appropriate road for large vehicles and caravans. The fact that children play on the bridleway is also a matter of concern.
16. Given the above, I find that the appeal proposal would cause harm to highway safety, contrary to paragraph 115 of the National Planning Policy Framework (the Framework) and would conflict with criterion 8 of Policy HO11 of the CDLP 2015-2030 which seeks to ensure that sites have or are able to provide adequate access and turning space for large vehicles and caravans. It would also fail to comply with criterion 5 of Policy SP6 which seeks to secure good design and ensure all components of a proposal are accessible, inclusive to

⁴ APP/E0915/W/22/3306293

everyone and safe, ensuring a scheme is amongst other things, well integrated with its surroundings.

Nutrient neutrality

17. The appeal site lies within the catchment of the River Eden SAC. The Council were advised in March 2022 by Natural England (NE) that the catchment was in unfavourable conservation status for the purposes of the Conservation of Species and Habitats Regulations 2017 (as amended) ('the Habitat Regulations') due to nutrient levels, in particular phosphates.
18. The proposed development has the potential to cause nutrient pollution because of foul drainage. The increases in loading of phosphates as a result of the development, would be likely to adversely affect the designated species and habitats in the SAC without mitigation measures. As such, the proposal would (both alone, and in combination with other development) be likely to lead to significant effects on the River Eden SAC. It is therefore necessary that I undertake an appropriate assessment in accordance with the requirements of the Habitat Regulations.
19. I note that a sewage treatment plant has already been installed on the site. The appellant has completed a Nutrient Neutrality Budget Calculator to aid the understanding of the likely phosphate levels that may result from the disposal of foul drainage by means of the installed treatment plant. It is calculated that the development would generate 0.17kg total phosphorus per year (TP/year). In order to reduce this figure further it is proposed that the treatment plant discharge to reed beds which would be installed in pre fabricated units on the site. It is estimated this would reduce the nutrient load budget to 0.1kg TP/year. Additionally, it is proposed to plant a strip of woodland on the site, covering an area of approximately 15 metres by 33.3 metres, to reduce the levels down to 0.06kg TP/year.
20. I know the efforts by the appellant to achieve nutrient neutrality. However, the proposed reed beds and woodland planting area are not shown on the submitted plans. I cannot be certain that the site is able to accommodate these additional features and what the implications may be for the site layout. For the above reasons, should the appeal be allowed, a condition requiring a scheme of phosphorus offsetting would not be appropriate. I acknowledge that NE is working to identify mitigation projects in nutrient neutrality catchments which would enable a developer to purchase 'nutrient credits' to discharge the mitigation requirement. Unfortunately, such a scheme is not yet in place in Cumbria.
21. In summary, whilst the mitigation measures proposed would significantly reduce the level of phosphorus, they would not achieve nutrient neutrality. Whilst the calculated figure is low, should developments achieving similar levels be approved, the cumulative impact could be significant and undermine the objective of securing nutrient neutrality and safeguarding the integrity of the River Eden SAC, a European designated conservation site.
22. Accordingly, I conclude that the development would have a likely significant effect on the integrity of the River Eden SAC. The proposal would therefore conflict with paragraphs 180 and 186 of the Framework and Policy G13 of the Local Plan which seek to protect sites of biodiversity value.

23. The appellant has argued that if the appeal is dismissed and the appellant and her family are forced to move off the site to somewhere without the same level of wastewater treatment, the impact in terms of phosphate release could potentially be greater. However, there is no certainty that this would be the case and I give this argument limited weight in my decision.

Other material considerations

Need for and Supply of Gypsy sites

24. The Cumbria Gypsy and Traveller Accommodation Assessment (GTAA) 2022 estimates that there is a need for an additional 33 permanent pitches in the District between 2021 and 2040, of which 17 pitches are required in the first five years. In addition, the GTAA estimates that there will be a need for accommodation for three households whose Gypsy status is unknown and three pitches for traveller households who have ceased to travel permanently.
25. The Council confirmed at the hearing that currently they do not have a 5 year supply of Gypsy sites. I was informed of a current planning application to extend an existing site by 15 pitches. Even if that proposal is approved, there would still be a shortfall of 2 pitches.
26. The appeal site would clearly contribute to this need. This matter forms a material consideration to which I attach significant weight.

Alternative sites

27. I am advised that there are no public Gypsy and Traveller sites in Carlisle. There was discussion at the hearing of possible other sites, but these are in private ownership or have other restrictions on occupation which make them unsuitable and/or unavailable to the appellant. The parties agree that there are no alternative sites currently available. I have no reason to disagree. Accordingly, the absence of alternative sites forms a material consideration weighing in favour of the appeal.

Personal circumstances and the Best Interests of the Child

28. The appellant and her husband have three children, the younger two are secondary school age and are home schooled whilst the eldest is no longer dependent and is in employment. The family are registered with a local doctor. The appellant has some health issues which require regular monitoring including on occasion hospital visits. Having a settled base would be clearly beneficial to the family in meeting their healthcare needs.
29. As there are two dependent children on the site, Article 3 of the United Nations Convention on the Rights of the Child is engaged in this case. This requires that the children's best interests are a primary consideration and caselaw has established that no other consideration in a subsequent assessment of individual circumstances, should be regarded as more important or be given greater weight.
30. The best interests of the children would be served by the family continuing to reside at their established home. Their education and health needs are being met presently at this base. Should the appeal be dismissed, and the family required to vacate the site, they would be forced to either lead a roadside existence or double-up on pitches elsewhere. This would inevitably impact

negatively on the children's education and wellbeing. The appellant's personal circumstances and the best interests of the children are factors that attract significant weight.

Planning Balance

31. I have found that the need for Gypsy and Traveller sites in Carlisle, the lack of suitable alternative sites, the personal circumstances of the appellant and her family and their need for a settled base, weigh in favour of the scheme. However, I have also found harm to highway safety and the integrity of the River Eden SAC due to lack of nutrient neutrality in this case. In the overall planning balance, the benefits of the scheme are not sufficient to outweigh the adverse effects on highway safety and on the integrity of the River Eden SAC. The proposal therefore fails to comply with the development plan, the Framework and the Habitat Regulations.
32. I have given consideration to a temporary permission. Planning Practice Guidance advises that such a condition may be appropriate where a change in planning circumstances may occur such as through the allocation of pitches through the Local Plan or the grant of planning permission for a pitch elsewhere that may suit the appellant's needs. I have no evidence before me that such changes may occur. Furthermore, a temporary permission would not be appropriate due to the harm I have identified which would arise even on a temporary basis. I therefore do not consider a temporary permission to be appropriate in this case. For the same reasons, a personal permission would not be justified.
33. I have had regard to Article 6 of the First Protocol to the Convention, as incorporated by the Human Rights Act 1998, and am aware that the Article 8 rights of a child should be viewed in the context of Article 3(1) of the United Convention on the Rights of the Child. However, the appellant and her family's individual rights for respect for private and family life, along with the best interests of the children must be weighed against other factors including the wider public interests and legitimate interests of other individuals.
34. As the appellant and her family are Gypsies, they have the protected characteristic of race under s149(7) of the Equality Act 2010. In such circumstances, s149(1) of the Act requires due regard to be had to the need to, amongst other matters, advance equality of opportunity between persons who share a relevant protected characteristic and those who do not. This includes minimising the disadvantages connected to that characteristic. As there is potential for my decision to affect persons with a protected characteristic, I have had due regard to the three equality principles set out in Section 149(1) of the Act.
35. Dismissing the appeal would represent an interference with the potential home of the appellant such that Article 8 of the Human Rights Act is engaged. There is also a positive obligation imposed by Article 8 to facilitate the gypsy way of life.
36. However, I have found that the proposal would cause significant harm to the integrity of the River Eden SAC and to highway safety. I am satisfied that the well-established and legitimate aim of granting planning permission in accordance with the development plan and planning policies which seek to protect the integrity of European designated conservation sites and ensure

highway safety in the wider public interest, can only be adequately safeguarded by the refusal of planning permission in this instance. Whilst bearing in mind the need to eliminate discrimination and promote equality of opportunity, in my view, the adverse impacts of dismissing the scheme on the appellant and her family are necessary and proportionate.

Conclusion

37. The proposal would lead to significant adverse effects (both alone, and in combination with other development) on the integrity of a designated site contrary to the requirements of the Habitat Regulations, and in conflict with development plan policies which seek to protect the River Eden SAC. It would also cause harm to highway safety. There are no other considerations, even taking into account the family's Article 8 rights and the PSED considerations, which are of greater significance which would outweigh this finding or the conflict with the development plan as a whole.
38. For the reasons given above and having had regard to all other matters raised, I dismiss this appeal.

Helen Hockenhull BA (Hons) B.Pl MRTPI

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Philip Brown

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Ltd

George Bailes

TTC Highways Consultant

Mr and Mrs Miller

Appellant and husband

FOR THE LOCAL PLANNING AUTHORITY:

Rachel Lightfoot

Planning Consultant for
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Alanzon Chan

Development
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