



Appeal Decision

Hearing held on 6 March 2024

Site visit made on the 6 March 2024

by David Murray BA (Hons) DMS MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 April 2024

Appeal Ref: APP/Y3940/W/23/3333705

Land at Littleton Drew, Chippenham, SN14 7LZ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr E Sykes against the decision of Wiltshire Council.
 - The application Ref is PL/2023/00249.
 - The development proposed is the change of use of land to private family traveller site and associated development.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. In December 2023 all designated Areas of Outstanding Natural Beauty in England and Wales were redesignated as National Landscapes. I have therefore referred to the area previously known as the Cotswolds AONB as the Cotswolds National Landscape (NL), however, the legal designation and policy status of this area is unchanged.
3. From December 2023 as part of the LURA¹ there is now a duty on me when considering land in an AONB to seek to further the purpose of conserving and enhancing the natural beauty of the AONB (NL).
4. The appellant tabled an amended site plan at the hearing which sought to reposition the position of the proposed dayrooms and mobile homes on the site and accommodate additional landscaping. However, the local community had not been reconsulted on this amendment, and following objections expressed on their behalf, I decided that it would be unfair to them to consider this plan, in the context of the High Court's decision in the case of *Holburn Studios Ltd*², and I therefore declined to consider this plan at the Hearing.
5. The main parties submitted a Statement of Common Ground at the Hearing which, amongst other aspects, advised that the appellant had installed essential services to the site (electrical power, water supply and a facility for the disposal of foul sewerage) to meet the requirements of part (iii) of Policy CP47. On that basis the first reason for refusal on the planning application had been overcome.

¹ Levelling Up and Regeneration Act 2023 which amends the Countryside and Rights of Way Act 2000 (CROW)

² *Holburn Studios Ltd v The Council of the London Borough of Hackney* [2017] EWHC 2823 (Admin)

6. On the evidence presented by the appellant, the Council does not contest that he and his brother, who would both occupy the site with their families, are (Romany) Gypsies as defined in the Annexe to the Planning policy for traveller sites (PPTS). It is therefore necessary to also assess the proposal in accordance with this national policy and CS Policy CP47.
7. At the Hearing evidence on the appellant's personal circumstances was taken in private session particularly as details of the children were involved.

Main Issues

8. The main issues are:
 - The effect on the living conditions of the occupiers from traffic noise from the M4;
 - The effect on the character and appearance of the area and the Cotswolds National Landscape;
 - Whether the site has good accessibility to services and facilities;
 - The effect on ecology and biodiversity;
 - The need for and supply of gypsy/traveller sites;
 - The availability of alternative sites; and
 - The personal circumstances of the appellant and best interests of children.

Reasons

Background

9. The appeal site comprises a rectangular shaped parcel of land which lies immediately to the north of the M4 motorway and in an area of countryside which forms part of the Cotswolds National Landscape. The site, which is generally enclosed by trees and hedges, lies about 200m to the south of the village of Littleton Drew and has a vehicular access to a narrow rural lane which has an underpass to the M4. There are open fields to the east.
10. The Council says that the lawful use of the site is as agricultural land but the appellant had settled on the land in May 2022 and was using it for residential purposes. The proposal is to use the land to accommodate two traveller pitches for the families of the appellant and his brother and at the time of my visit there were four large touring caravans on site and the timber barn had been converted into a dayroom.
11. The Council referred to the planning history of the site where various proposals for a bungalow or farmhouse had been rejected in the past because of objections (amongst others) to the noise from traffic on the motorway.

Policy context

12. The development plan includes the Wiltshire Core Strategy adopted in 2015 (now referred to as CS) and saved policies in the North Wiltshire Local Plan 2011.

13. The Council is in the process of preparing a Gypsy and Traveller Development Plan Document (DPD) which has progressed to a consultation stage. The Council reports that it is scheduled for adoption in 2025 but at the moment the main parties agree that the provisions of the DPD have not evolved to a stage where they can be taken account of in this appeal and I agree.

The effect on the living conditions of the occupiers from traffic noise

14. This issue is concerned with the effect of noise arising from traffic on the M4 on the living conditions of the occupiers of the residential caravan site both through the daytime and at night. Part (i) of Policy CP47 advises that to be acceptable new gypsy and traveller pitches should be located in an area without a significant barrier in terms of (in summary) proximity to a hazardous installation where conventional housing would not be suitable. Saved policy NE18 also restricts development where there would be harm to health from excessive noise.
15. In assessing this issue I have had regard to the general guidance set out in Planning Practice Guidance on Noise; the standards set out in BS 8233 and the industry guidance in ProPG: Planning and Noise. BS 8233 indicates that the following design aims for residential properties should be achieved so that occupants would not be subject to any significant adverse effects, although it adds that where development is considered necessary the internal target levels may be relaxed by up to 5dB:
- 35 dB within living rooms/bedrooms during the daytime
 - 40 dB within dining rooms during the daytime.
 - 30 dB within bedrooms at night.
16. The noise survey work undertaken within the site by the appellant's Noise Consultant are summarised as an average week-day daytime level of 65dB and 60 dB at night-time. The survey also noted maximum day-time noise levels of between 70-75dB and the acoustic report says that these were attributed to passing HGV traffic. Overnight maximum noise levels are said to be in the order of 70dB. Occasional spikes within the measured levels are said to be associated with the appellant's dogs barking. From the noise survey results it is clear that the appeal site suffers from a considerable noise issue.
17. The appellant's team proposes to mitigate the effects of noise by arranging the layout of the site so that the dayrooms (constructed in permanent materials) can be sited between the static mobile homes and the M4 and that the mobile homes themselves would be sited so that windows to the habitable rooms are located within the quiet façade facing away from the road. The appellant's noise consultant says that the mobile homes proposed would be constructed to BS 3632 and therefore designed to have a minimum sound insulation for external walls and roof of 35dB.
18. Taking the best modelling of data related to the site into account and put forward on the basis that the windows to the mobile homes can be made permanently closed, the noise consultant submits that the noise levels internally would be substantially below a level which would be considered unreasonable and would not result in the potential for significant adverse effects. Nevertheless, the consultant accepts that noise levels within the site

would remain above the BS8233 guideline for external amenity space although quieter areas could be found in areas screened by the day rooms.

19. I am concerned that the residential environment of the living and sleeping space inside the mobile homes is only acceptable if the windows can be secured closed. Moreover, there is no detailed scheme of ventilation before me to establish how the mobile home can be ventilated with fresh air especially in hot summer evenings. Dr Ruston referred to another appeal decision³ where the inspector imposed conditions regulating the specification of the static caravans. However, in that decision I note that condition No.9 only requires that any static caravan complies with BS3632 on sound insulation and ventilation requirements, but there is no explicit condition on keeping the windows permanently shut. It also appears to me that the noise levels applying to that site were lower than those recorded at this appeal site. I am therefore not able to place much weight on the details of that appeal in relation to the current scheme.
20. Even if the windows could be secured closed and there was an electronic or mechanical ventilation system in place there would be no control over the doors being propped open on hot nights when the occupiers could be subject to difficult sleeping conditions. In addition these concerns are over the internal environment and the parties accept that the external environs of the site are likely to exceed recommended levels or at best be tolerable only in the lea of the day rooms. It would be impossible to regulate children to only play in such areas and I noted at the site visit the families' children were playing on the grassed area closest to the M4.
21. I recognise that the appellant and his brothers' families are presently living in touring caravans which are unlikely to have the necessary sound insulation, or if they are faced with a life on the roadside, this is also likely to have significant noise issues on their living conditions. These are matters to be weighed up in the overall planning balance.
22. Overall on this issue I find that the site is subject to significant noise levels from motorway traffic on the M4 and its use for a form of residential accommodation has not been shown to provide reasonable internal accommodation and external amenity space. I also have doubts over the practical enforceability of conditions requiring the permanent closure of windows in the static vans and prohibiting the use of the touring caravans as sleeping accommodation while on site.
23. I conclude that the proposal would harm the living conditions of the occupiers of the site and would conflict with the provisions of part (i) of CS Policy 47 and Policy NE18 of the Local Plan. It would also conflict with the guidance in paragraph 191(a) of the Framework about avoiding noise giving rise to significant adverse impacts on health and the quality of life.

The effect on the character and appearance of the area and the Cotswolds National Landscape.

24. From the evidence presented it is evident that before the current use commenced in 2022 the appeal site comprised mostly a grassed field used as a paddock generally enclosed by hedges with a few mature trees and there was a

³ APP/C3105/W/18/3219199

simple access and track to a wooden barn. As exists today, there are extensive open fields to the east side of the site and on the western side of the lane. I have no reason to doubt the Council's assertion that at that time the site contributed to the verdant rural character of this part of the Cotswolds NL in a positive way.

25. There is no reason for refusal on landscape impact but objections on this ground are very much raised by the local community and I will consider these objections as a main issue.
26. The proposal is for two family pitches and would result in the erection of two dayrooms and the siting of a static mobile home and a touring caravan for each pitch as opposed to the present circumstances of 4 touring caravans. In assessing the visual impact of the proposal I have taken account of the screening given by the hedging around the site and the fencing erected within that and noted the appellant's intention to carry out further infill planting.
27. The presence of the M4 with its embankments and cuttings has a harsh visual effect on the general landscape of the Cotswolds NL to the south of the appeal site. However, the land leading northwards to the village of Littleton Drew has more characteristic features of regular open fields enclosed by hedgerows or stone walls as identified as 'Dip-slope Lowland' in the Landscape Character Assessment.
28. At the site visit I noted that despite the natural vegetation around the boundaries of the appeal site, the presence of the existing touring caravans were clearly apparent from the (un-named) lane to the front of the site when seen over and through the natural and man-made fence screening. The proposed static vans and day rooms would be more prominent because of their increased height. Even if the natural screen was to be thickened, this built development and accompanying residential paraphernalia would have an isolated and imposing visual intrusion into the natural landscape. I judge this visual impact on the landscape to cause substantial harm.
29. In addition to the views of the appeal site from the public realm along the adjacent highway I also considered the proposal from the (un-named) lane to the north as discussed at the hearing⁴. From here the presence of the residential occupation was apparent in the wider landscape though the roadside hedge which was relatively bare of leaves at the time of the visit. The visual impact from this area would be moderate.
30. As well as the visual impact in the daytime, the residential use would also be prominent at night with the impact of external lighting. At the visit I noted the many electric bulbs that had been strung out along the access to the site and on the wooden barn as well as external lighting around the touring vans. The degree of external lighting in this isolated location is at odds with the conservation aims of the NL to maintain dark skies as a key aspect of their natural beauty. While external lighting could be regulated by a condition requiring an external lighting scheme to be submitted and agreed, the present lighting shows the practical effects of a residential use needing external lighting.

⁴ Near position of new houses as referred to as permission 18/12101/FUL as referred to on page 26 of Mr Jephson's evidence dated November 2023.

31. Overall on this issue I find that the proposal conflicts with part (vi) of Core Policy 47 and Core Policy 51 on landscape conservation particularly in the NL (AONB).

Accessibility to settlements and to services and facilities

32. Although the officer report accepts that the site is within a reasonable distance of a range of facilities this is disputed by the local community who described the very limited facilities available in Littleton Drew. They said it is common-place for residents to have to travel some distance for basic day to day needs. People said that they had to travel by car to take children to school, the nearest being at Acton Turville some 3km away, and for health visits, where the nearest facility is in Yatton Keynell some 5km to the south-east. Dr Ruston said that the planning statement has set out the relative distance to services but bearing in mind the guidance in paragraph 109 of the Framework, that sustainable transport solutions will vary between urban and rural areas, it was not uncommon for a gypsy or traveller site to be located in such a location given their nomadic habit of life.
33. I noted at my site visit that the appeal site is physically separated from Littleton Drew and although the road in between is relatively straight it is subject to the national speed limit of 60mph and it has no footways and is unlit. It is therefore not conducive for walking along particularly by younger children. It also appeared to me that essential day to day services were also not available in Littleton Drew nor were there other means of alternative transport reasonably alternative to places further afield.
34. The appellant refers to other appeal decisions where varying distances to settlements and services and facilities have been considered by inspectors. There are no hard and fast rules on this and I formed my own judgment on the circumstances of this case.
35. I find on the basis of the evidence put to me and my own observations that the appeal site is not well-located to an existing settlement within a reasonable distance of a range of local services and community facilities and this location does not meet the requirements of part (v) of Core Policy 47. There would also be a conflict with part 9 of the Framework as the location of the site would not help manage patterns of growth in favour of sustainable transport solutions through limiting the need for travel and offering a genuine choice of transport modes.

The effect on ecology and biodiversity and trees

36. The proposal includes a Preliminary Ecological Appraisal which concludes that the site was previously an area of species poor heavily managed grassland and although this would be lost it would have had a very limited suitability to support protected species. Moreover the report concludes that the habitats around the site boundaries have some potential to support named species. These habitats will be retained and there is an opportunity to provide various ecological enhancement which can be conditioned. There is no specialist evidence submitted to dispute this conclusion.
37. In terms of trees, the proposal includes an Arboricultural Survey and Impact Assessment. The two mature oak trees on the site form part of a group covered by a Tree Preservation Order (TPO 43) and there are other ash trees to

the south-west. The Assessment finds that the driveway to the site appears to follow the historic access route and its resurfacing is unlikely to have caused significant harm to the root-system of the adjacent oak tree.

38. At the site visit I noted that although the access to the site has been formed and upgraded this appears to follow the original access track shown on the Council's aerial photographs. Further, the surface of the track is gravelled rather than tarmacked and should be permeable. Therefore, even though this surfacing takes up just less than half of the root protection area, I am satisfied that it is unlikely to have caused material harm to the well-being of the oak (T1). I also noted that this tree has a relatively high canopy and there is adequate space below the canopy for a mobile home to be delivered to the site, or for general use by caravans and trailers to pass, without causing harm to the tree.
39. I conclude on this issue that the proposal would not harm interests of ecological importance or to the mature and protected trees on the site.

Need and supply of gypsy/traveller sites and availability of alternative sites

40. Policy B of the PPTS indicates that Councils should be able to identify a five-year supply of deliverable sites for gypsies and travellers to meet locally set targets. However, the Council accepts that the current development plan does not allocate sites for gypsies and travellers and that it cannot demonstrate a five-year supply at the moment set against the 2022 Gypsy and Traveller Accommodation Assessment (GTAA). This identifies a need for 79 pitches over the period 2022-2027. This is not a recent occurrence. Dr Ruston refers to a 2023 appeal decision where the evidence submitted showed that the Council had failed to deliver sites via the development plan process and the inspector described this as 'a woeful failure of policy'. The situation is unlikely to improve in the short term. The Council had started a Gypsies and Travellers DPD in March 2021 but this is now scheduled in the Local Development Scheme for adoption in mid to late 2025 and will concentrate on a review of Core Policy 47. Proposals for specific sites for gypsies and travellers will therefore not realistically come forward until after that time.
41. At the Hearing both of the main parties accepted that there were no other sites available and suitable for the appellant and families to turn to at the moment. It was reported that the Council's own public sites were full and there was a long waiting list. Other known sites tended to be private and were occupied by the owning family and were not available to outsiders. Dr Ruston said and Mr Sykes confirmed that if the appeal was dismissed there was a likelihood that the families would have no alternative but to live on the roadside.
42. These are all factors to which significant weight needs to be attached.

The personal circumstances of the appellant and best interests of children.

43. The appellant and his brother said that he had lived with his wider family at the Council's Thingley Caravan Park but their families have now outgrown the space at his mum's pitch. He also described continuing troubles and tensions at the site as other residents had changed and he felt it was not a suitable place to bring up his children.
44. The families now live at the appeal site and have done so since May 2022. Within the two families there are 5 children generally of school age and they

are all enrolled in the education system. One is home schooled, two others go to Corsham Primary School which is closer to where they used to live. A younger one is proposing to go to primary school in Acton Turville.

45. Mr Sykes stressed that his main reason for moving on to the appeal site was to give his own family and his brothers a stable base. While the family did not have any pressing health issues currently, the site gave them a settled site and address from where they could access health facilities. They wanted the children to have the opportunity to go to local schools and be part of the community rather than face an itinerate life on the roadside. The families were well aware of the noise from the M4 and had got used to it. The noise was less than that the families had experienced when they had to stay at junction 18 of the M4. There were no other sites available for them to go to.

46. These personal circumstances carry significant weight in favour of the proposal.

Planning balance

47. As the start of the planning balance I have borne in mind the requirements of the Public Sector Equality Duty as the appellant and family have protected characterisations as Romany Gypsies. I have also placed no single factor above the best interests of any child.

48. On the main issues I have found that the appeal site is subject to considerable noise from traffic on the M4 and it has not been shown that the living conditions of the occupiers of the site would be reasonable in terms of internal living and sleeping space and use of the outside amenity space.

49. The development of the site for residential purposes would also have a significantly harsh and intrusive visual impact on the special landscape of the Cotswolds NL. Great weight has to be given to conserving this landscape as set out in paragraph 182 of the Framework. I have also found that the site is not well related to an existing settlement with a range of services and facilities, although it has not been shown that the development proposed would harm interests of ecological importance or trees.

50. The adverse effects identified mean that the proposal conflicts with the main relevant policy in the development plan on the provision of new sites for gypsies and travellers - Core Policy 47 and the other specific policies mentioned above.

51. To be balanced with this there are many aspects in favour of the proposal. The Council cannot demonstrate a five-year supply of new gypsy and traveller sites at the moment or apparently for some time, and there is an on-going failure of the development plan policy to make the necessary provision. This is unlikely to be rectified in the short term. Possibly because of this it is agreed that there are no suitable alternative sites for the appellant to turn to.

52. Continuing to live on the appeal site would give the appellant and families a settled base. This and the ability to have continuing education locally would clearly be in the best interests of the children whereas this is unlikely to happen with the real risk of the families being on the roadside if the appeal is dismissed. In such circumstances the families may be subject to very unfavourable living conditions within a noisy environment.

53. However I find that the inherent unsuitability of the site in noise terms and the significant visual intrusion into the Cotswolds landscape day and night would result in profound adverse effects which also conflict with the policy in the Framework. I conclude that the other considerations that arise in the case do not outweigh the conflict with the development plan and national guidance when both are taken as a whole. The permanent residential caravan site use should therefore not be allowed.
54. I have also considered whether the appellant's personal circumstances justify allowing the proposal on a temporary basis pending the adoption and practical application of the forthcoming Gypsy and Traveller DPD. But the families would be subject to the noisy conditions on the site for a continuing period in the meantime and the harm to the Cotswolds landscape would remain. A temporary permission is therefore not appropriate.
55. Dismissing the appeal would be likely to lead to circumstances where the appellant and the two families are required to leave the site. This would be an interference with their rights under Article 8 of the European Convention on Human Rights as incorporated into the Human Rights Act 1998. Article 8 affords the right to respect for private and family life and home and the best interests of children. However it is a qualified right and interference may be justified where that is lawful, in the public interest and is proportionate.
56. In this case the need to avoid fundamentally harmful living conditions and the protection of a nationally recognised special landscape are well established aims in the public interest. Interference would therefore be in accordance with the law.
57. The protection of the public interest cannot be achieved by means which are less interfering with the appellant and families rights. The dismissal of the appeal is proportionate and necessary and therefore would not result in a violation of rights under Article 8

Conclusion

58. For the reasons given above I conclude that the appeal should be dismissed.

David Murray

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Dr S Ruston MRTPI	Ruston Planning
Mr E Sykes	Appellant
Mr Crandon, BA (Hons)	Director, TDA
Mr L Jephson BEng (Hons) MIOA	L F Acoustics
Mr G Coe, MCIEMM	Co-Ecology

FOR THE LOCAL PLANNING AUTHORITY:

Mr Crozier,	Senior Planner, Wiltshire Council.
Mr Smith	Team Leader Development Management, Wiltshire Council.
Mr H Totz	Spatial Planning Officer, Wiltshire Council.
Mrs V Brown	Public Protection Officer, Wiltshire Council.

INTERESTED PARTIES:

Mr P Fong, MRTPI	MD, Morgan Elliot, representing Badminton Estate
Mr Raymond, MBA MIAC	ADC Acoustics representing local residents
Mr J Walker	Chairman Grittleton Parish Council
Cllr N Bootterill	Ward Councillor, Wiltshire Council
Mr J Grandison	Local resident.
Cllr Carter	Local resident

Documents handed in at the hearing

1. Statement of Common Ground