



Appeal Decision

Hearing held on 12 June 2024

Site visit made on 13 June 2024

by Darren Hendley BA(Hons), MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5 July 2024

Appeal Ref: APP/D1835/W/24/3340942

Land to the south of Broomhall Way (A4440), Worcester

- 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 R Lethem against the decision of Worcester City Council.
 - The application Ref is 22/00751/FUL.
 - The development proposed is a change of use of land to provide 10 permanent Travellers Pitches including the stationing of caravans for residential purposes with ancillary dayroom for each pitch plus associated access, parking, landscaping, engineering and infrastructure works.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. The Hearing included the consideration of a draft agreement under Section 106 of the Town and Country Planning Act 1990 (as amended) (S106 Agreement). An engrossed version was submitted after the close of the Hearing. The obligations concern open space, a right of way contribution and an occupation notice, which I have considered in my decision.

Main Issues

3. The main issues are (i) whether the proposal would accord with the spatial strategy for the area, including the Worcester South urban extension and the Local Green Network; (ii) the effect on the character and appearance of the area; and (iii) if there is harm, whether this is outweighed by the supply of pitches for Gypsies and Travellers, and other considerations.

Reasons

Spatial Strategy

4. The appeal site comprises an irregular shaped area of enclosed grassland. It is found to the south of the A4440 dual carriageway, from which vehicular access is taken. The site's boundaries consist of hedgerows and trees, with parts also bounded by post and rail fencing and a watercourse. To the south, there is an area of housing which is under construction. A raised footway and cycle path structure is found to the east, beyond which are new industrial units. On the opposite side of the A4440, past open space and an overhead transmission line, lies more established housing associated with the St Peter's (St Peter the Great) part of the Worcester urban area.

5. Under Policy SWDP 45 of the South Worcestershire Development Plan (2016) (SWDP), the site lies within SWDP 45/1 Broomhall Community and Norton Barracks Community (Worcester South Urban Extension) (urban extension). This large scale development is to provide for approximately 20 hectares of employment land and around 2,600 dwellings, amongst other uses. It is to come forward in accordance with a number of requirements under the policy, including the provision of Green Space adjacent to the A4440 (after allowing for dualling and other improvements). This is to provide a framework for the built development and mitigate noise, flood risk and maintain the individual identities of Broomhall and St Peter the Great. The urban extension is also to provide for a Travellers site of up to 10 pitches.
6. Diagram 1 shows how the various requirements under SWDP 45/1 are to be applied. The site is shown within an area that forms part of the Local Green Network (LGN). The area in the vicinity of the site is shown for residential and commercial purposes, as well as for the A4440 enhancements. Diagram 1 is not intended to be prescriptive and show absolute restraint. Furthermore, a formal designation as Green Space is dependent on the grant of a permission under Policy SWDP 45 and protection as green infrastructure under Policy SWDP 5. However, the LGN does reflect the requirement for the provision of Green Space adjacent to the A4440.
7. The introduction of 10 permanent traveller pitches and associated caravans, dayrooms, vehicles and parking would be contrary to the provision of Green Space under Policy SWDP 45 and the LGN network annotation on Diagram 1. These elements of the proposal are not green space uses and would negate from its provision adjacent to the A4440 and the LGN as an important objective of the planning of the urban extension. As a consequence, the proposed development would not be consistent with the plan led approach. That parts of the proposal contain landscaping, allotments and orchards would not address this conflict because of the built aspects of the development and the associated use.
8. While the rationale for the policy and Diagram 1 would have been a matter for the SWDP examination, the development of housing to the south of the site has in my view reinforced the importance of the site in providing separation and therefore maintaining the individual identities of Broomhall and St Peter the Great. It assists in maintaining the separate identity and character of these settlements. In contrast, the proposal would narrow this separation because of the built aspects of the development that are proposed, even acknowledging the proposed landscaping, the public open space on the north side of the A4440 and the highway verge adjacent to the site. This further demonstrates that it would undermine the plan led approach.
9. I am less persuaded that the proposal would unduly detract from biodiversity and recreational aspects, based on the evidence before me. Nor is it in dispute that the proposal would accord with Policy SWDP 39 concerning the Green Space and Outdoor Community Uses provision that a development itself must provide, as well as the associated maintenance. None of these matters would though overcome the harm that would arise to the scale and function of the LGN.
10. The appellant has referred me to uses on the site, including for car boot sales. However, the proposal would have a greater level of adverse effect because it

proposes an unceasing development, rather than one that would not be continuous in relation to when it would occur. This is ably demonstrated by the site still exhibiting an undeveloped appearance apart from occasional detritus associated with the uses that have been drawn to my attention.

11. Diagram 1 does not specifically indicate where the Traveller site under the policy should be located within the urban extension. Nevertheless, it would be hard to reconcile the proposal within the LGN because of the built parts of such a development that would come with it. Nor would the withholding of permission preclude provision been made elsewhere in a manner that would accord with Policy SWDP 45.
12. Both main parties referred to an appeal decision at Broomhall Grange¹ which also concerned whether a proposed development complied with the planning policy for the urban extension. It does not seem to be a particular matter of dispute that *'Diagram 1 sits outside of the policy wording and so it is in effect part of the explanatory text'*, as that Inspector stated². However, as it is not to be interpreted rigidly comparisons with this site do not take my deliberations substantively further. I also note that decision concerned a 'buffer', which is not a term which figures in the part of the policy on Green Space which is of relevance to the development that is for my consideration.
13. The appellant has also referred to an encroachment into the LGN directly to the north-east of the site. However, it is clear that the site itself performs a clear function in maintaining the separate identity of settlements. While there may have been incursions elsewhere of built development into the LGN, it still remains part of the plan led approach to deliver the urban extension. The proposal would also be a development within its own right in the LGN, and so this would set it aside from where there may be private garden space and ancillary structures where the incursion into the LGN may be less significant. None of these matters change my conclusion.
14. I conclude that the proposal would not accord with the spatial strategy for the area, including the urban extension and the LGN. Accordingly, it would not comply with Policy SWDP 45 because of the conflict with the provision of Green Space under that policy and similarly with Policies SWDP 5 and 38, where they concern green infrastructure and Green Space, respectively. Nor would it comply with Policy SWDP 21 B v. where it states that the distinct identity and character of settlements should be safeguarded. With the conflict that arises with the spatial strategy, it would also not comply with the over-arching sustainable development principles under Policy SWDP 1.
15. Similarly, it would not accord with the National Planning Policy Framework (Framework) where it concerns the statutory status of the development plan as the starting point for decision-making. This is because of the conflict with the plan led approach. It is an issue which weighs considerably against the proposal.

Character and Appearance

16. The site lies within the Principal Settled Farmlands Landscape Type (LT) under the Worcestershire County Council Landscape Character Assessment (LCA). The primary key characteristics are hedgerow boundaries to fields, and a

¹ Appeal Ref: APP/J1860/W/20/3255153 Broomhall Grange, Norton Road, Norton, Worcester, WR5 2PD

² Paragraph 7

moderate-to-high density settlement pattern of farmsteads and rural dwellings dispersed throughout the area. Secondary key characteristics are said to be mixed farming land use, and rolling lowland with occasional steep-sided hills and escarpments, while tertiary key characteristics are identified as an irregular enclosure pattern of small and medium-sized fields and scattered hedgerow trees. The site is not in a protected landscape, or a valued landscape for the purposes of the Framework, but nevertheless the consideration of character and appearance is still a relevant planning consideration under the development plan and national planning policy.

17. While the Council set out that the LCA informed the proposals for the urban extension, it is clear there is now significantly more built development in this part of the LCA than the more rural aspects that are included in the key characteristics. Much of this is related to the urban extension itself, including the housing and commercial areas adjacent to the site, as well as the dualling of the A4440. The site has though maintained a largely undeveloped field-like appearance. It maintains some of the key characteristics through hedgerow boundaries to fields, and an irregular enclosure pattern of small and medium-sized fields and scattered hedgerow trees.
18. I have already set out earlier in my decision why it is not appropriate to consider the uses on the site as part of the baseline. They are not of a continuous nature. On this basis, the proposal would result in a reduction of the landscape character in as far as an irregular enclosure pattern of small and medium-sized fields because of the development that would be contained within it. It would not thus reasonably maintain this key characteristic.
19. Hedgerow boundaries and scattered hedgerow trees would be maintained and this would be further reinforced through additional planting. This would accord with the Landscape Management Advice Sheet for this LT where it refers to the protection of existing hedgerows and enhancement of tree cover along watercourses. The proposed landscape masterplan does though also show planting within the site. Vegetation away from hedgerows is not a key characteristic. Nor are recreation and biodiversity unequivocally identified in the key characteristics.
20. The landform of the bund running close to the A4440 boundary with an acoustic fence on top of it would also clearly be at odds with the key characteristics. While it may be a common feature alongside major roads, this would not address that it would detract from the site's contribution to the remaining landscape character. The planting in and around the bund would further not accord with the LCA key characteristics. In relation to buildings, farmsteads and rural dwellings are identified as key characteristics of the LT, not the type which form part of the proposal. As a result, the proposed dayrooms would not be of a typical rural vernacular, even with the use of local materials.
21. The site currently benefits from being fairly well screened as regards visual impacts. The bund, fence and planting arrangement would likely add some degree of visibility from the A4440 due to its height and extent. The proposal would be though more likely to be evident from the footway and cycle path due to the raised form of this structure which allows views across the site, and so the contrast from the current more undeveloped character would be apparent. Views from the new housing to the south would be filtered by existing and

proposed planting, and as much of the proposed built development would be set away from this boundary.

22. In taking the above considerations together, the size, design and location of the proposal together with the mitigation through the proposed landscaping would undermine and dilute the established character of the landscape on the site. This includes in short and medium views. The more urban surroundings to the site temper the adverse effect to a degree because it limits the functional physical and visual links to areas of the LT which may share similar characteristics to the site. Nevertheless, and while the harm would not be substantial, some harm would arise to the landscape character and visual impacts.
23. As such, I conclude that the proposal would have an unacceptable effect on the character and appearance of the area. It would not comply with Policies SWDP 21 and 25 where they concern proposals complimenting the character of the area, the landscape quality of the local area, taking into account the latest LCA, the character of the landscape setting and conserving and where appropriate, enhancing the primary characteristics, amongst other considerations. It would also not accord with the Framework in as far as the plan led approach has reflected landscape character matters.

Need and Supply of Pitches for Gypsies and Travellers

24. The Planning Policy for Traveller Sites (2015) requires local planning authorities to identify and update annually a supply of specific deliverable sites sufficient to provide 5 years' worth of sites against their locally set targets. Minimum requirements are set out in Policy SWDP17. These figures are subject to subsequent review and I was informed at the Hearing that the Council use the South Worcestershire Gypsy and Traveller Accommodation Assessment Final Report, October 2019 (GTAA). The need for the Council up to 2028 as is set out in the GTAA is for 6 pitches. The GTAA also shows that the Council cannot demonstrate a 5 year supply of deliverable sites in accordance with the PPTS. These matters are not in dispute.
25. In relation to the supply of pitches under Policy SWDP 45, the Council is taking an approach with the neighbouring Malvern Hills District Council (MHDC) to accept commuted sum payments in lieu of provision. I was informed that one such payment had already been received. The monies are to be used to set up a site which I was told that MHDC are taking a lead on. More broadly, the Council has also been working to produce a development plan document that would be intended to meet the need for Gypsies, Travellers and Travelling Showpeople. This has however been paused until policy submitted as part of the SWDP review has been considered.
26. While I do not consider this amounts to a policy failure as the Council is seeking to make provision related to the urban extension through commuted sums and by way of the DPD, clearly there are a lack of available, suitable and affordable sites for the Gypsy and Traveller communities. The proposal would provide for such a site. There would also be likely benefits for the Gypsy and Traveller communities due to the social interaction and well-being from living on such a development.
27. In exercising my function on behalf of a public authority, I am also consciously aware of my duties under the Public Sector Equality Duty (PSED) contained

within the Equality Act 2010 which sets out to eliminate discrimination, harassment and victimisation, advance equality and foster good relations, and the protected characteristics under the PSED, including for Gypsy and Traveller groups. I am also aware of my duties under Article 8 of the Human Rights Act 1998 (Article 8) that bestows the right to private and family life and for the home, and that the Article 8 rights of a child should be viewed in the context of Article 3(1) of the United Nations Convention on the Rights of the Child.

28. While the intended occupiers of the proposal and therefore the personal circumstances are not known, the provision of pitches would be of benefit to future occupiers to provide a settled base, as well as serving the best interests of the children. These are matters that weigh significantly in favour of the proposal.

Other Considerations

29. Public Rights of Way 500 and 533 (PRoW) cross the far eastern part of the site, close to the footway and cycle path. They are currently inaccessible and overgrown. The proposal would involve reinstating the PRoW from the footway and cycle path so that it would provide access to the site for pedestrians. It would also access the proposed allotments and orchard on the site. The S106 Agreement through the related planning obligation provides for a financial payment that would be used by the County Council to reinstate this section of PRoW. The S106 Agreement also includes the provision and maintenance of landscaping arrangements, and a children's play area.
30. While the PRoW would be required in order for the proposal to be accessible for pedestrians and there was some discussion at the Hearing over whether the allotments would be necessary, in recreational terms the PRoW and the allotments would be of some modest benefit. The same applies with biodiversity as there would be some measurable gain as required by paragraph 185 of the Framework, and similarly economically from the construction and management of the proposal.
31. While I note that the appellant considers the design, green infrastructure and landscaping to be of benefit, these also need to be considered in the context of where I have found harm over the spatial strategy and character and appearance. Hence, they do not favour the proposal. That the proposal would be accessible to public transport, local services and active travel modes is needed in order for the proposal to be not unacceptable, and so is neutral.
32. Interested parties have raised a number of cogent issues, which in particular focus on highway safety by virtue of accessing this stretch of the A4440 and whether the future occupiers would have suitable living conditions with the proximity to this road. Other planning issues raised include the effect on the living conditions of existing residents, drainage, effects on local infrastructure and public health. I do not find unacceptable harm on these issues, including through the use of planning conditions to deal with a number of these matters, if I had been minded to allow the appeal.

Balancing Exercise and Conclusion

33. The proposal would have unacceptable effects on two counts. It would not accord with the spatial strategy for the area, including the urban extension and the LGN. It would also have an unacceptable effect on the character and

appearance of the area. Such matters attract collectively very significant weight in my decision, in particular as there would be a conflict with the plan led approach.

34. In coming to this view, I have also considered whether a temporary permission would satisfactorily overcome the harm. As the Council cannot demonstrate a 5 year supply of deliverable sites, this is a significant consideration. However, this would still result in conflict with the spatial strategy and harm to the character and appearance of the area, even over a shorter time period. Nor did the parties at the Hearing consider there were circumstances that would warrant a temporary permission.
35. Against the harm that I have identified, it is necessary to balance the other considerations. In this case, these centre on the need and supply of pitches for Gypsies and Travellers, and to a lesser degree a number of economic, social and environmental benefits. Together, these matters attract significant weight in favour of the proposal, especially with the lack of available, suitable and affordable sites.
36. In considering my duties under the PSED, Article 8 of HRA and the best interests of the child, I also have to consider the wider public interest. The spatial strategy and character and appearance are such legitimate matters of interest. Taking into account all of the considerations, I am satisfied that this objective can only be adequately safeguarded if the proposal does not proceed. Not granting planning permission would therefore be a proportionate response that would not violate potential occupiers' human rights.
37. In concluding, I have considered all matters that have been raised, but the benefits that would arise would not outweigh the harm caused by the proposal. For these reasons, I conclude that the proposal conflicts with the development plan when taken as a whole and there are no material considerations to outweigh this conflict. Therefore, the appeal should be dismissed.

Darren Hendley

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Matthew Williams	Planning Consultant, Williams Gallagher
Neil Furber	Landscape Director, Pegasus Group
Roger Lethem	Appellant
Elliott Williams	Williams Gallagher

FOR THE LOCAL PLANNING AUTHORITY:

Paul Round	Service Manager, Development Management
Duncan Rudge	Head of Planning
Hannah Millman	Planning Policy Manager

INTERESTED PARTIES:

Councillor Elena Round	Worcester City Council
Councillor Steve Mackay	Worcestershire County Council
John Renshaw	Chair, St. Peter's Parish Council
Jason Tait	Planning Prospects (on behalf of St. Modwen Homes)

DOCUMENTS SUBMITTED AT/AFTER THE HEARING

1 South Worcestershire Gypsy and Traveller Accommodation Assessment Final Report, October 2019

2 St Modwen Homes Footpath Route Plan

3 Deed of Agreement and Planning Obligations Section 106 Town and Country Planning Act 1990 (as amended) relating to land off Broomhall Way, Worcester dated 27 June 2024 (engrossed)