



Appeal Decision

Hearing held on 16 July 2024

Site visit made on 16 July 2024

by A Owen MA BA(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5 August 2024

Appeal Ref: APP/K2420/W/24/3343996

Land south of Normandy Way, adjacent 12 Newquay Close, Hinckley

- 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 D Winter against the decision of Hinckley and Bosworth Borough Council.
 - The application Ref is 24/00016/FUL.
 - The development proposed is change of use of land to provide 4 no. gypsy and traveller pitches including day rooms with associated landscaping.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The four proposed pitches would be shared by five families. The families are all part of the appellant's wider family. All the families are known to the County Council's Multi Agency Traveller Unit (MATU) who are aware of their lifestyle and work patterns. There is no dispute regarding their gypsy status and I have no reason to disagree.
3. Following the hearing, a draft revision to the National Planning Policy Framework was issued for consultation alongside a Written Ministerial Statement. Neither introduce issues relevant to the pertinent considerations in this appeal and therefore I have not sought comments on it from the parties.

Main Issues

4. The main issues are the effect of the proposal on highway safety and the effect on the character and appearance of the area with particular regard to the site's location within the Green Wedge.

Reasons

Highway safety

5. It is not disputed that the development would involve an increase in vehicle movements using the existing access over and above the existing movements involved in the maintenance of the site and the horse that grazes on it. A figure of 30 two way trips was agreed to be a reasonable estimate accounting for the fact that the site is within reasonable walking distance of some of the shops and facilities in Hinckley. There is also agreement that there is sufficient

- visibility from the access based on the measured speeds of traffic on the road, and that the geometry of the access would meet the required standards.
6. Normandy Way (the A47), at the site access, has a speed limit of 60mph. It is a busy road, acting as a bypass around Hinckley and connecting the town to nearby villages. This has resulted in it being designated part of the County Council's Resilient Network and the Major Road Network.
 7. Speed survey data has shown average speeds of vehicles passing the site are around 50mph with speeds of vehicles travelling westwards into Hinckley slightly slower than the speed of vehicles travelling eastwards out of Hinckley. This is because a short distance to the west of the access the speed limit is 40mph so vehicles would be slowing down, whereas the opposite is true for eastbound vehicles.
 8. The character of the A47, at the point of access, is rural; being flanked by trees, having no street lighting and with no side roads. The access, which would be around six metres width, emerging between trees and serving residential development, would be unexpected. When the 40mph zone starts, there is street lighting, the junction of Cornwall Way is close by and the houses on Newquay Close and Cornwall Way are prominent, so the road is more urban in character.
 9. For vehicles turning right into the site, a dedicated turning space would be provided on the central reservation area where vehicles could wait clear of the flow of traffic. I understand there would be sufficient room for this to be provided and for vehicles to pass. However any vehicles in the waiting area would visually narrow the road and I consider it likely most passing vehicles would slow down as they passed. Moreover as the speed surveys show traffic in this direction would be speeding up, having to slow down again would be unexpected. Likewise vehicles which were turning right out of the access would be going much slower than traffic on the main carriageway which would be travelling at around 50mph and would be speeding up.
 10. Vehicles travelling westwards towards the site would be slowing down in preparation for the 40mph zone and so braking would not be unexpected. However drivers may not be fully prepared for vehicles turning into the site in advance of the 40mph zone, even if there is a warning sign in advance. Vehicles turning left out of the site would very quickly be in the 40mph area. As visibility from the access to the right is good and vehicles would be slowing down, I consider the risk here is minimal.
 11. I understand there is no guidance relating to safe distances between vehicles on the road, rather it is expected that all drivers would be driving with due care and attention. Nonetheless, in my view, vehicles emerging from and entering the access would be out of character with the nature of the road at this point. This could lead to vehicle conflict and so would represent a compromise to highway safety.
 12. The low number of vehicle movements generated by the site would mean that such conflicts would be infrequent. However there is a high volume of traffic carried on the road and at high speed, and if such conflicts did occur the consequences could be severe. The fact that there have been no incidences so far associated with the existing infrequent movements of horses also has no

material bearing on my view, given the increase in movements the development would result in.

13. There has only been one accident on the A47 in the last five years near the site, which involved a vehicle turning right into Cornwall Way. The other recorded accidents nearby occurred at the junction of Ashby Road and Normandy Way which is a much busier junction. Nonetheless this does not suggest the intensification of the access would be safe, especially bearing in mind it is on a faster part of the road than the Cornwall Way junction and less prominent.
14. The appellant suggests that were the A47 a trunk road, the access would most likely be acceptable as the National Highways guidance is that accesses that meet the technical standards are likely to be acceptable. However, it would be inappropriate to suppose what National Highways' view would be even if this were a trunk road.
15. In Summary, the development would conflict with policy DM17 of the Site Allocations and Development Management Policies document (2016) (SADMP) which states that development will only be supported where it is demonstrated there is not a significant adverse impact on highway safety. It would also conflict with Core Strategy policy 18 which requires gypsy and traveller development to have safe access.
16. It would also conflict with section IN5 of the Leicestershire Highway Design Guide which says the increased use of existing access will not normally be permitted on roads with a speed limit above 40mph. The Council advise this policy is being reviewed and the emerging equivalent policy takes a more risk-based approach. However, that emerging policy states that intensification of existing accesses will be assessed to ensure they do not result in unacceptable road safety concerns. The proposal would therefore conflict with this draft policy too.

Character and appearance

17. The site is bounded to the west by the houses in Newquay Close and to the south by a vegetative buffer separating it from more dwellings. All these houses are within the development boundary of Hinckley, whereas the site is outside that boundary and in the open countryside for planning policy purposes. There is open land to the west.
18. The north boundary of the site, alongside the A47, is demarked by a tree screen. The south and eastern boundaries are similarly vegetated. The trees are currently in full leaf but I would anticipate that even in winter, views through this vegetation to the site are limited. However there is a clear view of the site through the access. There is some vegetation on the western boundary, but it is lower in height than that on other boundaries and the adjacent house at No 12, and some of its neighbours, are clearly visible over it. Likewise, there would be a view over the site from some of the windows at No 12 as well as from other houses, aided by their position on slightly higher ground.
19. As set out above, the A47 is a heavily trafficked road. Despite the site visit taking place in the early afternoon and during the school holidays, noise from traffic was a constant feature while on the site. This noise and the visibility of

the adjacent houses from the site lend an urban characteristic to the area, whilst the vegetated boundaries and the site's current grazing use contribute a rural feel. Overall, they combine to give the site an urban fringe character. The proposal would be fairly low density and, with a significant amount of buffer landscaping, would not be inconsistent with its urban fringe setting.

20. However the site is also designed as Green Wedge. The explanatory text to Policy 6 of the Core Strategy (2009) states that the aims of the Green Wedge are to protect the separation of Hinckley, Barwell and Earl Shilton, and to provide easy access to green spaces for residents in the urban areas. The site is private land so the parties agree it is not expected to contribute to the second aim.
21. It does however contribute to the separation of Hinckley from Barwell. Due to the presence of the A47 the development would project no further north than the adjoining houses. It would also project no further east than the houses to the south. However it would be further to the northeast than the neighbouring houses, and it is in that direction that Barwell lies. Furthermore, when travelling along the A47, which is from where this part of the Green Wedge is most readily be appreciated, it would appear to extend Hinckley further along the A47 towards Barwell. The provision of the static and touring caravans, the dayrooms, the hardsurfacing and other residential paraphernalia would visually represent works that would result in the loss of Green Wedge. This would be apparent when seen through the access to the site, and also from the adjacent houses, particularly as proposed landscaping cannot be relied upon completely. I accept that it is not necessary for gypsy and traveller development to be completely hidden from public view. Nonetheless, in this case, clear views from nearby houses and from the A47 by pedestrians, cyclists and motorists would be possible.
22. The site represents a very small part of the Green Wedge. However the loss of even a small part of the green wedge would have an impact and cumulatively such small impacts would undermine the purpose of the Green Wedge. Policy 6 says that any land use in the Green Wedge should retain the function of the Green Wedge. The proposal would fail to do this.
23. Some forms of development are identified by policy 6 as being acceptable in the Green Wedge, but the list does not include gypsy and traveller development. The Planning Policy for Traveller Sites (PPTS) recognises that gypsy and traveller development is not unacceptable in the countryside, other than in the Green Belt. However, I do not consider there to be conflict between policy 6 and the PPTS because the list of forms of development that the policy says are acceptable is not exhaustive. It does not suggest that gypsy and traveller development is unacceptable in the Green Wedge. Rather, it says any development should retain the function of the Green Wedge, which is a matter of judgement.
24. Likewise, Core Strategy policy 18, which refers to the provision of gypsy and traveller accommodation, states that permission will be granted for such accommodation providing it is within or adjacent to the settlement boundaries of Hinckley Burbage, Barwell and Earl Shilton. The development would accord with this. As set out above, the land between Hinckley, Barwell and Earl Shilton is Green Wedge. However there are areas in or adjacent to Hinckley, Burbage, Barwell and Earl Shilton which are not Green Wedge, so it would be possible for

- gypsy and traveller development to accord with both policy 6 and 18. There is therefore no direct conflict between these two policies either.
25. However, it is understood that much of the land outside the Green Wedge and on the edge of the settlements is in demand for housebuilding, so naturally is of higher value and hence most likely beyond the means of the Gypsy and Traveller community. The planning permission for 475 houses on the north edge of Hinkley is indicative of this. It is also the case that the south western edge of Hinckley is in a neighbouring Borough. So I appreciate in practical terms, in this respect, there is a degree of conflict.
26. Furthermore as the site is adjacent to the settlement boundary, there would be no conflict with paragraph 25 of the PPTS which says local planning authorities should very strictly limit new traveller sites away from existing settlements. In addition it is noted that gypsy and traveller sites are not uncommon features in the countryside.
27. The parties disagree on the interpretation of policy DM4 of the SADMP which aims to protect the character of the countryside. However both parties agree the list of forms of development which the policy identifies as being sustainable, is not exhaustive. That being the case, it would seem to me that the criteria listed in points i) to v) should apply to all forms of development. Indeed, paragraph 13.11 of the explanatory text to the policy would also suggest this, as it says the criteria in the second half of the policy apply to any development. Criteria iv) says that development in the Green Wedge needs to protect its role and function in line with policy 6. As I have found it does not protect its function, it would conflict with part iv) of Policy DM4.
28. Notwithstanding this it is not disputed between the main parties that the site is not in an unsustainable location, would cause no ecological harm and that the provision of four pitches would be a social benefit. However, the harm that would be caused to the Green Wedge by virtue of the development on a currently undeveloped field would, in my view conflict with the environmental strand of sustainability.
29. Overall the proposal would harm the character and appearance of the area by virtue of resulting in the loss of a part of the Green Wedge. It would therefore conflict with policies 6 and DM4 as set out above. It would also therefore conflict with Core Strategy Policy 20 which also seeks to maintain the Green Wedge.
30. My attention was directed to the development of an allocated site on the southwest side of Barwell which, I was advised, closed the gap to Hinckley by 55m. Nonetheless that does not affect my view. Indeed it raises the importance of the remaining land in the Green Wedge in retaining the function of separation. I also understand there are a number of sports facilities, a short distance away, that are in the Green Wedge, but these would be supported by policy 6. The nearby Dorothy Goodman School is also located in the Green Wedge, but I am not aware of the circumstances that lead to this. In any case, such other development should not be used to justify an unacceptable encroachment into the Green Wedge that would result from the current proposal.
31. With regard to the planning permission for 475 houses on land on the north edge of Hinckley, the officer's report identified conflict with policy DM4.

However, it was considered that the existing developed edge of Hinckley and the A47 strongly influenced the character of the site. I agree that in this respect that site is comparable with the appeal site. However, that site was not in the Green Wedge, which is a key material difference. Similarly though planning permission was granted for 10 pitches on a site next to Dalebrook Farm, which is in the countryside and is detached from any settlement, that was also not in the Green Wedge. It was also approved before the SADMP was adopted.

Other Matters

32. The Council accept they have no five years supply of gypsy and traveller pitches. This is contrary to paragraph 10 of the PPTS and is a matter to which I give substantial weight. Moreover, there presently appears little prospect of sites being allocated for several years yet as evidenced by three call for sites exercises producing no responses.
33. A Gypsy and Traveller Accommodation Assessment was prepared in 2022 to support an emerging Local Plan which indicated a need for 53 pitches. But that Plan has now been withdrawn and I was advised that the GTAA should carry no weight. However in the absence of any other figure it is at least a broad indication of the need. The broad size of the unmet need carries significant weight.
34. There are no public sites in the Borough and all public sites in Leicestershire are full or are in such poor condition such that there is no effective capacity. I understand a site at Whitegates in Blaby Borough is to open in the autumn, but the Council could provide no other details of this. Despite this, they accept there is still an unmet need.
35. The 2016 GTAA identified a need for 7 pitches which were to be provided at Dalebrook. I understand Dalebrook has never been built despite being granted planning permission. I also understand permissions for 14 pitches elsewhere have been granted since 2016. Clearly then, despite the failure of Dalebrook to be realised, the Council have granted permissions to meet the previous identified need, even if that figure now appears to be out of date.
36. With regard to personal circumstances, the appellant and the other families that would occupy the site are currently living at a variety of sites elsewhere. Mr Winter lives at a transit site in Nuneaton and has been doing so for about three years. There is no security of tenure here and no private sanitary facilities. Moreover the site is cramped and there is little space for his mother, who needs care, to come and stay occasionally to reduce the burden on his father.
37. The appellant's cousin, Mr Sykes, has lived in a bricks and mortar house in Hinckley for 17 years and has a bowel disease. One of his sons and his wife have been living on the adjacent transit site for around two years. His other son lives in an adjacent bricks and mortar house and has a daughter who has significant disabilities and learning difficulties.
38. Another of the appellant's cousins, Mr Mulvenna, lives at a site in Market Harborough and has done so for 20 years. However the pitch is large enough only for a touring caravan. He has a young son with autism and his wife has a

heart condition. Both his son and his wife have appointments at Glenfield Hospital in Leicester a few times a year.

39. Altogether, there are five children of school age who would live at the site. Three of them are teenagers and are home-schooled. Of the other two, one is enrolled at Dorothy Goodman special school which is close to the appeal site. The other is currently in mainstream school but, because of his autism, requires a place at a special school.
40. All of the intended residents of the site are registered with doctors' surgeries in Burbage.
41. Clearly it is untenable for the families to be living on transit sites, in bricks and mortar housing which is incompatible with their culture, or on cramped pitches. The settled base that the site would provide would be a significant advantage to the families and I give this significant weight.
42. The families are all currently locally based and accessibility to educational or medical facilities, as well as the Light and Life Church which forms a major part of their lives, would be broadly the same from this site as it is from their current locations. There would therefore be no particular medical or educational benefits to them being at the appeal site.

Conclusion

43. The Council's failure to provide a 5 year supply of sites, the lack of any prospect in the short term of allocations being made, a substantial unmet need and the lack of any suitable alternative sites available to the appellant and his wider family all carry substantial weight.
44. I give significant weight to the harm to the Green Wedge, but I give greater and considerable weight to the harm to highway safety.
45. I have had regard to 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, including the traditions and culture associated with the gypsy way of life. It is a qualified right, and interference may be justified where that is lawful and in the public interest.
46. Dismissing this appeal would likely interfere with the appellant and his family's rights under Article 8 in that they have no other acceptable accommodation available to them. However, interference with those rights in this instance would be in accordance with the development plan policies which seek to protect the Green Wedge and highway safety.
47. That balance is subject to the best interests of children. There is no consideration more important than the best interests of children. I recognise that living on a transit pitch, on a cramped pitch, or in bricks and mortar housing is not the settled base that the appeal site would be. Despite this, it would not be in the children's best interests to move onto a site which has unsafe access.
48. Gypsies share the protected characteristic of race for the purposes of the Public Sector Equality Duty under s149 of the Equality Act 2010 which sets out the requirement to have due regard to the need to eliminate discrimination and advance equality of opportunity between persons who share a relevant

protected characteristic and persons who do not. I consider the harms resulting from the development, as identified above, would outweigh the benefits in terms of advancing equality.

49. I have considered the possibility of granting planning permission temporarily, and the parties suggest that a four year consent would allow time for the Council to adopt a new Local Plan with allocated gypsy and traveller sites. However although a temporary permission would have a lesser impact on the Green Wedge, it would not reduce the unacceptable risk to highway safety for the occupants of the site and other highway users. For the same reason, though I have considered a personal permission, there are no personal circumstances that outweigh this harm.
50. Consequently, I conclude that the proposal would fail to accord with the development plan as a whole. There are no material considerations that indicate that a decision should be taken otherwise than in accordance with it. As such, the appeal is dismissed.

A Owen

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr David Winter	Appellant
Mr Luke Mulvenna	Appellant's cousin
Mr Samson Sykes	Appellant's cousin
Mrs Alison Heine	Agent
Mr Matthew Lennon	Lennon Transport Planning Ltd

FOR THE LOCAL PLANNING AUTHORITY

Mr Sullivan Archer	Planning Case Officer
Mr Tim Hartley	Planning Team leader
Mr Ben Dutton	Leicestershire County Council Transport Planner

INTERESTED PARTIES

Cllr Scott Gibbens	Borough Councillor
Cllr Michael Mullaney	Borough Councillor
Cllr Linda Hodgkins	Borough Councillor
Cllr Stuart Bray	Borough Councillor
Steve Beck	Local resident
John Spencer	Local resident
Cheryl Spencer	Local resident
Stuart Robinson	Local resident
Mr Mead	Local resident