

Appeal Decision

Hearing held on 18 September 2024

Site visit made on 18 September 2024

by A Owen MA BA(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 October 2024

Appeal Ref: APP/J0405/W/24/3341663

Nash Park, Winslow Road, Great Horwood, Buckinghamshire MK17 0FD

- 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 T Reilly against the decision of Buckinghamshire Council - North Area (Aylesbury).
 - The application Ref is 20/02755/APP.
 - The development proposed is change of use of land to 6 Gypsy/Traveller pitches with associated works including, 6 no. mobile homes, 6 no. touring caravans, 6 no. day rooms, and 6 no. cesspits incorporating detailed landscape scheme.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application as originally submitted was for 13 pitches. During the determination of the application, the number of pitches was reduced to six, albeit the size of the appeal site is unaltered and this is reflected in the submitted plans. I have considered the appeal on this basis.

Main Issue

3. The main issues are the effects of the proposal on the character and appearance of the area, the nearest settled community, flooding and biodiversity.

Reasons

Character and appearance

4. The appeal site is located to the rear of Nash Park which is an existing gypsy and traveller site accommodating 18 static caravans across 17 pitches. The site is bordered to its north and south by hedgerows of around 3 – 4 metres in height, and to its eastern side by a much taller conifer hedge. The plans show the land falls towards the east by around four metres across the site. The surrounding land, with the exception of the existing caravans on Nash

Park and a single domestic caravan on the adjoining land to the east, is predominantly agricultural. The site is undeveloped.

5. In terms of visual impacts of the proposal, the appellant's Landscape Statement acknowledges that due to intervening vegetation, the development would not be visible from Winslow Road. The development would, however, be visible from positions¹ along Little Horwood Road to the east. It identifies the sensitivity of these viewpoints as being medium. In addition to these however, I noted the site was visible from the footpath within College Wood, a matter also recognised by the Council. This view was not assessed in the Landscape Statement. Although this view may be taken more leisurely than those along the road it is at a slightly greater distance and is through gaps between trees and bushes. I would consider it to also be of medium sensitivity.
6. The Landscape Statement suggests the magnitude of the effect of the development on viewpoints 5 and 6 would be low due to hedgerow screening. From here, the east and southern sides of existing caravans in Nash Park are clearly visible at the top of the slope. However the proposed caravans would be more visible from these positions as they would extend down the east facing slope. Similar views would be possible from within College Wood. The spread of caravans over this slope would represent a significant visual extension to Nash Park. The Council suggest the magnitude of the effect would be medium and in my view this is more likely.
7. As such, using the tables in the Landscape Statement, the significance of the visual effect on viewpoints 5 and 6 and on positions within College Wood, would be moderate.
8. The appellant suggests the visual impacts would be reduced by landscaping. However, given the slope across the site, I would not be confident that planting would successfully mitigate the visual effect such that it could be considered to be reduced from moderate to minor.
9. In terms of landscape character impacts, the site is within the Undulating Clay Plateau landscape character type as set out in the Aylesbury Vale Landscape Character Assessment, and within the A421 Ridge sub area of that. This identifies that the area is intrinsically rural and predominantly used as grassland with dispersed farmsteads. It also states that the sensitivity of the landscape is moderate.
10. The appellant advises this assessment, which was undertaken in 2008, does not account for the existing caravans at Nash Park, which were introduced after that, and hence the sensitivity should be downgraded to medium/low. The Council do not disagree. However they consider the assessment of the effects of the development on landscape character is misjudged and uses visual impact to conclude the landscape effect would be minor adverse. I agree that the Landscape Statement conflates the two distinct aspects of Landscape and Visual Impact Assessments using visual impacts to instruct landscape impacts.

¹ viewpoints 5 and 6 in the Landscape Statement

11. Nonetheless, I would consider that the magnitude of the landscape change is low given the size of the site in its wider context and the presence of the existing caravans. Using the table in the Landscape Assessment, a low magnitude of change on a landscape of moderate sensitivity would result in a minor impact.
12. Overall, despite the proposed landscaping, there would be a moderate visual impact on multiple viewpoints and a minor landscape impact. These are both harmful impacts. Though the results of such assessments inform the consideration of a proposal against development plan policy, there is not a formulaic relationship. In this case I consider the minor adverse landscape impact and moderately harmful visual impact would result in a significant effect on the character and appearance of the area.
13. I recognise that caravans are not uncommon features in the countryside and that the advice in the Planning Policy for Traveller Sites (PPTS) says that such sites should not be completely enclosed. Indeed, the existing caravans at Nash Park are testament to this and mean the proposal would not represent the introduction of an alien use in the area. Nonetheless the spread of the proposed use over a large area, in addition to the existing site, would result in a large sprawl of caravans, day rooms and other paraphernalia. This would be visually prominent in this rural setting.
14. As such it would conflict with part d) of policy D11 of the Vale of Aylesbury Local Plan which requires gypsy and traveller development to not have a significantly adverse impact on the countryside and landscape. Likewise it would conflict with Local Plan policy NE4 which says development should not be visually prominent in the landscape.
15. There would also be conflict with Local Plan policy S3 which states that development in the countryside should not compromise the character of the countryside, and Policy 1 of the Great Horwood Neighbourhood Plan which advises against development outside settlement boundaries which harms countryside interests.

Nearest settlement

16. It is agreed that the nearest settlement is the village of Nash. There are 417 people in 195 houses in Nash. The development, along with the existing site, would result in a total of 23 pitches at Nash Park. In a purely numerical sense it is clear that 23 pitches could not be said to dominate a settlement of 195 homes.
17. The distance between the site and Nash is also relevant. The southern edge of Nash is around 600 metres north of the site. Although there some limited development in between, I consider that the distance assists in negating any dominating effect, though the gap is not so great that existing residents of Nash Park do not use the facilities within Nash, such as the recreation ground.
18. The Council also suggests that the extent of the amenities in Nash is relevant. However as, usually, the level of amenities in a settlement is broadly proportionate to its size, I do not consider this adds any extra

dimension. Indeed, the PPTS does not refer to the extent of amenities when advising that sites should not dominate nearest settlements.

19. In summary the development, even when considered in combination with the existing gypsy site, would not dominate the nearest settlement. It would therefore accord with the PPTS and part e) of Local Plan policy D11.
20. Part h) of policy D11 adds that there should not normally be more than 15 pitches on any one site. Due to the close relationship between the proposed and existing site it would be appropriate to consider them as one site. On that basis the proposal would result in a conflict with this part of policy D11. However this additional restriction on the scale of a site is not reflected in the PPTS. I therefore give little weight to this conflict.

Flooding

21. The site and the surrounding land falls from west to east. Much of the site would be surfaced in quarry dust which I understand would be permeable. However the provision of the access road and the footprint of the dayrooms would represent an increase in the impermeable area of the site. Therefore there would be an increase in surface water run off towards the east of the site, and possibly onto the neighbouring property to the east.
22. The parties agree that some mechanism to deal with surface water would be required. No formal assessment to demonstrate what mechanisms would be feasible has been provided. The Council suggest that due to underlying ground conditions it is not certain that soakaways, as suggested on the application forms, could be used. Moreover, due to the proposed layout of the site, it is not clear that there would be room for other drainage systems such as storage ponds to be provided, given that the required size for these has not been calculated.
23. The planning permission for the existing site, dealt with surface water drainage by virtue of a planning condition which required the submission of further details. The Council accept that this condition was discharged in 2017, but added that the details submitted to do that would not be considered sufficient today.
24. The appellant referred to other appeal decisions where this matter had been dealt with by a condition. In the case of the recent Gawcott decision², the Inspector had a Sustainable Drainage Assessment before him which demonstrated that there would be sufficient room for soakaways even if infiltration wasn't possible. There are no such details before me suggesting a similar approach would be reasonable. Likewise, in the Edgcott appeal³, the Inspector noted that over half the appeal site would not be developed and so there was ample room for surface water drainage solutions. Due to the layout of the site in this appeal there is little room for any surface water drainage systems.
25. As such, due to the lack of any proposed drainage details and the consequent lack of certainty that an acceptable solution could be found, I

² Appeal Ref APP/J0405/W/23/3334857

³ Appeal Ref APP/J0405/W/23/3332664

cannot conclude that the proposal accords with policy I4 which seeks to ensure that developments minimise the impacts from all forms of flooding.

Biodiversity

26. A Preliminary Ecological Appraisal (PEA) had been undertaken six years ago in connection with a previous proposal for the site. This found no evidence of protected species. The Council advise that any survey older than three years is no longer effective. I agree that the PEA is of little use in assessing the potential for protected species at present. Furthermore as the appeal site is largely covered with ruderal vegetation and has trees and hedgerows along its boundaries, it is not unreasonable to consider the site could accommodate a range of species and which it may not have done six years ago. The failure to provide an up to date ecological survey is contrary to Local Plan policy NE1 which says ecological surveys are expected for planning applications.
27. In addition, policy NE1 states that a measurable gain in biodiversity is necessary on all developments. A comprehensive landscaping scheme has been provided showing substantial numbers of trees, significant lengths of hedgerows, plus bulbs and other planting to be provided.
28. Whilst it is accepted that there is no need to provide the statutory 10% Biodiversity Net Gain, it is not possible to be satisfied that there would be any net gain without any calculation of the existing degree of biodiversity that would be lost. I consider therefore that the development would conflict with policy NE1 for this reason too.
29. Reference was made to the Edgcott appeal decision where it was found that biodiversity net gain could be demonstrated in details secured by condition. However, as set out above, over half of that site was to remain undeveloped so there was high confidence that a net gain in biodiversity was achievable. In the scheme before me the vast majority of the site would be developed, despite the extensive landscaping proposed.
30. Policy NE2 relates to rivers and streams. The PEA had noted the presence of a drainage ditch that ran along the southern edge of the site. At the site visit there was little conclusive evidence of a ditch and certainly not one that contained water. Even if it did, it would be feasible for the 10 metre ecological buffer required by policy NE2 to be provided. There would therefore be no conflict with this policy.

Other Matters

31. The Council accept that, in light of the Gawcott decision, they cannot demonstrate a 5 year supply of traveller sites as set out in paragraph 10 of the PPTS. Also there are no public sites in Buckinghamshire and no vacant pitches on any private site in the county as available alternatives to the appellant. These factors carry significant weight in favour of the proposal.
32. Moreover the Council accept that they have no substantive evidence to demonstrate what the current unmet need for sites is. Though I acknowledge their suggestion that the unmet need could be limited, it is equally true that the unmet need could be substantial. Indeed the appeal

decisions relating to Sunset Park Homes⁴ in December 2022 found that the 2017 GTAA had significantly underestimated the need for pitches within Aylesbury Vale. In the absence of any more recent evidence to the contrary, it is reasonable to assume the unmet need is more likely to be of a substantial nature. This is also a matter of significant weight.

33. Aside from the general need, the appellant has a personal need. The appellant would live in one of the pitches on the site with the other five pitches being occupied by his cousins or other family members, and their families. They currently all live at different locations across the country with three of the families living on the roadside and two doubling up on existing sites; neither of which provide long term security of tenure. They wish to live together, primarily for cultural reasons, but also as it is more economic instead of paying for sites or pitches individually.
34. I understand there would be 13 children living at the site. I heard that all of these children are of school age though there are no further details of this. Nonetheless the proposal would allow for the children to attend the local school in Great Horwood whereas at present all the children of school age, are home schooled. There is a GP surgery in Winslow and there is further healthcare provision in Milton Keynes, a short distance away. Four of the intended occupiers have physical conditions which need treatment and four have mental health conditions, including anxiety stemming from the insecurity of their current accommodation. The proposal by providing opportunities for full time education, access to healthcare and addressing their anxiety would be of considerable benefit to them.

Planning Balance

35. The development would harm the character and appearance of the area. In addition it has not been satisfactorily demonstrated that surface water from the site can be appropriately dealt with, nor that the development would not harm biodiversity. These harms all carry considerable weight. The development would not dominate the nearest settlement and hence would accord with policy D11 in this regard. Nonetheless for the reasons given above, the proposal would fail to accord with the development plan taken as a whole. There would be a resultant conflict with Local Plan Policy S1 which supports development which is in accordance with the development plan.
36. Balanced against that, the unmet need, the Council's failure to allocate sites in accordance with the PPTS, the lack of any acceptable alternative sites and the personal needs of the appellant and his wider family all attract significant weight.
37. 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.
38. Dismissing this appeal would likely interfere with the appellant and his wider family's rights under Article 8 in that they have no other lawful

⁴ Lead appeal Ref APP/J0405/W/22/3295746

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 character and appearance of the area, ensure development is satisfactorily drained and that biodiversity is protected.

39. That balance is subject to the best interests of children and there is no consideration more important than that. I recognise that unlawfully doubling up on pitches or living by the roadside is not the settled base that the appeal site would be. Therefore, being at the site would be in their best interests. Nonetheless those interests are not necessarily determinative.
40. Gypsies share the protected characteristic of race for the purposes of the Public Sector Equality Duty (PSED) 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. The development would allow the occupants the opportunity to foster good relations with the settled community. However the harm resulting from the development would outweigh these benefits in terms of advancing equality. Dismissing the appeal would therefore be a proportionate response to the PSED.
41. Overall the proposal would fail to accord with the development plan as a whole. The other material considerations including the application of the Human Rights Act, the PSED and accounting for what is in the best interests of the children, do not outweigh the conflict with the development plan.
42. The appellant suggests that if it would not be acceptable to grant permission for the use of the site as applied for, a personal or a temporary permission should be considered. A personal permission would not be justified as I have already determined that their personal circumstances do not outweigh the harms.
43. A temporary permission for 4 or 5 years as suggested by the parties would allow for the Council to adopt their Local Plan which would allocate Traveller sites. This could reduce the impact on the character of the area as the harm would be for a limited period. However the harm to flooding and biodiversity would not be mitigated by a temporary permission as during that temporary period the site may suffer from surface water flooding and irrevocable harm to species could occur. As such the harms would still be of such weight that the other considerations would not outweigh them.

Conclusion

44. 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

Simon Ruston	Ruston Planning
Rhodri Crandon	Landscape consultant
David Reilly	relative of appellant
Michael Ward	relative of appellant
Mr Doran	relative of appellant

FOR THE LOCAL PLANNING AUTHORITY

Phillipa Jarvis	Consultant of behalf of Buckinghamshire Council
Jason Small	Senior Sustainable Drainage Officer
Emma Foster	Ecology Officer
Louise Anderson	Principal Planning Policy Officer
Emily Brown	Senior Policy Officer

OTHER INTERESTED PARTIES

Michael Williams	Chair of Nash Parish Council
Michelle Crack	Local resident
Miss Rowe	Local resident

DOCUMENTS SUBMITTED AT THE HEARING

Impact Statement from Nash Parish Council