



Appeal Decision

Hearing Held on 21 November 2024

Accompanied site visit made on 21 November 2024

Unaccompanied site visits made on 18 September and 20 November 2024

by Philip Major BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State for Housing Communities and Local Government

Decision date: 29 November 2024

Appeal Ref: APP/J1860/W/24/3339751

Land off B4208, Castlemorton, Malvern WR13 6BS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr J Smith against the decision of Malvern Hills District Council.
 - The application Ref: M/23/00437/FUL, dated 23 March 2023, was refused by notice dated 13 October 2023.
 - The development proposed is the change of use of land to 3 No Traveller pitches and associated works including 3 No day rooms, 3 No mobile homes, 3 No touring caravans and hardstanding.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr J Smith against Malvern Hills District Council. This application is the subject of a separate decision.

Preliminary Matters

3. The hearing was postponed from an earlier date in order to await the publication of an updated Gypsy and Traveller Accommodation Assessment (GTAA). This was published in October 2024 and informed discussion at the hearing.
4. It is agreed between the parties that the Council is unable to demonstrate a 5 year supply of land for traveller sites and that there is at least a moderate (the Council) but more likely a significant (the Appellant) future need. On the Council's evidence from the GTAA the current need is a minimum of 15 pitches in the period 2024 to 2029. The Appellant questioned the basis of the GTAA calculations for future need and suggested that need is in fact likely to be greater than that included in the GTAA.
5. It seems to me that the Appellant's arguments in this respect are of merit and that the realistic requirement for future pitch provision is likely to be higher than suggested in the GTAA. This is in large part because the assumptions in the GTAA of demand from households currently residing in bricks and mortar accommodation are open to question. That is not something which was in the control of the Council during the updating of the GTAA. However, this is in any

case a moot point as I am satisfied on the figures in the GTAA that there is a current and future need for pitch provision at a significant level in order to address the lack of a current 5 year supply as well as future provision.

6. The Appellant suggests that there is a failure of policy to cater for traveller accommodation through the development plan process. I was told at the hearing that work on a new Gypsy and Traveller development plan document is progressing alongside proposed updates to the development plan. But in light of the current lack of a 5 year supply it seems to me that it is self evident that policy in relation to site provision has failed. This must add weight to the arguments in favour of granting planning permission.

Main Issues

7. The main issues in the appeal are:
 - (a) The impact of the proposed development on the character and appearance of the surrounding area and the Malvern Hills National Landscape (NL);
 - (b) Whether the proposed development would be suitably located in relation to available services and facilities;
 - (c) The planning balance.

Reasons

Landscape

8. The appeal site is located on the edge of the NL within the area described as Settled Farmlands with Pastoral Land Use in the Worcestershire landscape character assessment (LCA)¹. Key characteristics in this landscape are its pastoral land use, small to medium scale fields defined by hedgerows, scattered tree cover along hedgerows and watercourses, dispersed settlement of farmsteads and other dwellings, and a rolling topography. These characteristics can be observed at and in the immediate vicinity of the site, which is itself a small grass paddock with boundary hedgerows and trees.
9. The National Planning Policy Framework (NPPF) makes it clear that great weight should be given to conserving and enhancing the landscape and scenic beauty of National Landscapes (formerly Areas of Outstanding Natural Beauty). Although development in these areas, or their settings, is not precluded, the NPPF advises that such development should be limited and that any adverse effects on setting are avoided or minimised. Policy SWDP 23 of the development plan² follows these general principles and seeks to ensure that development within the NL should conserve and enhance the special qualities of the landscape. This policy is one of the most important in the determination of this proposal.
10. The scheme as proposed would seek to follow the LCA guidelines for land management by conserving hedgerows and trees, and promoting new planting. But on the converse side the existing grass paddock would be lost to development, which conflicts with a further land management objective of the LCA.

¹ Worcestershire Landscape Character Assessment 2012

² South Worcestershire Development Plan (2016)

11. The implementation of the proposed development, with 3 day rooms, 3 static mobile homes, and the introduction of extensive areas of hardstanding, would introduce features wholly alien to the established character of the immediate surroundings, albeit that there is scattered development nearby. The site boundary to the B4208 currently includes a hedgerow and trees, with a relatively narrow entrance appropriate to a small field. The proposal, in contrast, would establish a more formal access with hard surfacing and extensive visibility splays more characteristic of urban or semi urban locations. In addition the acknowledged requirement to cut back vegetation along the roadside would significantly alter the character of the roadside hedge. It would change from being a rural field boundary to a clearly defined and managed highway visibility splay of an entirely different nature. The informality of the current access and boundary treatment would be lost, and this would detract from the character of the surroundings. The change would be limited in spatial extent, but nonetheless would introduce an element of harm to the NL.
12. Furthermore, the site topography and shape requires that activity would be necessary along most of its north to south length. The comings and goings of vehicles, and the activity associated with normal day to day activities would be discernible. This would clearly indicate that the character of the land had changed from being a small pasture to being a residential location. Furthermore the relatively large day room structures and caravans would add yet more uncharacteristic features to this rural area.
13. Of great importance would be the change to the visual appreciation of the locality. As explained at the hearing I visited the site extensively, and included all of the viewpoints recommended by the Appellant. The public right of way (PROW) to the west is important in this respect. Whilst the western edge of the site has an established hedgerow it is possible to see through this feature during the winter months. In my judgement the buildings and caravans on site would be seen without difficulty by anyone using this PROW (noting here that a relatively small covering on a feed bale outside the entrance was in clear view during my visit on 20 November). The development would be a significant visual detractor within the NL, and would encompass a relatively wide arc of the view from the PROW. I do not accept that the landscaping proposed would offer sufficient mitigation to satisfactorily lessen the visual impact.
14. It is also my judgement that the roadside appreciation of the area would be visually harmed. The necessity to remove vegetation to create visibility splays would seem to me to be more extensive than suggested, and any replacement planting would take time to mature. I do not accept the suggestion that the hedges simply require flail cutting. My own observations lead me to conclude that far more brutal cutting of vegetation would be required. This would open up the site in the short to medium term such that it would be highly visible from the B4208 and the PROW on the land to the east. Users of the highway are less sensitive to the change than users of PROW but the change here would surely introduce harmful visual impacts to the NL and to its setting. The planting proposed in mitigation along the eastern side of the site would offer some minor longer term screening, but could do little to alleviate the removal of existing vegetation and views of activity and buildings/caravans.
15. The Malvern Hills Management Plan is material and it sets objectives which are consistent with the aim of preserving and enhancing the landscape. Amongst other things it seeks to promote positive landscape change. For the reasons given above I do not consider that this proposal promotes positive change.

16. To sum up on this issue it is my judgement that the proposed development would be unacceptably harmful to the character of the locality, and would also introduce severe visual harm. As the development would be located in a sensitive location within the NL I consider this to be a matter of substantial weight. There would be clear conflict with development plan Policy SWDP 23 in that the proposals would not conserve and enhance the special qualities of the landscape. There would also be conflict with the objectives of the NPPF to give great weight to the conservation and enhancement of the NL. Similarly there would be conflict with the objectives of the NL Management Plan.
17. Although I deal with development plan policy SWDP 17 in more detail below, this proposal would clearly fall foul of SWDP 17Cv. in that I do not accept there is sufficient mitigation here to offset significant visual impact. This policy is also one of the most important in this case. Furthermore there would be conflict with SWDP Policy 21, which seeks, amongst other things, to ensure that development complements its surroundings. SWDP Policy 25 has similar objectives with which this proposal would also conflict.

Location

18. The site is not far from the village of Welland, which has limited services, but does benefit from a primary school and village store/post office. A little further afield is Upton-upon-Severn, which provides a full range of services and facilities. It is not in dispute that in order to access the range of services required for day to day living it would be necessary for residents of the appeal site to make use of private motor vehicles.
19. The Council takes the view that the appeal site is, in effect, too remote from services and facilities and that access by means other than the private car (such as by public transport, cycling or walking) would not be feasible. Whilst I agree that access by means other than the private car would be unlikely here, that does not necessarily mean that the location is unsuitable, in principle, for the development.
20. Both main parties accept that Planning Policy for Traveller Sites (PPTS) which is to be read alongside the NPPF, indicate that sites in the open countryside away from existing settlements should be very strictly limited. But the Council's reason for refusal refers to the site being away from the nearest urban area. The Council has therefore applied the wrong 'test'. In any event there is no definition of what 'open countryside away from existing settlements' means in practice. It is a matter of judgement for the decision maker on a case by case basis, and I have information relating to various previous cases, in addition to my own experience of this type of casework. It is difficult to read across from one case to another because of their unique circumstances.
21. PPTS does not rule out sites in rural areas. A balance must be struck between the needs and aspirations of the traveller community and the objective to limit travel by private vehicle which are set out in both national guidance and the development plan. Policy SWDP 17 C sets out a number of criteria for assessing traveller site proposals. These include criterion i. – whether the site is within, or on the edge of, a town or category 1,2 or 3 settlement; and criterion x. – whether the site has reasonable access to health services, schools and employment. The policy does not mandate accordance with criterion i. and it is obvious that a judgement is required for criterion x.
22. Previous appeal decisions have made it clear that, subject to assessing the details of a particular scheme, a proposal can conflict with SWDP 17Ci. whilst

being in accordance with SWDP 17Cx. That is the situation here. A primary school, village store and post office are not much more than a mile away, and health services are available in Upton-upon-Severn less than 5 miles distant. It is not much further to secondary educational facilities. I therefore consider that the appeal site has reasonable access to health services, schools and employment, albeit that it would be almost entirely by private vehicle.

23. Taking this issue in the round I am satisfied that it has been demonstrated that the appeal proposal would be in a suitable location in relation to access to services and facilities. Overall I do not find conflict with SWDP17C in respect of its physical location. Of the remaining criteria of this policy which require a judgement I also find no conflict. In light of this conclusion there is no conflict with the objectives of SWDP Policy 4, which seeks in general to promote alternative modes of transport.

Other matters

24. At the hearing I was told that the intended residents of the site currently live in overcrowded conditions in the Gloucester area where toilet facilities are inadequate for the number of people who live there. There was no suggestion made that if this appeal is unsuccessful any of the residents would have to resort to a roadside existence, though I am conscious of the fact that it is not desirable that anyone should live in unsuitable conditions for longer than is necessary. It would also be important to ensure that any children are adequately catered for, and it is well known that the needs of the child are a primary concern in any case.
25. No alternative accommodation has been brought to my attention by either the Appellant or the Council, and as set out above the Council does not have a 5 year supply of sites. I understand that the Council is working on a development plan review, and that this is intended to be ready for adoption in the latter part of 2025. I was told that emerging policies are likely to be similar to those of the current development plan. However I must make my decision on the basis of the existing development plan and other material considerations. No draft policies have been put before me.
26. The standard of access to the site was criticised by some people who made representations. However the highway authority is content with the access point subject to the provision of visibility splays. But those splays would, in themselves, form part of the landscape harm. So, whilst technically possible, access to the site in a safe manner has consequential and unacceptable effects.
27. Some concern was raised in relation to ecological and archaeological interests. In addition external lighting is of concern. However I am content that these and other matters raised could be dealt with by condition in the event that I was minded to grant planning permission.

The Planning Balance, Human Rights and the Public Sector Equality Duty

28. There is an undisputed need for gypsy and traveller pitches in the Council area, and this carries significant weight in favour of the proposal. The needs of the Appellant for accommodation which is not overcrowded are also important. The needs of any children of intended site occupants are a primary consideration of substantial weight, but not necessarily determinative if other considerations of equal and other weight cumulatively carry greater force.
29. Of fundamental importance in this case is the finding in the first issue above that the site is unacceptable for the reasons set out there. The proposal would

introduce substantial harm to the character and appearance of the area and the NL and would be fundamentally in conflict with the development plan and national advice in this regard. The fact that the site is not so remote from services that it should be refused for that reason is not enough to outweigh the harm. The harm to the NL, and the great weight which must attach to that, in combination with the conflict with the development plan as a whole results in a conclusion that this proposal cannot be considered to be sustainable in the terms set out in the NPPF. This brings it into conflict with the overarching sustainability objectives of SWDP Policy 1. The harm clearly outweighs any positive support for the proposal in this case.

30. In considering this appeal I have taken account of the human rights of the Appellant and any dependents. Refusal of the proposal would interfere with their Article 8 rights and in all probability lead to further periods of living in overcrowded conditions. Those rights have to be balanced against the legitimate aims of what is necessary in a democratic society, including the protection of the countryside.
31. I have also considered my duty under the Public Sector Equality Duty (PSED) to have regard to the 3 aims set out in the Equality Act 2010. The Appellant and other prospective occupants share a protected characteristic, and I have taken into account the need to avoid discrimination, advance equality of opportunity and foster good relations.
32. To summarise, my judgement in this case is that matters which are in favour of the development are clearly outweighed by the serious and substantial harm which would be caused. Whilst I recognise that the needs of the prospective site occupants are important and of substance, this is a case where the level of harm would be simply too great for permanent planning permission to be granted. The interference with human rights is proportionate in this instance, and my consideration of the PSED does not lead me to a different conclusion.
33. I have given consideration to whether or not a time limited permission would be acceptable. I acknowledge that in such circumstances the level of harm I have identified would be expected to come to an end at the end of the time limit, and consequently less weight can be attributed to the harm. However, this is a case where I cannot agree that a time limited permission would be appropriate. The extent of development proposed would still, even if restricted as suggested, lead to substantial harm which would outweigh the matters in support of the proposal. This is not an acceptable site for this proposal, either permanently or temporarily.

Overall Conclusion

34. For the reasons given above I conclude that there are no reasons to make a decision other than in accordance with the development plan, and therefore the appeal should be dismissed.

Philip Major

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Dr S Ruston BSc(Hons) MA MA PhD MRTPI	Ruston Planning
Mr R Crandon BA(Hons) DipLA	Director, Tirlun Design Associates Ltd
Mr J Smith	Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Mrs C Bull	Planning Officer
Mrs D Duggan	Policy Officer

INTERESTED PERSONS:

Miss C Laidlaw	Malvern Hills National Landscape Team
Mr M Wilkinson	Castlemorton Parish Council
Mr N Baker	Castlemorton Planning Group
Mr S Laws CMLI	Landscape Architect