Planning Inspectorate

Appeal Decision

Hearing held on 30 January 2025

Site visit made on 29 & 30 January 2025

by Mr R Walker BA HONS DIPTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 February 2025

Appeal Ref: APP/H1840/W/24/3351881
Land south of A44, Worcester Road, Evesham, Worcestershire WR11 4TD

- 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 James Carroll against the decision of Wychavon District Council.
- The application Ref is W/22/02586/CU.
- The development proposed is use of land for the stationing of caravans for residential purposes.

Decision

1. The appeal is allowed and planning permission is granted for use of land for the stationing of caravans for residential purposes at Land south of A44, Evesham, Worcestershire WR11 4TD in accordance with the terms of the application, Ref W/22/02586/CU, and subject to the conditions in the attached schedule.

Applications for costs

2. An application for costs was made by Mr James Carroll against Wychavon District Council. This application is the subject of a separate decision.

Preliminary Matters

3. Prior to the Hearing, an updated National Planning Policy Framework (the Framework) (2024), Planning Policy for Traveller Sites (PPTS) (2024) and Gypsy and Traveller Accommodation Assessment (GTAA) (2024) were published. These documents were discussed at the Hearing.

4. The appeal is for the provision of two gypsy and traveller pitches on a site where planning consent was granted[1] for two holiday cabins. Operational works have been undertaken on and beyond the appeal site, including, amongst other things, the laying of concrete bases. The works within the appeal site, it is put to me are in connection with the consented holiday cabins.

5. There is no substantive evidence before me of the original ground levels to demonstrate that groundworks within the appeal site accord with the consented holiday cabins. However, it is not the purpose of a section 78 appeal to determine the lawfulness of works. Moreover, it is possible to commence a development for the purpose of section 56 of the Town and Country Planning Act 1990 (as amended) (S56), and then later to deviate from the permitted works in a manner that later becomes an enforcement issue without retrospectively altering the fact that the commencement of the development had occurred for S56 purposes.

[1] Ref: 21/02536/CU

6. In this regard, the dispute between the main parties regarding the ground levels and whether the works undertaken within the appeal site accord with the consented holiday cabins scheme is not a matter for my consideration. Moreover, were I minded to dismiss the appeal, I have no reason to question the appellant's intentions to implement the holiday cabins permission and generate an income, irrespective of the costs to regularise any unauthorised elements. Accordingly, in so far as it relates to the appeal before me, I give the submitted alternative development of the holiday cabins, as a 'fallback position' significant weight in the appeal before me. However, for clarity I have assessed the appeal scheme based on the plans before me.

Main Issues

7. The main issues are:

- the effects of the proposed development on the character and appearance of the area;
- whether the appeal site represents an appropriate location for the proposed development, having regard to the accessibility of services and facilities; and
- whether any harm arising from the proposed development would be outweighed by other considerations.

Reasons

Character and appearance

8. The appeal site is located on the south side of the A44, near but beyond the boundaries of Evesham and close to a small settlement, known as Chadbury. The appeal site lies within the River Meadows Landscape Type (RMLT) as defined within the Council's Landscape Character Assessment (LCA) (2012).

9. This part of the landscape exhibits many of the key characteristics of the RMLT, including the open pastoral landscape, seasonally flooded alluvial floodplain and linear patterns of trees and hedges set in a largely unsettled landscape. The appeal site is also heavily influenced by its position on the edge of the RMLT, with the presence of the A44 and nearby buildings along the northern side of the road having a strong influence on the experience of the landscape.

10. The LCA seeks to *conserve and restore* features that contribute to the RMLT's landscape character and seeks to avoid building or road construction works. Moreover, the flow chart at figure 2 in the LCA, indicates that, as an '*unsettled'* landscape character type, development cannot be supported unless there are exceptional circumstances.

11. The proposed development would be seen in localised views to varying degrees, including from the A44, the railway line, the river and the public footpath to the south of the river from near Charlton. From the river and the footpath to the south, the appeal site is highly prominent. However, the presence of buildings on the northern side of the A44 is also experienced from these southern views and the proposed development would not appear isolated in this context.

12. The proposed development would include static mobile homes, and formal surfacing for the access and parking. In addition, the visible manifestations

associated with the intensification of the site as part of its residential occupation, would include extensive acoustic fencing, lighting, and domestic accoutrements that are associated with permanent occupation. Such features would erode the unsettled landscape character and natural qualities of the RMLT.

13. Whilst planting along the southern boundary would help reduce the harm from views from the south it would not fully mitigate my concerns. There would still be a high degree of intrusion into the rural setting of the site.

14. To conclude on this main issue, the proposed development would have a harmful effect on the character and appearance of the area. Accordingly, it would not accord with Policies SWDP 17 or 25 of the South Worcestershire Development Plan (SWDP) (2016), or the guidance within the LCA, when taken together and in so far as they relate to this main issue. These say, amongst other things, that proposals and their landscaping schemes must demonstrate that they conserve, and where appropriate, enhance the primary characteristics defined in character assessments and important features of the Land Cover Parcel and have taken any available opportunities to enhance the landscape.

15. The appellant submits that Policy SWDP 25 is not consistent with the Framework, as its requirements are akin to the Framework's provisions in relation to valued landscapes. However, in my view, it does not go as far as the Framework's provisions for valued landscapes as the wording in the policy relates to the 'primary characteristics'. In my view, Policies SWDP 17 and 25 are consistent with paragraph 187 of the Framework, in recognising the intrinsic natural beauty of the countryside. Accordingly, the proposal would also be contrary to the Framework in so far as it relates to this main issue.

Access to services and facilities

16. The appeal site lies beyond any development boundary and is classified as the open countryside within the SWDP. This means that the site is treated as open countryside for the purposes of applying the relevant development plan policies. Nonetheless, due to the appeal site's position adjacent to the A44 and having regard to its proximity to Chadbury, the site does not constitute "open countryside that is away from existing settlements" where paragraph 26 of the PPTS seeks to very strictly limit new traveller sites. Instead, I consider the appeal site to be located within a rural setting, where Policy C of the PPTS indicates that some sites may be located, whilst ensuring that they do not dominate the nearest settled community.

17. For the purposes of applying the SWDP policies, the site is not within a town or village identified as part of the settlement strategy in the SWDP. New development in the countryside is permitted where it is related to specific forms of development as set down in Policy SWDP 2. These include, amongst other things, rural workers dwellings' and development specifically permitted by other SWDP policies.

18. Policy SWDP 17 of the SWDP relates to Travellers and Travelling Showpeople, and amongst other things, sets down 11 criteria by which applications for sites will be assessed. These include, amongst other things, whether the site is within, or on the edge of, a town or Category 1, 2 or 3 settlement (criterion (i)). Policy SWDP 4 says, amongst other things, that proposals must minimise demand for travel and offer genuinely sustainable travel choices.

19. The appeal site is not located within or on the edge of a town or Category 1, 2 or 3 settlement but is located a short drive from the town of Evesham. However, there is no continuous footpath to the town or the nearest bus stop. Moreover, given the speed of traffic along the A44 and lack of street lighting I do not consider it likely that future occupiers would cycle or walk along the road verge to access services and facilities, even including the nearby farm shop.

20. Given the location of facilities and services, the nature of the walking routes and evidence before me, future occupiers would have a reliance on private vehicles. This would result in negative impacts on carbon emissions and would not promote healthy travel options such as walking, bringing conflict with Policies SWDP 4 and 17 of the SWDP.

21. However, paragraph 110 of the Framework says, amongst other things, that opportunities to maximise sustainable transport solutions will vary between urban and rural areas, and this should be taken into account in both plan-making and decision-making. Journeys made by car to Evesham would be reasonably short. Moreover, accessibility needs to be considered in the context that members of the travelling community are generally reliant on vehicles wherever they live given their lifestyle. In this regard, the easy access to the A44 and the national road network would facilitate travel and the nomadic habit of life that occupiers of the site would engage in.

22. Additionally, in broader sustainability terms, a settled base can reduce incidents of unauthorised encampments, reduce the need for continuous travel and facilitate consistent access to schools and medical services.

23. In conclusion, future occupants of the appeal scheme would not be able to access services and facilities by walking, cycling or public transport. This, in combination with its location near but beyond the edge of Evesham, would bring conflict with Policies SWDP 2, 4 and 17 of the SWDP, when taken together and in so far as they relate to this main issue. However, future occupants would only be a short drive from services and facilities in Evesham. Given the appeal site's close proximity to a sustainable settlement and the nomadic habit of life of the future occupants, the proposed development would, on balance, be located in a reasonably accessible location. Accordingly, I do not find conflict with the provisions of the Framework or the PPTS, when taken together and in so far as they relate to this main issue.

Other considerations

24. The PPTS requires local authorities to set pitch targets and to identify and update annually a supply of specific deliverable sites sufficient to provide five years' worth of sites against this target. Prior to the Hearing the Council issued an update to its figures, following the change in definition of gypsies and travellers within the updated PPTS. As a result, the Council indicate that using the 'ethnic definition' within its GTAA, there would be a need for 57 Gypsy and Traveller pitches in the period between 2024-2029. The Council confirmed that based on this need figure, and an annual need of 11.4 pitches, it had, as of 27 January 2025, a shortfall of 3 pitches and could not thus demonstrate a five-year supply of pitches.

25. The appellant has submitted a detailed critique of the Council's GTAA and considers that the Council's GTAA greatly underestimates the need and the Council's supply shortfall is much more than that given. Although a written rebuttal

was provided to some of the critiques the Council was not fully represented at the Hearing to defend during discussions against the appellant's assertions and the large differences that exist between the respective figures.

26. In any case, even if I accept the Council's more conservative figures, paragraph 28 of the PPTS confirms that the provisions of paragraph 11(d) of the Framework apply. I will come back to this matter in the Planning Balance.

27. I am satisfied that the fallback position of the holiday cabins would continue to be pursued if I were to dismiss the appeal. The consequence of this would be that the appeal site would not likely revert to a natural, open and undeveloped parcel of land within the RMLT. The visible manifestations of domestic paraphernalia associated with permanent occupation, and the more utilitarian form and appearance of static caravans in contrast with the timber holiday cabins, would be more harmful than the fallback position. However, it does moderate the extent of harm from the proposed development and subsequently the weight I give to that harm in the Planning Balance.

Other Matters

28. The Council, together with other south Worcestershire Councils, have submitted the South Worcestershire Development Plan Review for examination. Given its early stage in the examination process, I give it limited weight in my decision.

29. From the evidence before me, the proposed pitches would be located within Flood Zone 1 and there is therefore no requirement for a Flood Risk Assessment. Moreover, whilst there is evidence of flooding from the River Avon nearby, there is no substantive evidence that future occupiers would be at risk of flooding.

30. The appellant has submitted a Noise Impact Assessment (NIA) to consider the potential effects from traffic noise along the A44. The Council's Senior Technical Officer has considered this NIA and raised no objections subject to the mitigation, and I have no reason to disagree. Traffic along the A44 is clearly audible behind the existing fence within the site, and I recognise that traffic will vary through the year. Nonetheless, with the introduction of acoustic fencing as proposed, I am satisfied that levels, even with different designs of caravans, would not be to the extent that would be disturbing to future occupiers.

31. I have also had regard to all the other matters raised by local interested parties, including highway and pedestrian safety, parking, air quality and wildlife. However, there is sufficient space within the site for vehicles to park and manoeuvre. As I have found that occupiers would not realistically walk along the verges but would have a reliance on private vehicles, I do not find there to be an unacceptable pedestrian safety risk. Moreover, there is no substantive evidence before me that there would be harm in respect of these matters, and no objection has been raised by the Council or statutory consultees in that regard.

32. Works undertaken outside of the appeal site are not matters for my consideration and do not alter the planning merits of the proposal before me. Nor is there any evidence to demonstrate that such works, or the holiday cabins permission would preclude the implementation of the appeal scheme. Moreover, the need or potential for acoustic fencing elsewhere in Chadbury to mitigate noise from the A44 is not a matter for my consideration as part of the appeal.

Planning Balance

33. The proposed development would not be in a suitable location when judged against the relevant SWDP policies in so far as they relate to access to services and facilities. Moreover, the proposed development would cause a high degree of harm to the character and appearance of the area. The weight I give to this harm is moderated by the fallback position, which would also erode the natural qualities of the RMLT. Nonetheless, the proposed development would conflict with Policies SWDP 2, 4, 17 and 25 of the SWDP. As such, it would not accord with the development plan as a whole. However, due to the absence of a five-year supply of pitches, paragraph 11(d) of the Framework is engaged and the policies which are most important for determining this appeal are out-of-date.

34. As set out above, notwithstanding my findings in relation to the SWDP policies, given the appeal site's close proximity to a sustainable settlement and the nomadic habit of life of the future occupants, the development would, on balance, be located in a reasonably accessible location. As set out providing a settled base has broader sustainability benefits. The proposal would provide two pitches on a site previously granted consent for two holiday cabins. In this regard, I find the scheme to make an effective use of land. Moreover, given the scale of development proposed it would not dominate the nearest settled community.

35. The Council is currently unable to meet the identified accommodation needs of gypsies and travellers. In these circumstances, I afford the absence of a five-year supply of sites and the contribution that the appeal site would make to addressing this by making an effective use of land in a reasonably accessible location significant weight as a matter in favour of the proposal. Set against these benefits, the adverse impacts identified would not significantly and demonstrably outweigh them. Therefore, the presumption in favour of sustainable development applies and paragraph 11(d) of the Framework indicates that permission should be granted. There are no other material considerations to override this finding.

Conditions

36. I have adapted the Council's suggested conditions where necessary and in the interests of precision and brevity. In addition to the standard time limit condition (1), I have imposed a condition (2) specifying the relevant drawing and to require that the development is carried out in accordance with it as this provides certainty.

37. Having regard to my findings in the Planning Balance, I do not consider that it is necessary for a personal occupancy condition or temporary consent condition. However, I have included a condition which restricts the occupation to Gypsies and Travellers (3) so as to ensure that the site meets the long-term needs of the gypsy and traveller community using the latest definition in the PPTS. To limit the effect of the proposed development on the character and appearance of the area I have imposed a condition to limit the number of static caravans (4). It is also reasonable to impose conditions (5 & 6) to ensure that commercial activities do not take place on the site and no vehicle over 3.5 tonnes is stationed, parked or stored on the site in the interests of the character and appearance of the area and residents' living conditions.

38. As set out above, I have assessed the appeal scheme based on the plans before me, which do not stipulate alterations to ground levels. However, grounds works for the holiday cabins permission have commenced and I am unable to verify that

the site levels and concrete bases installed, at the time of my site visit, would accord with the appeal plans before me. As such, and for the avoidance of doubt, a condition (7) requiring details of final site and slab levels prior to the occupation of the site is necessary in the interests of certainty and the character and appearance of the area.

39. To limit the effect of the proposed development on the character and appearance of the area a condition (8) requiring a scheme of landscaping is necessary. This would provide details of planting, primarily along the southern boundary, to moderate the degree of harm from views from the south.

40. A condition (9) is necessary requiring the acoustic fence to be installed prior to the occupation of the site in the interests of residential amenity. Appendix E and M of the appellant's sound survey provide sufficient details of the fence and on that basis no further details are necessary to be submitted and approved by the Council.

41. A condition seeking the approval of details of the appearance of the static caravans has also been suggested. However, considering the definition of a caravan and subject to condition 2 and 4, which limits the number and position of the static caravans, I do not consider such a condition to be necessary.

Conclusion

42. The proposed development would be contrary to the development plan but material considerations, especially the presumption in the Framework, outweigh this conflict. Therefore, for the reasons given, the appeal should succeed.

Mr R Walker

INSPECTOR

Schedule of conditions

1) The development hereby permitted shall begin not later than three years from the date of this decision.

2) The development hereby permitted shall be carried out in accordance with drawing no: Case No 22_1234 Drg No: 003 Rev P04.

3) The site shall not be occupied by any persons other than Gypsies and Travellers, defined as persons of nomadic habit of life whatever their race or origin, including such persons who on grounds only of their own or their family's or dependants' educational or health needs or old age have ceased to travel temporarily or permanently, and all other persons with a cultural tradition of nomadism or of living in a caravan, but excluding members of an organised group of travelling showpeople or circus people travelling together as such.

4) No more than 2 static caravans as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 as amended shall be stationed on the land at any time.

5) No commercial activities shall take place on the land, including the storage of materials.

6) No more than one commercial vehicle per pitch shall be kept on the land for use by the occupiers of the caravans hereby permitted, and it shall not exceed 3.5 tonnes unladen in weight.

7) Before the first use/occupation of the development hereby permitted details of site levels and slab levels shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.

8) Before the first use/occupation of the development hereby permitted a scheme of landscaping shall be submitted to and approved in writing by the Local Planning Authority. The landscaping scheme shall include:

(i) a plan(s) showing details of all existing trees and hedges on the application site. The plan should include, for each tree/hedge, the accurate position, canopy spread and species, together with an indication of any proposals for felling/pruning and any proposed changes in ground level, or other works to be carried out, within the canopy spread.

(ii) a plan(s) showing the layout of proposed tree, hedge and shrub planting and grass areas.

(iii) a schedule of proposed planting - indicating species, sizes at time of planting and numbers/densities of plants.

(iv) a written specification outlining cultivation and other operations associated with plant and grass establishment.

(v) a schedule of maintenance, including watering and the control of competitive weed growth, for a minimum period of five years from first planting.

(vi) an implementation programme.

The development shall be carried out in accordance with the approved details. Any trees or plants which, within a period of five years from the completion of the planting, die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.

9) Before the first use/occupation of the development hereby permitted, an acoustic fence shall be erected in the position shown on plan No: Case No 22_1234 Drg No: 003 Rev P04 in accordance with Appendix E & M of the Environmental Sound Survey and Noise Impact Assessment of Mr Tim Green dated 16th August 2023. The acoustic fence shall thereafter be retained.

End of conditions

APPEARANCES

FOR THE APPELLANT:

Matthew Green	Green Planning Studio
James Carroll	Appellant
William Cowley	Proposed occupier of a pitch

FOR THE LOCAL PLANNING AUTHORITY:

Gavin Greenhow	Wychavon District Council
Leanne Pogson	Wychavon District Council
Eileen Marshall	Wychavon District Council

INTERESTED PARTIES:

Anne Heald	Local resident

DOCUMENTS:

- RRR Response to the appellant's critique of the South Worcestershire GTAA (2024)
- Updated witness statements
- Updated list of conditions