
Appeal Decision

Hearing held on 30 October 2013

Site visit made on 30 October 2013

by Richard McCoy BSc MSc DipTP MRTPI IHBC

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

Decision date: 19 March 2014

Appeal Ref: APP/L3245/A/13/2196550

The Caravan Site, Preeshenlle, Henlle Lane, Gobowen, Oswestry, Shropshire SY10 7AX

- 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 & Mrs Michelle and Jerry Berry against the decision of Shropshire Council.
 - The application Ref 12/04304/FUL, dated 10 October 2012, was refused by notice dated 28 March 2013.
 - The development proposed is the change of use of land to a private gypsy and traveller caravan site consisting of a mobile home, a touring caravan, an amenity building, access arrangements, landscaping, car parking and drainage.
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Procedural matters

1. It was agreed by the parties that the accurate description of the proposal is "the change of use of land to a gypsy and traveller caravan site, siting of a chalet, a touring caravan, a temporary amenity building, alterations to existing vehicular access, formation of parking area and the installation of a package treatment plant". I have dealt with the appeal on this basis.

Decision

2. The appeal is allowed and planning permission is granted for the change of use of land to a gypsy and traveller caravan site, siting of a chalet, a touring caravan, a temporary amenity building, alterations to existing vehicular access, formation of parking area and the installation of a package treatment plant at The Caravan Site, Preeshenlle, Henlle Lane, Gobowen, Oswestry, Shropshire SY10 7AX in accordance with the terms of the application Ref. 12/04304/FUL, dated 10 October 2012, subject to the conditions set out in the Annex to this decision.

Main Issues

3. The main issues are the effect of the proposal on the character and appearance of the area and whether any harm arising would be outweighed by the need for additional gypsy accommodation having regard to local and national policy, and personal needs and circumstances.

Reasons

Background

4. The appeal site is a former landfill site that has been capped. Roughly rectangular in shape, it is situated in a rural location, around 1km from the nearest services in the settlement of Gobowen. It stands on the western side of Henlle Lane, close to the A5 and B5009 roads. A public footpath (FP8Y) passes close by. This proposal seeks either planning permission for the permanent change of use of the site or a temporary planning permission for 5 years. The change of use has been partially completed and on site at the time of my visit, I observed a large chalet style building and a touring caravan.
5. In June 2012, planning permission at the appeal site for the change of use of land for the siting of 4 chalets and associated parking areas for 4 touring caravans and vehicle parking; erection of washroom/kitchen facilities and creation of new access together with landscaping, car parking and drainage was dismissed at appeal ref. APP/L3245/A/12/2168380. That Inspector found that the clear harm to the countryside, contrary to Policies CS5, CS6 and CS12 of the adopted Shropshire Local Development Framework Core Strategy (CS), would not be outweighed by the general and personal needs of the appellants, to an extent sufficient to justify a permanent permission. He went on to opine that no more than a temporary permission for a period of 3 years could be considered to allow time for the site supply situation to improve. However, he found that it would not be reasonable to require the demolition of the substantial, permanently constructed, washroom and kitchen building after only a temporary period.
6. He also concluded that it would not be appropriate to require the submission of an alternative design for the building, or revision to the layout with respect to the access arrangements. He decided that taken with the further requirement for details of the chalets themselves, the scale and extent of these modifications would be likely to make the development permitted substantially different from that in the application on which the Council undertook statutory public consultation. This, he found, would be clearly against the advice in paragraph 84 of Circular 11/95. For these reasons he concluded that a temporary permission would not be appropriate in that case.
7. In response, this proposal has reduced the number of families on the site from 4 to 1; the amenity building proposed under this scheme is of a temporary nature and further details have been submitted in respect of the access arrangements and a landscaping mitigation scheme. In addition, the proposed design and layout details do not require substantial modifications from those under which the Council undertook statutory public consultation. Against this background, I consider that in this instance there would be no procedural impediment to a temporary permission being considered.
8. Following the previous dismissal, an Interim Injunction was obtained from the High Court on 8 November 2012 prohibiting the appellants and others from carrying out any further operational development on the land pending determination of application Ref 12/04304/FUL (the subject of this appeal) and any subsequent appeal.

Policy considerations

9. The development plan provisions most relevant to this case are contained in the CS. CS Policy CS5 strictly controls development in the countryside while Policy CS6 further protects the natural environment from the effects of development. Policy CS12, as informed by the adopted Supplementary Planning Document; *Type and Affordability of Housing* (SPD) and the Gypsy and Traveller Accommodation Assessment 2008 (GTAA), provides for allocating sites to meet identified need for gypsy and traveller accommodation and ensuring that all such sites are reasonably accessible to services and facilities, suitably designed and screened and have suitable access and parking arrangements. Policy CS12 also supports suitable development proposals for small exception sites (under 5 pitches) in accordance with Policies CS5 and CS11 where a strong local connection is demonstrated.
10. These policies are broadly consistent with those of the National Planning Policy Framework (NPPF) and Planning Policy for Traveller Sites (PPTS) with the exception of the need for a strong local connection in CS12. With respect to the supply of gypsy and traveller sites, the PPTS at paragraphs 4 and 9 sets out the national requirement for local planning authorities to plan over a reasonable timescale for an appropriate supply of suitable traveller sites, including private sites. The supply should comprise specific, deliverable sites for the first 5 years and developable sites or broad locations for later years.
11. With respect to deciding specific planning applications, PPTS paragraph 22 cites the existing level of provision among relevant matters for consideration and paragraph 24 reflects a core planning principle of the NPPF by encouraging the effective use of previously-developed land. Paragraph 23 of PPTS states that new traveller site development in the open countryside "*that is away from existing settlements or outside areas allocated in the development plan*" should be strictly limited but does not rule them out completely. PPTS Paragraphs 25 and 28 together provide that a lack of an up-to-date 5-year supply of deliverable traveller sites should be a significant consideration when deciding a proposal for a temporary permission.

Character and appearance of the rural location

12. The proposed siting of a chalet, touring caravan and a temporary amenity building, together with works to alter the existing access and provide a package treatment system would give the proposal the appearance of a permanent residential development. This would be all the more apparent from the likely associated domestic paraphernalia such as car parking, garden and clothes drying area. The proposal would be visible to substantial numbers of passing motorists on the nearby roads, as well as to walkers using public footpath (FP8Y) that passes close to the appeal site, from where it would appear as an alien feature, out of keeping with its rural location.
13. The effect would be ameliorated to some extent by the proposed landscaping scheme although this would take some time to become established. Nevertheless, I consider that the proposal would introduce an incongruous domestic development that would not assimilate well with this rural location, resulting in a harmful change to its character and appearance.
14. My attention was drawn to a nearby touring caravan site and a development of log cabins as well as a larger touring caravan park further to the north, all

within the countryside. I also observed the Henlle Park Golf Club buildings and car park opposite the appeal site. However, I agree with the previous Inspector that these developments are connected with leisure pursuits and tourism, properly related to the countryside, and are not comparable to the residential development proposed at the appeal site.

15. Furthermore, although the PPTS does not preclude rural gypsy sites, the appeal site is previously developed land in a reasonably sustainable position close to the community facilities and services of Gobowen, and fewer than 5 pitches are proposed, these factors are still subject to the overall requirements to maintain, enhance and protect the countryside. In my judgement, the proposal would fail to maintain and enhance countryside character, and would cause substantial harm to the character and appearance of area, contrary to CS Policies CS5, CS6 and the objectives of CS12.

Other considerations

Need for gypsy and traveller sites

16. The Council recognises that there is an unmet need for gypsy accommodation in the District which is yet to be addressed by local policy in line with the PPTS. The Council estimates the need across its area (as of 11 July 2013) based on the GTAA 2008 assessment, as 93 pitches to 2017. I heard that 40 pitches have been granted planning permission, including an additional 10 pitches at the Park Hall gypsy site near Oswestry, giving an outstanding need of 53 pitches.
17. The Council anticipates preparing a specific Gypsy and Traveller Development Plan Document (DPD). However, I was informed by the Council that due to work proceeding initially on a separate Site Allocation and Development Management Plan, the DPD would not be completed until late 2015. In the interim period, the Council would consider proposals for small exception sites (under 5 pitches) for gypsy and traveller provision in accordance with CS policies CS5 and CS12.

Personal needs

18. Details of the family members who would occupy the proposed pitch at the site were provided in the application and were updated at the Hearing. The Council accepts the gypsy status of the appellants and on the evidence before me, I am satisfied that they concur with the definition of gypsies and travellers set out in Annex 1 of PPTS. The appeal site would be occupied by Mr and Mrs Berry and their 5 children. The family has a long connection with the local area.
19. I note from the previous appeal ref. APP/L3245/A/12/2168380 that it was confirmed by the Council's Gypsy Liaison Officer that the appellants have problems of personal conflict that would preclude them from accepting any offer of accommodation at the Park Hall gypsy site and that they have no alternative accommodation. In addition, Craven Arms was suggested by the Council as an alternative site but the appellants' uncontested evidence states that this is more than 40 miles from the appeal site which would disrupt the children's schooling and the family's health care arrangements.
20. In my judgement, a refusal of planning permission would be likely to result in the appellants having to leave the site with no alternative accommodation

available to them. This may result in the appellants resorting to roadside camping and this could have a detrimental effect on the health and education of the appellants and their children. Accordingly, these personal needs are of significant weight in the consideration of this proposal.

Personal circumstances

21. I heard that both Mrs Berry and her daughter suffer from significant health problems and evidence was submitted to demonstrate that Mrs Berry has been registered with a local medical practice since birth. Furthermore, evidence was submitted to demonstrate that 3 of the children attend Holy Trinity Primary School in Oswestry and a letter from the Educational Psychology Service asserts that it is important for the appellants' daughter to be close to her school, to enable staff to work on the objectives of her Statement of Special Educational Needs.
22. In my judgement, a refusal of planning permission would be likely to have a detrimental effect on the continuity of health care provision for Mrs Berry and her daughter and the ongoing education of the appellants' children. These personal circumstances also carry significant weight in the consideration of this proposal.

Other matters

23. I note that the Council is satisfied that the site was previously used as an inert landfill and the principle of residential occupation is acceptable. I also note that the Council is satisfied that the required visibility splays can be provided in each direction within land under the appellants' control. This could be secured by a condition attached to any grant of temporary planning permission. Furthermore, the Council was satisfied that the proposal would not have an adverse effect on residential amenity given the separation distances to the nearest dwellings and would not adversely affect the operation of nearby businesses. From my assessment, I have no reason to disagree and consider that the proposal would not be harmful to highway safety, living conditions and nearby business operations.
24. As for the impact on the Right of Way and drainage, I note from the officer's report to Committee that the appellants will enable access to the footpath which cuts through the site and this is shown on the submitted drawing TDA.1940.02. Moreover, the proposed private treatment plant and the surface water drainage system, in place on site, are considered acceptable by the Council. From my assessment, I have no reason to disagree.

The balance of considerations

25. Notwithstanding the proposed landscaping scheme, I have found that the proposal would cause substantial harm to the character and appearance of the rural area which would not be outweighed by the general and personal needs and circumstances of the appellants, to an extent sufficient to justify the permanent permission sought.
26. However, there is a clear current need for additional pitches which is not likely to be met by approved planned, deliverable pitches in the near future. This general need for further sites lends significant weight in favour of this proposal as far as a temporary planning permission is concerned. Furthermore, planning conditions could be attached to any grant of temporary permission

requiring the restoration of the site so that any change brought about by the proposal would not endure. In addition, taking account of the duty to have regard to the best interests of the children as a primary consideration and noting the family's health requirements and lack of any alternative sites, there are personal needs and circumstances in respect of the appellants which suggest that they would benefit from living at the appeal site. All of these factors weigh in favour of the appeal scheme.

27. Taking all of these matters into account, I consider that a grant of temporary permission would strike the appropriate balance between the competing considerations in this appeal. However, I consider that a period of 3 years, rather than the 5 sought by the appellants, would be sufficient to enable the number of pitches required to be confirmed through the development plan process, give time for future supply to be addressed and give time for the sites identified to come forward. Accordingly, in respect of a temporary permission, I consider that the substantial harm to character and appearance would be clearly outweighed by the unmet need for gypsy pitches, and the personal needs and circumstances of the appellants.

Conditions

28. A list of conditions was prepared by the Council which together with the advice in Circular 11/95 *The Use of Conditions in Planning Permissions*, formed the basis of a discussion at the Hearing. Condition 1 requires that the development shall be carried out in accordance with the approved plans for the avoidance of doubt. Given the development has been partially completed, in order to have a scheme which reflects the situation on site and in the interests of visual amenity, Condition 2 requires the submission, within 3 months of the date of this decision, of full details of the development (including the restoration of the land to its condition prior to occupation) for the written approval of the Council, or the approved use shall cease.
29. However, I shall not require details of the internal layout of the site and tree, hedge and shrub planting under Condition 2 as these matters are covered by Conditions 1 and 8. Furthermore, the parties agreed that as gypsy status and personal circumstances had been put forward and taken into account, the occupancy of the site should be limited to gypsies and travellers and to named occupiers. It was also agreed that as the appeal relates to a temporary planning permission the occupation of the site should be for a specified period of time (both matters covered by Conditions 3 and 4).
30. In view of the rural location, the temporary occupation of the site should be limited to 1 pitch with 2 caravans of which no more than 1 should be a static (Condition 5). It is not proposed that any large commercial vehicles would be parked on the site and in the interests of the visual amenity of the area this should be controlled by condition (Condition 6). In addition, a condition controlling commercial activity is required (Condition 7) in the interests of visual amenity. Finally, a landscaping scheme including provision for the replacement of any trees or plants which die within 3 years of completion of the scheme is required (Condition 8) in the interests of visual amenity.

Conclusion

31. In reaching this decision I have had regard to the Planning Practice Guidance (March 2014). The content of the Guidance has been considered but in light of the facts in this case it does not alter my conclusion which for the reasons given above is that the appeal should succeed and permission be granted for a limited period.

Richard McCoy

Inspector

ANNEX

Schedule of conditions:

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans: Site Plan 0950 and Detailed Landscape Proposals TDA 1940.02.
- 2) The use hereby permitted shall cease and all caravans, structures, equipment and materials brought onto the land for the purposes of such use, shall be removed within 28 days of the date of failure to meet any one of the requirements set out in (i) to (iv) below:
 - i) notwithstanding the details in the submitted plans within 3 months of the date of this decision a Site Development Scheme giving full details of: a) *the materials, finishes and external colour scheme for the amenity building*, b) *foul and surface water drainage of the site*, c) *proposed and existing external lighting on the boundary of and within the site*, d) *access and visibility splays including the location of gates*, e) *the restoration of the site to its condition before the development took place, at the end of the period for which planning permission is granted for the use, or the site is occupied by those permitted to do so*; shall have been submitted for the written approval of the local planning authority and the said scheme shall include a timetable for its implementation,
 - ii) within 11 months of the date of this decision the site development scheme shall have been approved by the local planning authority or, if the local planning authority refuse to approve the scheme, or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State,
 - iii) if an appeal is made in pursuance of (ii) above, that appeal shall have been finally determined and the submitted site development scheme shall have been approved by the Secretary of State,

- iv) the approved scheme shall have been carried out and completed in accordance with the approved timetable.
- 3) The residential use hereby permitted shall be carried out only by the following: Jerry Berry, Michelle Berry and their resident dependents and the permission shall be for a limited period being the period of 3 years from the date of this decision or the period during which the site is occupied by the above named, whichever is the shorter.
- 4) When the land ceases to be occupied by the persons named in condition 3 above or at the end of 3 years from the date of this decision, whichever shall first occur, the residential use hereby permitted shall cease. Within 2 months of the authorised use ceasing all caravans, buildings, structures, materials and equipment brought on to the land or works undertaken to it in connection with that use shall be removed and the land restored to its condition before the residential use took place in accordance with details approved under condition 2.
- 5) There shall be no more than 1 pitch on the site and no more than 2 caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 (as amended), shall be stationed at any time. Notwithstanding the provisions of Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 (as amended), only 1 caravan sited on a pitch shall be a residential (static/chalet) mobile home.
- 6) No vehicle over 3.5 tonnes shall be stationed, parked or stored at the site. No more than one commercial vehicle shall be kept on the land for use by the occupiers of the caravans hereby permitted.
- 7) No commercial activities shall take place on the land including the outside storage of materials in connection with commercial activities.
- 8) All hard and soft landscape works shall be carried out in accordance with the approved details and the programme agreed with the local planning authority. Any trees or plants which within a period of 3 years from the completion of the landscape works die, are removed, or become seriously damaged or diseased shall be replaced in the next planting season with plants of a similar size or species.

APPEARANCES

FOR THE APPELLANT:

Dr A Murdoch BA(Hons), MSC, MPhil, PhD, MRTPI	Principal, Murdoch Planning Landscape Architect
Mr R Crandon	Landscape Architect

FOR THE LOCAL PLANNING AUTHORITY:

Mr I Kilby MRTPI, IHBC	Planning Services Manager, Shropshire Council
Miss S Bates	Council Solicitor
Mr M Farmer	Principal Planning and Enforcement Officer

INTERESTED PERSONS:

Mr C Roberts BSc, MRTPI	Agent for local residents
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DOCUMENTS

- 1 Council's letter of notification of the hearing
- 2 List of persons represented by Mr C Roberts
- 3 Appeal decision APP/L3245/A/12/2186880
- 4 Schedule of conditions

PLANS

- A Detailed landscape proposals TDA.1940.02
- B Land ownership plan