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# Appeal Decision

Hearing and site visit held on 17 June 2014

by **A U Ghafoor BSc (Hons) MA MRTPI**

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

Decision date: 26 September 2014

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**Appeal Ref: APP/L3245/A/14/2215836**

**150 Sparrow Cottage, Shawbury Heath, Shawbury SY4 4EA<sup>1</sup>**

- 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 John Dean Price against the decision of Shropshire Council.
  - The application Ref 13/03489/FUL, dated 27 August 2013, was refused by notice dated 24 October 2013.
  - The development proposed is described in the planning application form as: '*material change of use of land to use as a residential caravan site for two Gypsy families, each with two caravans including one static caravan/mobile home*'.
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## Decision

1. The appeal is allowed and planning permission is granted for a material change of use of land to form a residential caravan site for two gypsy families to include two pitches and the erection of an amenity building at 150 Sparrow Cottage, Shawbury Heath, Shawbury SY4 4EA in accordance with the terms of the application, Ref 13/03489/FUL, dated 27 August 2013, and the plans submitted with it, subject to the conditions set out in the annex to this decision<sup>2</sup>.

## The appeal site and background information

2. The site is an area of land situated off the A53 – Market Drayton to Shrewsbury highway. It is about 120m away from the road and is accessed via an unmade track. The planning application was submitted prior to moving to the site in March 2014. The appellant and his family live on the site.
3. On 19 November 2010, the Council issued an enforcement notice in relation to the unauthorised use of the site. It alleged: '*Without planning permission, the change of use of land to a mixed use for the siting of a caravan for the purposes of residential use in the approximate location on the land marked with a red cross on the attached plan and use for the storage of motor vehicles*'. An appeal made under Section 174 (2) (g) of the Town and Country Planning Act 1990 as amended ('the 1990 Act') was dismissed on 1 June 2011<sup>3</sup>.
4. Planning permission for the appeal development before me was refused on four grounds. Reason no. 1 states that the site is located within the countryside

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<sup>1</sup> This is the correct address of the site as agreed at the Hearing.

<sup>2</sup> For clarity's sake, I have adopted the Council's amended description of the development in my decision with some minor variation.

<sup>3</sup> Appeal ref: APP/L3245/C/10/2142926.

and is classed as a rural exception site. No evidence has been demonstrated to show that the appellant and/or his family have strong local connections. Reason no. 2 raises concerns about sustainable development, reason no. 3 refers to the effect of the development upon the character and appearance of the area and reason no. 4 refers to its potential effect upon local ecology.

5. In terms of reason no. 1, the Council refer to Policy CS5 and CS12 of the Shropshire Local Development Framework Adopted Core Strategy (CS) 2011. Policy CS5, Countryside and Green Belt, restricts housing development to that for countryside workers, affordable and local needs housing. Policy CS12 specifically relates to Gypsy and Traveller provision. The application of these Policies is illustrated in the *Type and Affordability of Housing* supplementary planning document (SPD). In so far as Policy CS5 relates to rural exception sites, the Council confirmed that it is no longer relevant in the context of this appeal, because the site has not been identified as a rural exception site.
6. CS Policy CS12, and elements of the SPD, has a bearing upon the supply of housing. The Council cannot demonstrate a five-year supply of deliverable sites for gypsies and travellers. Policy CS12 is, therefore, out-of-date given the advice contained in paragraph 49 of the National Planning Policy Framework.
7. The Council also acknowledged that it did not require the appellant to demonstrate strong local connections due to advice found in paragraph 22 (e) of the Planning Policy for Traveller Sites ('the PPTS'). This states that Councils should determine applications for sites from any travellers and not just those with local connections. These upfront concessions have, mainly, been made because of a recent appeal decision<sup>4</sup>.

## Reasons

8. Against all of the background information, the **main issues** are the following:
  - (i) Whether the appellant is a Gypsy and Traveller for planning purposes,
  - (ii) Whether or not the development of this site is sustainable, having particular regard to accessibility to local services and local and national planning policies relating to sustainable development,
  - (iii) The effect of the development upon the character and appearance of the surrounding area with particular regard to the rural woodland setting of the locality,
  - (iv) The effect of the development upon local ecology having particular regard to protected species,
  - (v) The need for and provision of sites for gypsies and travellers in the area and the availability of alternative sites and,
  - (vi) The appellant's need for a settled site and personal circumstances.

### *Gypsy and Traveller status*

9. Annex 1 of the PPTS states: '*For the purposes of this planning policy "gypsies and travellers" means: 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*

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<sup>4</sup> Appeal decision ref: APP/L3245/A/13/2196615, dated 7 February 2014, allowed, at Adbo Farm, Rosehill near Market Drayton, Shropshire.

*travel temporarily or permanently, but excluding members of an organised group of travelling showpeople or circus people travelling together as such'.*

10. The underlying purpose of the definition is to identify those persons who have particular land use requirements arising out of their nomadic habit of life. It does not alter the need to carefully scrutinise the current and past lifestyles of individual site occupants and it is down to the appellant to make his own case out.
11. The site is currently occupied by Mr Dean Price (appellant), Debbie Price (wife) and four children: Chasey (4 year old), Lilly (3 year old), Nemo (2 year old) and Lilo (18 months). They are expected to be joined by Mr Price's parents, John and Jane Price.
12. The family are Romany Gypsies who originate from the South Wales region. They travelled for economic purposes and mainly sought a livelihood through building renovation work and the buying and selling of motor vehicles. The family attended horse fairs and lived on various authorised/unauthorised gypsy and traveller sites. Although the appellant's parents have given up travelling due to old age and health conditions, Mr Price stated that he is the main bread-winner and continues to travel for economic purposes. He continues to renovate vehicles, buy and sell motor vehicles in the West Midlands region. He also explained that his family has never lived in a traditional house given their aversion to bricks and mortar. At the Hearing, the Council conceded that, given the appellant's habit of life and ethnic origins, the travelling is characteristic of a past and present nomadic way of life.
13. Taking all of the above points together, I conclude that the appellant, his wife and parents have gypsy status for planning purposes. It follows that gypsy planning policies should be taken into account in this appeal.

#### *Sustainable development*

14. CS Policy CS6 relates to sustainable design and development. Amongst other things, it seeks to ensure that development protects, restores, conserves and enhances the natural, built and historic environment and is appropriate in scale taking into account local character. It also seeks to ensure that there is capacity and availability of infrastructure to serve any new development. Broadly, these aims and objectives reflect guidance contained in the Framework<sup>5</sup>. It states that there is a presumption in favour of sustainable development, which means approving development proposals that accord with the development plan, and where the development plan is absent, silent or relevant policies are out of date, granting permission unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, or specific policies in the Framework indicate development should be restricted.
15. The PPTS advises, in paragraph 23, that local planning authorities should strictly limit new traveller site development in the open countryside that is away from existing settlements or outside areas allocated in the development plan. Paragraph 11, Policy B, gives guidance on the allocation of sites for travellers. It requires traveller sites to be sustainable economically, socially and environmentally, and sets out a number of requirements that local

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<sup>5</sup> In particular, paragraphs 7, 9, 17 and 55.

planning policy should meet. Although this Policy strictly applies to the allocation of traveller sites in local plans, the tests set out in paragraph 11 are equally relevant in assessing whether proposed sites satisfy the requirement that they should be sustainable.

16. The Council, supported by the Parish Council and some local residents, are concerned about the location of the site relative to nearby facilities. They question the sustainability of the site given its distance from Shawbury which is about 2 miles away. Shawbury has a limited range of facilities such as a Post Office, some retail shops and a doctor's surgery. Shrewsbury, which is the nearest town with a wider choice of facilities, is about 4 miles away. Bings Heath, the closest settlement, is 800m but it is a small hamlet without any amenities. The nearest bus stop is in Bings Heath but this section of the A53 is unlit and it does not have footpaths making potential use of public transport facilities by the occupiers of the site less attractive.
17. For these reasons, it is likely that the occupiers of the site would be reliant almost entirely upon the private motor car for most of their day-to-day travel needs. Currently, that is how the appellant gets around. However this degree of reliance is not that uncommon in a mainly rural area such as this, and the distances involved are not excessive by rural standards. In addition, Shrewsbury is also a short car journey away. In terms of location, I take the view that the site is not totally isolated from nearby settlements for the kind and scale of the development.
18. Furthermore, there is no evidence to show that the capacity of the existing infrastructure is under considerable stress or is unable to meet the needs of the site's occupiers. Given the number and scale of the residential pitches created by the development, I find that the development is unlikely to considerably increase pressure on facilities in nearby Shawbury.
19. The PPTS recognises that caravan sites for gypsy and travellers could be allowed in rural or semi-rural locations that respect the scale of and do not dominate the nearest settled community. The site is small in scale and there is no evidence to suggest that the development has dominated the settled community, irrespective of the objections to the development from the Parish Council and some local residents. In terms of social integration, a settled base gives the family an opportunity to integrate and co-exist with the local community. Given the limited distances between the site and nearby settlements, contact with the settled community is likely to occur when accessing health, education and other local facilities.
20. The site is owned by the appellant and he travels closer to home to earn a livelihood which is an economic benefit. It reduces his need to travel longer distances in order to find places to work, which assists in reducing his carbon footprint.

#### *Character and appearance*

21. CS Policy CS17, environmental networks, states that development will identify, protect, enhance and connect Shropshire's environmental assets, to create a multifunctional network of natural and historic resources. Amongst other things, this will be achieved by ensuring all development protects and enhances the local character. I find the main objectives of this Policy consistent with advice contained in paragraphs 17 and 56 of the Framework.

22. The site adjoins dense woodland and it is 0.23 ha in size. The surrounding area is characterised by rolling countryside and dwellings are sporadically located. The site plan shows the layout of two static caravans, two touring caravans, a utility building, hard-surfacing and post and wire fence positions. The appellant's truck is also parked on the site. All of these structures are likely to be visible from the A53. Nonetheless, the caravans and the associated paraphernalia stand out in this rural location as being out of place and keeping with the wooded character of the locality. However, due to the enclosed nature of the landscape, views from the highway and surrounding area are limited in extent to the immediate locality and filtered by the location and amount of the existing vegetation. The use of appropriate landscaping would, probably, soften the appearance of the site and over time mitigate, to some degree, the visual harm.
23. The Council argues that the manoeuvring of vehicles in proximity to the trees might require the removal of branches and impact upon the root protection area by vehicles. That, in turn, would result in the removal of the trees thereby resulting in harm to the wooded character of the locality.
24. There are seven trees on the site of note; two Oak trees and a small group of Scots Pine located to the west of the reed bed. The canopy of the Oak trees are identified as having a 4m spread, but the levels of the site have not been altered nor are there any proposals to hard-surface the area immediately around the trees' trunk. There are hardstandings around the group of Scots Pine, but their branches are very tall and the canopy spread is unlikely to be affected by the height of the caravans. There is no evidence to suggest that the use of the land as a gypsy and traveller site is likely to result in the long-term harm to the well-being of the trees, and a condition could be imposed to require a landscaping scheme including areas for hard surfacing.

#### *Local ecology*

25. The site is not designated or classified for its ecological interest, but it is considered to be part of Shropshire's environmental assets. Amongst other matters, CS Policy CS17 seeks to ensure that all development contributes to local distinctiveness having regard to the quality of Shropshire's environment including biodiversity. These aims are broadly consistent with advice contained in paragraphs 7, 109, 114, 117 and 118 of the Framework. The general approach is to promote sustainable development by ensuring that biological diversity is conserved and enhanced as an integral part of social, environmental and economic development.
26. The Council, supported by some local residents, raise concerns about the existence of protected species on the site and, in support of these assertions, refer to an ecological report by Turnstone Ecology. Although the report criticises the appellant's planning statement, the appeal site itself was not actually inspected by representatives of Turnstone Ecology. The Council acknowledged that they did not do a survey and relied upon the planning agent's walkover of the site.
27. Nonetheless, a visit to the land immediately adjacent to the eastern boundary of the site was carried out by Turnstone Ecology who made representations on behalf of their client who owns the adjacent land. However, for the following reasons and on the basis of the evidence, I am quite satisfied that the development is unlikely to harm protected species or their habitat.

28. The report confirms that there are no ponds within 200m of the site though there are eight ponds within 500m and two ditches between 100m and 150m. These could be suitable habitats for Great Crested Newts (GCN) given that these species are known to be present in the Bings Heath area. However, at the time of the walkover survey, Turnstone Ecology's site visit to the adjacent land and the Hearing, GCNs or Reptiles were not identified on the site.
29. The Turnstone report states that a fresh badger latrine was found along the eastern boundary of the site and fresh badger prints were also identified in mud along the edge of the field immediately to the east. I recognise that woodland is potentially good foraging ground for badgers and the home range, which consists of feeding grounds and one or more setts, can be fairly extensive. However, the presented evidence does not confirm the existence of badgers on the site. Even if parts of the un-surfaced areas are used as foraging ground, these grassed areas are to remain as a result of the development.
30. Bats tend to inhabit broad-leaved trees and woodlands. There are two specimens of Oak trees on the site but they are not to be removed. The site is situated within woodland clearing with mature and semi-mature trees present along its boundaries. There is mixed woodland to the west and north of the access track. The evidence does not indicate the presence of bats on the site.
31. In addition, there is concern about the existence of invasive plants. I observed that the hard-surfaced areas used for the stationing of the caravans for residential purposes are not affected by Japanese Knotweed or Himalayan Balsam. The grassland areas around the periphery of the caravan site are to remain and the development does not affect these landscaped areas.
32. I find that the presented evidence does not show that the site contributes to a network of natural habitats which, because of their linear and continuous structure, or their functions as stepping stones, are essential for migration, dispersal and genetic exchange.

*The need for gypsy and traveller sites and the availability of alternative sites*

33. There is agreement between the appeal parties that CS Policy CS12 is not up to date, but it aimed to facilitate the provision for 79 residential pitches through the Core Strategy up to 2017. This figure derives from the Gypsy and Traveller Accommodation Assessment (GTAA) 2008. At the Hearing, the agreed updated figure in relation to outstanding need for pitches is 39<sup>6</sup>. Arc4 consultants have been appointed to carry out an up-to-date assessment of need, but no specific details were published, and there is no indication of the need for sites beyond 2017.
34. To meet future need for gypsy and traveller sites, the Council's intention is to allocate sites via the Site Allocations and Development Management Plan (SAMdev). At the time of the Hearing, details of potential sites have not been published given the on-going research by the consultants. In terms of the SAMDev adoption timetable, the Council intends to hold an examination in the autumn of 2014, but that is subject to additional work being undertaken. So, given the outstanding issues over the status of the SAMDev and the future level of the need for gypsy and traveller sites, the SAMDev can only be given

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<sup>6</sup> The need for gypsy and traveller pitches as of 28 March 2014 until 2017.

- limited weight in the context of this appeal. That said, there are no relevant policies in the SAMDev regarding the provision of gypsy and traveller sites.
35. The Council accepted that there is no 5-year supply of deliverable sites for gypsies and travellers, which conflicts with paragraph 9 of the PPTS. Furthermore, the Council are yet to produce any Plan which would attempt to address the situation. Thus, there is a vacuum as no mechanism is in place to meet the identified need through planned provision of sites.
  36. Paragraph 49 of the Framework indicates that the lack of a 5-year supply of deliverable sites means that the presumption in favour of sustainable development is engaged. In addition, paragraph 25 of the PPTS states that the lack of a 5-year supply of deliverable sites should be a significant material consideration for the grant of a temporary planning permission. However, there is no reason why this should not be a material consideration for the granting of a permanent planning permission.
  37. If planning permission was refused, the Council acknowledges that there is no available plot for the family to go to on any of its sites. At the Hearing, I was told that the appellant is likely to resort to roadside or unauthorised encampments given that there is no space for him and his family on sites occupied by family and friends. There is no available alternative site for the appellant to resort to.
  38. While I recognise the Council's attempts to address the current substantial unmet need for gypsy sites, it does not have a 5-year supply of specific deliverable sites. In addition to that there is an absence of allocated sites to meet the identified need, and a lack of alternative sites for the appellant to go to. All of these matters provide significant weight in favour of the appeal.

*The appellant's need for a settled site and personal circumstances*

39. The appellant indicated that he has relatives living on nearby sites in Wem and Market Drayton, but there is no suggestion that these other sites can accommodate the family's needs.
40. The PPTS acknowledges that settled accommodation can provide benefits in terms of access to health, welfare and education. The family are registered with a medical practice in Shawbury. In broad terms access to continuous healthcare for the site occupants is a benefit. Additionally, Mr and Mrs Price's children attend school in Shawbury. In this particular school, I heard that the children receive additional educational support from the Gypsy and Traveller education liaison officer, which is of significant benefit to the children. Accessing such facilities from an unsettled base is problematic as opposed to a more permanent abode. It is not necessary for these needs to be met from this particular site, but there is no suggestion that there are alternative sites closer to local centres to meet these needs.
41. The proposal would provide a settled base to enable the family to live together as a group where they are able to provide support to one another. This is part of the gypsy way of life which the PPTS seek to facilitate. These general benefits provide further weight in favour of the appeal.

### *Other matters*

42. The access track connecting the site to the A53 has adequate vehicle visibility splays in both directions. The access track is unmade though the local highway authority recommends its surfacing for the first 5m, which could be addressed through a planning condition. There is, nonetheless, adequate turning space within the site given its size. In my view, vehicles would have sufficient space to manoeuvre and exit in forward gear. I find that the development does not result in an increased risk to other highway users. This also goes in favour of the proposal.

### *Conclusions*

43. The development satisfies many of the matters to be taken into consideration of whether or not a particular site is sustainable economically, socially and environmentally. The use of this particular site by gypsies and travellers does not have a materially harmful visual effect upon the character and appearance of the surrounding area, subject to the imposition of suitably worded conditions which I will come to later. The development does not have a materially harmful effect upon ecological interests. Accordingly, the development complies with CS Policies CS6 and CS17, and advice contained in the PPTS and the Framework.

44. Additionally, the substantial unmet need for gypsy sites, the lack of a 5-year supply of specific deliverable sites and alternative available sites combined with the ongoing failure of the Council to meet that need through the development plan process and the appellant's personal needs, all provide significant weight in favour.

45. For all of the above reasons and having considered all other matters, I conclude that there are strong planning reasons for the grant of planning permission in this particular case.

46. If the appeal was dismissed, I was asked to consider the effect of that decision upon the appellant and his family's human rights under the provisions of Article 8 of the European Convention on Human Rights, and the implications of the public sector equality duty. I have had regard to these matters and find that a grant of full planning permission safeguards the appellant's human rights.

### *Conditions*

47. The Framework and Planning Practice Guidance indicate that suitably worded conditions can enhance the quality of development. Conditions must be necessary, reasonable and relevant to the permitted development. They should also be enforceable and precise. The Council submitted a list of suggested conditions which the planning agent agreed as being standard stipulations in gypsy and traveller appeals.

48. There is no need for a time commencement condition as the development has already started.

49. To define the development, it is necessary to restrict site occupation to gypsies and travellers.



50. A site plan has been submitted with the application for planning permission and it is necessary to stipulate that the development is carried out in accordance with the site plan at a scale of 1:500.
51. In the interests of safeguarding the character and appearance of the surrounding area, it is necessary to impose the following stipulations: a) restrict the number and type of caravans, b) prevent commercial activities and the parking of vehicles over 3.5 tonnes and, c) notwithstanding the submitted site plan, the submission of a site layout plan. The plan should include details for the utility building, proposed landscaping, areas of hard standings, parking and turning, means of enclosures, retained hedgerows and trees, lighting and other services such as drainage.
52. In the interests of highway safety, it is necessary and reasonable to require the access to be suitably surfaced for the first 5m as required by the local highway authority. The appellant has control over the access, but details of the junction between the access track and the highway are not adequately shown on the site plan. These should, therefore, be submitted within a specified timescale.
53. In terms of the condition requiring details to be submitted, the Council suggested that I impose stringent timescales for compliance; that the use shall cease within 28 days if the details were not lodged. However, I will impose a stipulation which will require the submission of the details within 3 months and that the development is carried out in accordance with the approved details. This timescale would be reasonable and necessary to ensure that the development is made acceptable.

### **Overall conclusion**

54. For all of the above reasons and having considered all other matters, I conclude that the appeal should succeed subject to conditions set out in the Annex attached to this Decision.

*A U Ghafoor*

Inspector

## **APPEARANCES**

### FOR THE APPELLANT:

Philip Brown Philip Brown Associates

John Price Appellant

### FOR SHROPSHIRE COUNCIL:

Mathew Farmer Principal Planning Enforcement Officer

Jane Raymond Senior Planning Officer

Alison Slade Ecologist Officer

### INTERESTED PERSONS:

Malcolm Colclough Astley Parish Council

## **DOCUMENTS**

1. Need for gypsy and traveller pitches as at 28 March 2014
2. Copy of enforcement notice dated 19 November 2010
3. List of suggested conditions.

**Annex to Appeal Decision APP/L3245/A/14/2215836**

- 1) The development hereby permitted shall be carried out in accordance with the following approved plan: Proposed Site Plan scale 1:500 stamped 13/0348.
- 2) The site shall not be occupied by any persons other than gypsies and travellers as defined Annex 1 of the Planning Policy for Traveller Sites Department for Communities and Local Government March 2012.
- 3) There shall be no more than 2 pitches on the site and on the pitches hereby approved no more than 2 caravans on each of the two pitches (as defined by the Caravan Sites and Control of Development Act 1960 as amended and the Caravan Sites Act 1968 as amended) shall be stationed at any time, of which only 1 caravan shall be a static caravan.
- 4) No vehicle over 3.5 tonnes shall be stationed, parked or stored on this site.
- 5) No commercial activities shall take place on the land, including the storage of materials.
- 6) Notwithstanding condition number 1, within 3 months of the date of this decision, a site layout plan shall be submitted to the local planning authority for its written approval. The details shall include the following:
  - a) the location and dimensions of the utility building including the type of materials used on the external elevations,
  - b) hard and soft landscaping including details of existing hedgerows and trees,
  - c) details for foul and surface water drainage,
  - d) areas for the parking of motor vehicles and turning spaces,
  - e) means of enclosures,
  - f) external lighting and
  - g) a timetable for implementation of the approved details.The development shall be carried out in accordance with the approved details and timetable for the implementation of the details.
- 7) All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the completion of the development, any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the local planning authority gives written approval to any variation.
- 8) Within 3 months from the date of this decision, details of the junction between the access track and the highway shall be submitted to the local planning authority for its approval. The details shall include the hard surfacing with a bound material for the first 5m between the junction and highway and a timetable for implementation. The development shall be carried out in accordance with the approved details and timetable for implementation of the details.

End of Annex to Appeal Decision APP/L3245/A/14/2215836