



Appeal Decision

Hearing and site visit held on 20 March 2012

by Clive Hughes BA (Hons) MA DMS MRTPI

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

Decision date: 15 June 2012

Appeal Ref: APP/R3325/A/07/2051240

Coles Furlong, Owl Street, East Lambrook, Somerset TA13 5HF

- 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 Garry & Marilyn Isaacs against the decision of South Somerset District Council.
 - The application Ref 06/03465/FUL, dated 26 September 2006, was refused by notice dated 28 February 2007.
 - The development proposed is described as retention of use of land as a private family Gypsy site for the siting of one mobile home, one touring caravan and ancillary buildings with altered access arrangement and landscaping treatment.
 - This decision supersedes that issued on 5 March 2008. That decision on the appeal was quashed by order of the High Court.
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Decision

1. The appeal is allowed and planning permission is granted for use of land as a private family Gypsy site for the siting of one mobile home, one touring caravan and ancillary buildings with altered access arrangement and landscaping treatment at Coles Furlong, Owl Street, East Lambrook, Somerset TA13 5HF in accordance with the terms of the application, Ref 06/03465/FUL, dated 26 September 2006, subject to the 9 conditions set out in the Annex to this Decision.

Procedural matters

2. The *National Planning Policy Framework* (the *Framework*) and *Planning policy for traveller sites* (the PPTS) were published in March 2012, after the Hearing had closed. The appellants and the Council have been given the opportunity to comment on the relevance of these documents to their cases. I have had regard to the comments made, to the *Framework* and to the PPTS in determining this appeal.
3. In their original statements, both parties referred to Circular 01/2006 *Planning for Gypsy and Traveller Caravan Sites*. This has now been replaced by the PPTS and I have considered the appeal in the context of current national planning policy.

Main Issues

4. The main issues are (i) the effect of the development on the character and appearance of the area; and (ii) whether the other material considerations advanced by the appellants are sufficient to outweigh any identified harm.

Reasons

Background and policy context

5. The appellants moved onto the site with their children in 2003. The Council issued an Enforcement Notice (EN) in February 2004; this was not appealed. The EN required the use to cease and the land to be restored. A planning application for the change of use of the land to a private gypsy site for one mobile home and one touring caravan was refused by the Council in October 2003 but was subsequently allowed on appeal in August 2005. The permission granted was for a temporary period of one year; it was personal to the appellant (Mrs M Isaacs), her husband and their children. The Inspector who determined that appeal concluded that the appellant and her family were gypsies as statutorily defined. Since then the definition of gypsies and travellers, for the purposes of planning law and practice, has been clarified in Circular 01/2006 and restated in the PPTS. There is no dispute between the parties that the appellants meet this definition; based upon the submitted evidence I have no reason to come to any different conclusion.
6. The planning application the subject of this appeal was refused by the Council in February 2007. The appellants are still living on the site although their two eldest children have since left home to pursue a travelling lifestyle. There are now three children living on the site with their parents; the two older children start at college in September while the youngest is at primary school and will start at secondary school in September.
7. The appeal site lies in the countryside outside any settlement boundary. The 2005 Inspector described the site as being in attractive gently undulating countryside, characterised by a pattern of small irregular fields and orchards, the orchards in particular being a distinctive local feature. She described how the hedgerows, field trees and small woodlands, together with the narrow country roads contribute to a sense of enclosure and further emphasise the unspoilt rural nature of the area. She considered that development, typically of domestic scale, is concentrated in and around small settlements. I agree with this description.
8. The Council's reason for refusal describes the site as being in an attractive and remote area of open countryside; in contrast the 2005 Inspector commented that "the site is not remote". I saw that the site entrance is only some 40m or so from the sign denoting the start of the small settlement of East Lambrook and that it adjoins a dwelling (Hazelwood) along its eastern boundary. Almost immediately across the road is the Four Winds Cider Farm with a prominently sited touring caravan, storage containers and sheds. Between the appeal site and the centre of the settlement, some 0.75km or so to the east, are a number of dwellings, farms, fields and allotments. Due to the short distance to the centre and the intermittent dwellings along Owl Street, I do not consider that the site can reasonably be described as being in a remote location.
9. There are two adopted development plan policies that relate specifically to sites for gypsies and travellers. Both these policies pre-date the publication of Circular 01/2006, the PPTS and any quantified assessment of need. Saved Policy 36 of the *Somerset & Exmoor National Park Joint Structure Plan Review 1991-2011* requires that sites for gypsies and travellers be within a reasonable distance of a settlement providing local services and facilities. In this case the site is within 3km or so of the centre of South Petherton which provides a

range of local services. While the term "reasonable" is not defined, distances greater than 3km have been accepted as reasonable in other cited appeal decisions. The Council has not cited the distance from services as a reason for refusal and I do not consider that there is any conflict with this policy.

10. Saved Policy HG11 of the *South Somerset Local Plan 1991-2011* is a permissive policy that says that outside areas where development is severely restricted such as AONBs and SSSIs, proposals for residential/ long term sites for gypsies and travellers will be permitted provided that certain criteria are met. In this case the Council's reason for refusal does not allege conflict with any of the cited criteria. While the Council's evidence to the earlier Inquiry was that there was conflict with criterion 2, concerning the proximity to schools and other community facilities, this did not form part of the reason for refusal. In any case, the site seems to be reasonably well related to schools and other community facilities; the primary school is within walking distance while the bus to the secondary school stops outside the site. As set out above, other facilities are available nearby in South Petherton.
11. There is thus no conflict with either of the adopted development plan policies that relate specifically to sites for gypsies and travellers. The cited policies do not significantly conflict with advice in the *Framework* or the PPTS and so carry full weight. At the Hearing it was agreed by the principal parties that the emerging Core Strategy is at an early stage and so carries very little weight.
12. Since the 2008 Inquiry there have been some relevant changes in circumstances. In particular, a new Gypsy and Traveller Accommodation Assessment (GTAA) has been published which identifies a need for a further 18 permanent residential pitches in the period to 2020. In addition, the latest bi-annual caravan count identifies some 37 caravans on unauthorised sites. This represents a significant increase in the July 2007 figure of 7 caravans.

Character and appearance

13. Neither of the saved policies relating to sites for gypsies and travellers makes any reference to the impact of such development upon the character or appearance of the area. The supporting text for Policy HG11, which unlike the policy itself is not saved, refers to the need to comply with other development plan policies that seek to protect the countryside from "harmful development". The reason for refusal relates solely to the impact on the rural and visual amenities of the locality. Notwithstanding the lack of conflict with either of the policies that relate specifically to sites for gypsies and travellers, it is necessary to consider whether the development gives rise to any unacceptable harm to either the character or the appearance of the area. If such harm is found, it would be necessary to balance this against the other material considerations advanced by the appellants.
14. The appellants and their children have lived on the site for almost 9 years. Inevitably there have been changes to the appearance of the site since the 2005 Hearing and the 2008 Inquiry. In particular, the appellants have carried out a significant amount of on-site planting following discussions with the Council and have also sited a smaller mobile home in a less visible location. White-painted walls, that once lined the sides of the entrance drive, have been removed and a frontage hedge, on the bank behind the sight lines, has been planted. There has been additional planting behind the hedge and, based upon

- the earlier photographs and my observations on site, the cumulative effect of this has been to significantly reduce the visual impact of the development.
15. Saved Structure Plan Policies STR 1 and STR 6 relate to sustainable development and development outside towns, rural centres and villages. Policy STR1 seeks to ensure that development is of high quality; Policy STR 6 seeks to restrict development in the open countryside. Concerning the saved policies in the Local Plan, Policy ST3 is broadly similar to Policy STR 6. Policy ST5, insofar as it relates to the reason for refusal, seeks to ensure that development respects the form, character and setting of the locality while Policy ST6 sets out various design criteria for new development.
 16. In considering the impact of the development on the character and the appearance of the area, it has to be borne in mind that Circular 01/2006, which was extant at the time the application was made, advised that rural settings for sites for gypsies and travellers were acceptable in principle. The PPTS does not give advice on the principle of providing sites in rural or semi-rural settings. However, it does say that when assessing the suitability of such sites, authorities should ensure that the scale of such sites does not dominate the nearest community. It further advises that new sites in the open countryside away from existing settlements should be strictly limited. In this case, Policy 36 of the Structure Plan Review anticipates that there will be sites in the countryside. This site, involving just 2 caravans, does not dominate the settlement of East Lambrook and it is not sited far from the settlement boundary.
 17. Concerning the impact on the character of the area, the site is in a countryside location close to a settlement boundary. The character of the area is described in broad terms earlier in this Decision. The site lies within a small orchard; the trees behind the development have been retained and further planting has taken place in front of the development. While some structures on the site are visible from public viewpoints, small agricultural buildings and intermittent dwellings are typical features of the area, especially between the site and the centre of East Lambrook. In this context, the development is not harmful to the established character of the area.
 18. With regard to the impact on the appearance of the area, the development is set well back from the road. Even when the hedge and trees are not in leaf, the visual impact is limited and highly localised. The development can be seen through the site entrance and the top of the mobile home is visible for a short distance along Owl Street. From the unnamed side road to the west of the site glimpses of the development can be seen through two hedges on the far side of a field. In this view the mobile home is largely hidden by evergreen planting.
 19. The PPTS says that weight should be attached to well-planned sites that are soft landscaped in a way that positively enhances the landscape and are not enclosed to such a degree that it could be seen as being deliberately isolated from the rest of the community. The promotion of peaceful and integrated co-existence between sites and the local community, as advocated in the PPTS, would not be achieved by hiding all gypsy and traveller sites from public view. This intention, together with the recognition that some small gypsy and traveller sites will be situated in rural and semi rural settings, means that some visibility of the site can be considered to be reasonable provided that it does not give rise to unacceptable harm.

20. This development is largely screened from public view and as the planting matures it will continue to assimilate into the countryside. The level of visual harm is not so great as to make the development unacceptable or in conflict with the cited policies. I conclude that the proposals do not result in undue harm to either the character or the appearance of the countryside. The site is not significantly detrimental to the rural or visual amenities of the locality. The proposals accord with advice in the PPTS and there is no unacceptable conflict with the saved development plan policies. Having come to this conclusion in respect of the only issue between the parties, it is not necessary to examine the various other material considerations advanced in support of the development.

Conditions

21. The conditions suggested by the Council at the earlier Inquiry were discussed at the Hearing. As the development complies with policy there is no need to limit the occupation of the site to the appellants and their resident dependants. It is necessary, however, to limit the occupation of the site to gypsies and travellers as any other occupation would not accord with the development plan policies. A condition limiting the number of caravans on the site is necessary in the interests of the visual amenities of the area. A site development scheme is necessary to ensure that the mobile home, touring caravan, ancillary buildings and parking area are sited where they are not unacceptably prominent in the landscape and to ensure that adequate parking is provided in the interests of highway safety. The provision and implementation of a landscaping scheme and a restriction on the size of parked vehicles is necessary in the interests of the appearance of the area. A restriction on business use is necessary to protect the amenities of neighbouring residents. The siting of any gates and the retention of adequate visibility along the site frontage are also necessary in the interests of highway safety. I have identified the approved plans for the avoidance of doubt and in the interests of the proper planning of the area.
22. I have taken account of all the other matters raised in the written representations and at the Hearing. I have found nothing that outweighs my conclusions on the main issue. Overall, therefore, I conclude that the development would not result in unacceptable harm to the character or the appearance of the area. The development would not conflict with the development plan, the *Framework* or the PPTS. The appeal is therefore allowed subject to the conditions set out in the Annex to this Decision.

Clive Hughes

Inspector

APPEARANCES

FOR THE APPELLANT:

Dr Angus Murdoch	Murdoch Planning
Garry Isaacs	Appellant
Marilyn Isaacs	Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Lee Walton	Planning Officer, South Somerset District Council
Angela Walton	Solicitor, South Somerset District Council

INTERESTED PERSONS:

Bryan Harris	Local resident
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PLANS

- A Site location plan – Scale 1:3000
- B Site plan – Scale 1:1250
- C Plan 1: Site layout plan - Scale 1:250
- D Plan 2: Access arrangement and landscape treatment - Scale 1:250

ANNEX

Schedule of conditions:

- 1) The site shall not be occupied by any persons other than gypsies and travellers as defined in Annex 1 of *Planning policy for traveller sites*
- 2) No more than 2 caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 (of which no more than 1 shall be a static caravan) shall be stationed on the site at any time.
- 3) 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 3 months of the date of failure to meet any one the requirements set out in (i) to (iv) below:
 - i) within 3 months of the date of this decision a scheme for: the internal layout of the site, including the siting of caravans, ancillary buildings, hardstanding, access road, parking and amenity areas; proposed and existing external lighting on the boundary of and within the site; and tree, hedge and shrub planting including details of species, plant sizes and proposed numbers and densities (hereafter referred to as the site development scheme) 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.
- 4) All planting, seeding or turfing comprised in the approved site development scheme shall be carried out in accordance with the approved timetable. Any trees or plants which within a period of 5 years from the completion of the site development scheme 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.
 - 5) No commercial activities shall take place on the land, including the storage of materials, apart from the keeping of birds for the purpose of trading at Gypsy fairs.
 - 6) No vehicle over 3.5 tonnes shall be stationed, parked or stored on this site.
 - 7) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that Order with or without modification), no fences, gates or walls shall be erected within the site. Any entrance gates erected shall be hung to open inwards and shall be set back a minimum distance of 10m from the nearside carriageway edge.
 - 8) There shall be no obstruction to visibility greater than 900mm above the adjoining road level forward of a line drawn 2.0m back and parallel to the nearside carriageway edge and extending a distance of 33m in a westerly direction and 30m in an easterly direction as measured from the centre line of the site access.
 - 9) The development hereby permitted shall be carried out in accordance with the following approved plans: Site location plan – Scale 1:3000; Site plan – Scale 1:1250; Plan 1: Site layout plan - Scale 1:250; and Plan 2: Access arrangement and landscape treatment - Scale 1:250.