The Planning Inspectorate

Appeal Decision

Site visit made on 24 January 2012

by Bridget M Campbell BA(Hons) MRTPI

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

Decision date: 17 July 2012

Appeal Ref: APP/R3325/A/10/2129616
Land at OS 6292 Percombe Hill, Stoke Road, Martock, Somerset TA12 6HT

- 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 Mrs K Sanderson against the decision of South Somerset District Council.
- The application Ref 09/02705/FUL, dated 6 July 2009, was refused by notice dated 4 February 2010.
- The development proposed is described as "change of use from agriculture to residential use comprising one mobile, one utility block including space for waste storage, one touring caravan nomadic use, a hay barn/tractor shed and 2 stables. Hay barn already built and needs retaining".

Summary of Decision: The appeal is allowed, and planning permission granted subject to conditions set out below in the Formal Decision.

Preliminary matters

1. The description used on the Council's decision notice more accurately describes the development proposed. Whilst it qualifies the residential use as being for gypsies and travellers; that is the way the Appellant has made her case. In all other respects it simply describes the proposal with greater clarity. I shall adopt it in this decision. The use had already commenced at the time of my visit with a mobile home present and the hay barn/tractor shed already constructed.

Consideration of the planning application by the Council

2. The officer's report on this application found that the Appellant satisfied the definition of a gypsy/traveller for planning purposes as set out in Circular 01/2006 which was then in force but has since been replaced by the Planning Policy for Traveller Sites (PPTS). The definition however remains unchanged. The Appellant is a Romany Gypsy with strong local connections who at the time of the application was living on the side of the road with her husband. From the written representations made in this appeal I have no reason to reach any conclusion other than that the Appellant continues to meet the definition. National and local planning policies relating to gypsies and travellers thus apply in the consideration of this appeal.

3. The application was then assessed against policy H11 of the South Somerset Local Plan and national planning policy guidance then in force in Circular 01/2006 and taking into account representations made both for and against the proposal by interested persons. The following findings were made:

- There are no available pitches on public gypsy sites in the District and currently no site allocations; the last assessments of need suggested 17 (GTAA 2006) to 20 (panel report into RSS) more pitches required in the District. It is anticipated that a new GTAA would only show an increased need for pitches.
- Both national and local policy accept rural locations for gypsy caravan sites in principle.
- There are no highway objections; the access is adequate and there would be no problems arising from the level of traffic generated.
- The site scores well in sustainability terms. It is within reasonable distance of services and facilities and would, by providing a settled base, enable easier access to health services and education.
- In landscape terms, the site is well defined by hedgerows at present and it could be better assimilated into the surroundings by a rearrangement of layout and some further planting of native species which could be achieved by way of condition.
- There would be no material adverse impact on the amenity of the nearest neighbouring residents some distance to the east.

Taking all those matters into account it was concluded that the proposal accorded with national and local policy and that a permanent permission for the use would be appropriate.

4. Since that time national policy has changed with the National Planning Policy Framework (NPPF) issued at the end of March 2012 together with the PPTS (replacing Circular 01/2006). However, taking full account of the up to date provisions as set out in those two documents there is nothing to indicate that the assessment as undertaken by the Council and summarised above is in any way no longer appropriate. Neither party has suggested otherwise.

5. Notwithstanding the conclusion that a permanent planning permission could be granted, the application was refused on grounds that the development conflicts with policy ST9 of the Local Plan in that the Appellant would be committing a criminal offence in driving over a section of public footpath without authority to access the site.

Background to the access problem

6. The application site comprises part of a field which sits on the northern side of a trunk road, the A303, with fields to either side. When that road was duelled, the Department of Transport extinguished accesses onto it and, using CPO powers, constructed a new concrete access track along the line of a definitive footpath which runs along the rear of those fields. The Appellant has a right to drive over the concrete track for all purposes.

7. The track then connects to Old Stoke Road which has the status of a public footpath before joining the vehicular public highway. The Appellant has a legal right to drive over this stretch for agricultural purposes and for residential use other than over one part where a landowner of half the width of the track is resisting a grant for use by residential traffic. However when this land was transferred back to the owner by the Secretary of State, the Transfer included a clause stating that should the Transferee (the Secretary of State) within 21 years of the date of the Transfer so request, the Transferor or his successors in title will grant to the landowners specified (which includes the Appellant) the right to pass and repass with or without vehicles over the land.

8. Eversheds, on behalf of the Secretary of State for Transport have written to the owner asking that he grants the required right of way, pointing out his obligation to do so under the terms of the Transfer and agreeing to pay his reasonable fees. The response has been that as such a grant has already been given for agricultural traffic; there is no obligation to make a further grant for residential traffic. That stance is not accepted as correct by the Council, the Appellant or the Secretary of State. They are all of the view that there is an obligation to grant a right of access for residential traffic across the disputed land.

Assessment

9. Policy ST9, to which the Council refers, states "Proposals for new development will be required to be designed to take into account the need for security and crime prevention". This policy is, as it says, concerned with the design of proposed development. There is nothing objectionable about the proposed layout of the site in design terms. Furthermore in physical terms the track leading to it, which does not form part of the application site, is wholly suitable for providing access to serve the proposed residential use. It cannot therefore be said that there is conflict with this policy.

10. The Council has referred to the duty imposed on it by s17 of the Crime and Disorder Act 1998 to have regard to the likely effect on crime and disorder. However, that section relates to the exercise of functions by the local planning authority and the Secretary of State is not under the same duty to have regard to it. Nevertheless, while s17 is not, in itself, a material consideration for me, its subject matter – crime prevention – may be a material consideration in determining an appeal.

11. The Council says the prevention of crime is a key social objective and that social objectives have been found to be a material consideration in determining planning applications. I do not disagree. In this case the Council's concern is about an offence committed under the Road Traffic Act 188 by driving over a public footpath without authority which it says it cannot condone by its actions.

12. The section of access in dispute only extends across half of the width of the track and, were it not for the current position of a gateway and kissing gate, it is likely that the Appellant would be able to take a standard 4 wheel vehicle along the track using only that half over which she has a right of access for all purposes. As it is she could still lawfully access her site for residential purposes by a narrower vehicle such as a motor cycle or a quad bike using only half the track width or indeed she could walk on any part of it. With unrestricted access over the whole track in connection with the agricultural activities on her land she might consider more limited access for the residential use to be sufficient.

13. In these circumstances, if planning permission was granted the Appellant would have the choice to access her land for residential purposes in a somewhat restricted manner or to disregard the lack of authority to use half the width of a stretch of the track. That choice would be hers to take. The grant of permission does not oblige the Appellant to commit a criminal offence.

14. In addition, Eversheds have written to the solicitors for the landowner indicating that if they do not comply with the obligation in the Transfer to grant the right, then Eversheds will be advising the Secretary of State for Transport

on the options open to compel them to comply. Thus it seems that the matter is entirely capably of being resolved and indeed will be resolved. That is the view held by the Appellant, the Council and the Department of Transport.

15. In light of the fact that the Appellant is not obliged to commit a criminal offence in order to use the appeal site for residential purposes and in view of the clear indication that the matter in dispute is capable of satisfactory resolution, I find the concern about the possibility that a criminal offence will be committed to be insufficient justification for withholding permission in this case. If an offence is committed and there was a legitimate reason to pursue prosecution, the grant of planning permission would not affect the position, but in the circumstances of this case it seems highly unlikely that prosecution would be in the public interest. The site is suitable for the use proposed and there are no planning considerations militating against the grant of permission which is in accordance with the Development Plan for the area. Conditional planning permission will be granted.

Conditions

16. The Council has suggested a number of conditions in the event that the appeal is allowed. As permission is only warranted because of the Appellant's gypsy status, it is necessary to tie the occupation of the land to such persons. It is also necessary to limit the number of caravans and to limit activities on the site given the rural location. In order to ensure that the site fits well into its surroundings, a condition requiring details of the site layout and of landscaping are required. However, I find no reason to prevent buildings or structures other than those allowed by the permission as these would be subject to normal planning control.

Decision

17. The appeal is allowed and planning permission is granted for a change of use from agriculture to a private gypsy and traveller site with the erection of a hay barn/tractor shed, stable, utility block, mobile home and touring caravan on land at OS 6292 Percombe Hill, Stoke Road, Martock, Somerset TA12 6HT in accordance with the terms of the application, Ref 09/02705/FUL, dated 6 July 2009, and the plans submitted with it, subject to the following 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* (DCLG March 2012).

    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) No commercial activities shall take place on the land other than in connection with the agricultural use of the property, including the storage of materials, and no vehicle over 3.5 tonnes shall be stationed, parked or stored on the site.

    4) 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 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 the mobile home and touring caravan; hardstanding and access drive (including surfacing materials); parking, tuning and amenity areas; the means of foul and surface water drainage of the site; proposed external lighting within the site; 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.

5) Following implementation of the site development scheme there shall be no change to any of the approved details and no additional lighting. The parking and turning areas shall be kept available for use at all times. Any planting comprised in the approved details which within a period of 5 years from 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, unless the local planning authority gives written approval to any variation.

Bridget M Campbell

Inspector