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## Appeal Decision

Hearing and site visit held on 30 October 2013

by **Clive Kirkbride BA(Hons) DipTP MSc MRTPI**

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

Decision date: 10 December 2013

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**Appeal Ref: APP/R3325/A/13/2200891**

**Land at OS parcel 4443 (part), Stonage Lane, Haselbury Plucknett, Crewkerne, Somerset, TA18 7PQ**

- 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 Billy Hughes against the decision of South Somerset District Council.
  - The application Ref 13/00107/FUL, dated 10 January 2013, was refused by notice dated 7 March 2013.
  - The development proposed is 2 private gypsy/traveller pitches to include 2 mobile homes, 2 touring caravans, 1 day room and associated hardstanding and refuse storage.
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### Decision

1. The appeal is allowed and planning permission is granted for 2 private gypsy/traveller pitches to include 2 mobile homes, 2 touring caravans, 1 day room and associated hardstanding and refuse storage at Land at OS parcel 4443 (part), Stonage Lane, Haselbury Plucknett, Crewkerne, Somerset, TA18 7PQ in accordance with the terms of the application, Ref 13/00107/FUL, dated 10 January 2013, and the plans submitted with it, subject to the conditions set out in the attached Schedule.

### Procedural matters

2. The development has already started. A substantial area of hardstanding has been laid and the appellant and his family are currently occupying the site for residential purposes. I have determined the appeal on this basis.
3. Since the Council refused planning permission for the development the South West of England Regional Spatial Strategy has been revoked and, with it, the Somerset and Exmoor National Park Joint Structure Plan Review, bar a single policy which has no relevance to my determination of this appeal. The development plan policies against which the development has to be assessed, therefore, are the saved policies of the adopted South Somerset Local Plan (LP) referred to by the Council. I was further advised that work on the Emerging Local Plan (ELP) has been suspended until early in 2014 and that ELP Policy HG7 (Gypsies, Travellers and Travelling Showpeople) should be given little weight.

## **Background**

4. Billy Hughes is an English Romany Gypsy born and raised on the Council site at Tintinhull. At the hearing the appellant acknowledged that he no longer travels for work and is currently recovering from a major operation. The Council accepts that the appellant is a gypsy and traveller for the purposes of the Government's Planning policy for traveller sites (the Traveller policy) and, in the absence of any evidence to the contrary, and having regard also to the appellant's other personal circumstances discussed below, I find no reason to disagree with this assessment.
5. I understand that the Council has already served an enforcement notice which requires, amongst other matters, the residential use of the land to cease and the caravans to be removed from the land. I further understand that the compliance period has expired and that the Council is awaiting the outcome of this appeal before deciding what action to take next.

## **Main issues**

6. I consider these to be the effect of the appeal development on highway safety and on the character and appearance of the area and whether other considerations outweigh any harm identified.

## **Reasons**

### ***Highway safety***

7. The key points are that Stonage Lane is restricted in width and its junction with the A3066 is substandard. Stonage Lane has few formal passing places, is constrained by hedges on both sides and has no footways or streetlighting; in other words, it is fairly typical of the numerous other narrow rural lanes found throughout the county. Other users of the lane, including agricultural traffic, horse boxes, horse riders and pedestrians, are well used to such conditions and take appropriate and considerate action, as I noted during the course of my site visit. Therefore, I am satisfied that the use of Stonage Lane to access the appeal site is acceptable, in principle.
8. As acknowledged by the Highway Authority (HA) during the hearing, the appeal site is served by an existing agricultural access which is set well back from the edge of the carriageway such that a vehicle can pull off the road before the driver would have to get out and open the gate. The Council has not raised any specific objection to the use of the existing access to the appeal site.
9. Any traffic turning right out of the appeal site onto the lane then has to turn either right or left onto the A3066 which is sited less than 200m to the west of the appeal site. The junction is located between the neighbouring villages of Haselbury Plucknett and North Perrott. The A3066 is subject to a 30mph speed limit through both villages and, irrespective of which direction vehicles are travelling past the junction with Stonage Lane, drivers will have only just left one 30mph speed limit area before entering another similarly restricted area. Moreover, the short section between the two 30mph limits, including the point where the junction is located, is subject to a 40mph speed limit.

10. It is a matter of fact that visibility to the left when emerging from Stonage Lane onto the A3066 is severely restricted, by whichever standards are applicable, be it the Design Manual for Roads and Bridges (DMRB), as referred to by the HA, or Manual for Streets 2, as referred to by the appellant. However, there is good visibility to the right and it is acknowledged that the only potentially dangerous manoeuvre for vehicles emerging from the junction is for those turning right towards Haselbury Plucknett.
11. To the left of the junction are two signs which should act as warnings to drivers travelling north along the A3066 to take care. Firstly, the junction sign and, then just a few metres beyond this, the village sign for Haselbury Plucknett. The junction sign is there to make drivers aware of the fact that any traffic attempting to turn right into Stonage Lane could be queuing and blocking the north-bound carriageway, in the absence of any dedicated right hand turn lane. The sign is also located at about the point where drivers travelling north along the A3066 would be able to see the junction and any vehicle edging out into the nearside carriageway in order to enable drivers to judge if it were safe to turn right into the north-bound carriageway. The village sign for Haselbury Plucknett also advises drivers to drive carefully through the village and it is at about this point that the village 30mph limit warning sign comes into view.
12. This is a historic road junction. There is a stud farm, a small holding and a yard with stables further down Stonage Lane beyond the appeal site and the evidence before me suggests that the junction is infrequently but regularly used by a variety of vehicles including private cars, agricultural vehicles and horse boxes without incident. From what I saw, drivers turning right onto the A3066 are reliant on drivers proceeding north along the main road out of North Perrott being able to see them edging out of the junction and being able to react sufficiently quickly in order to avoid potential accidents.
13. The evidence suggests that this is what happens and that a combination of circumstances peculiar to this particular stretch of main road accounts for why there is no record of any road traffic accidents (RTAs) which could be attributed to the use of a long-established but substandard junction. Had the HA considered the junction to be unsafe it could have put specific measures in place, such as extending the 30mph limit so that it includes the short stretch of road subject to the 40mph limit. It has not done so.
14. It has been claimed that vehicles regularly travel at speeds in excess of 40mph between the two villages. Whilst the HA has no speed data to confirm or deny this, it accepted that, statistically, there probably should have been at least one recorded RTA if this were the case. The fact that there has not suggests, in my view, that drivers generally abide by the speed limit.
15. The appellant has one vehicle and only he currently drives. This situation may change in the future if and when his children learn to drive. However, a condition could be imposed on any permission preventing occupation of the appeal site by more than one family, which some were concerned about. From the evidence before me, I am satisfied that the appeal development would result in only a small increase in daily vehicular movements over and above those associated with the lawful use of the land, were the appellant to be living

elsewhere, given that he and his family regularly visit the site to attend to their livestock. The HA acknowledged this to be the case during the hearing.

16. I noted that it is physically easier for a vehicle to exit the appeal site by turning left into Stonage Lane than it is by turning right towards the junction with the main road. This tends to support the appellant's otherwise unsubstantiated claim that he uses an alternative route when travelling to Haselbury Plucknett and beyond, which means that he avoids having to turn right onto the A3066. However, I can give this matter little weight as use of the existing access could not be conditioned to this effect.
17. Nevertheless, having regard to all of the above matters, I am satisfied that the traffic needs of the appeal development would not result in any material increase in the use of the substandard Stonage Lane/A3066 road junction. I am also satisfied, on balance, that such a marginal increase in the level of the use of the junction as a consequence of the appeal development would not result in any material harm to highway safety, including to other road users. There may come a time when the cumulative impact of additional traffic movements using Stonage Lane does result in such a harmful effect but there is no evidence before me that this is currently the case.
18. Therefore, I conclude that the appeal development would not result in any material conflict with LP Policies ST5 (general principles of development) and HG11 (long-term/residential gypsy and traveller sites) or the relevant advice regarding safe accesses in The Framework. Consequently, I conclude that there is no good reason to prevent or refuse development on transport grounds.

### ***Character and appearance***

19. The appeal site is situated beyond the settlement limits of Haselbury Plucknett in an area of open countryside where policies of development restraint generally apply. However, as the Traveller policy does not seek to prevent gypsy and traveller sites from being developed in rural areas, in principle, the accommodation needs of the travelling community are assessed somewhat differently to those of the settled community. However, due regard should still be paid to the protection of local amenity and the environment by ensuring that the scale of sites does not dominate the nearest settled community, by strictly limiting new sites in the open countryside that is away from existing settlements and by avoiding placing undue pressure on local infrastructure.
20. I am satisfied that a two-pitch site which meets the accommodation needs of a single family would not dominate the local community or place an undue pressure on local infrastructure. Nor is the appeal site in open countryside that is away from existing settlements; it is relatively close to both Haselbury Plucknett and North Perrott and Crewkerne is only a few miles further away. Indeed, the Council acknowledged that the site was in a sustainable location when determining the original planning application and I find no reason to disagree with its assessment, even though the parish council takes a different view.
21. The Council's second reason for refusal relates specifically to the local settlement pattern, the introduction of an incongruous form of development in

the local landscape and the further erosion of the open countryside between Haselbury Plucknett and North Perrot. With respect to the latter it could be argued that any traveller site located in a rural area would erode open countryside. The countryside hereabouts is not designated and, contrary to the submissions made by the parish council, is not Green Belt. Having regard to the provisions of the Traveller policy, therefore, I attach little weight to this particular element of the Council's second reason for refusal.

22. The Council's Landscape Officer attended the hearing and clarified his comments in respect of the visual impact of the appeal development. He was mainly concerned about the effect on character, not appearance; he acknowledged that the appeal site is contained and well screened by mature hedgerows and that none of the existing roadside hedge would need to be removed to facilitate the development. I was able to see on my site visit just how effectively the existing hedges screen the development and found it to be barely noticeable from Stonage Lane.
23. The hedges are generally sufficiently dense to ensure that they would still provide adequate screening during the winter; in any event, the Traveller policy advocates not enclosing sites with so much landscaping so as to avoid the impression that the site and its occupants are deliberately isolated from the rest of the community. Therefore, I am satisfied that the appeal development has only a very limited visual impact.
24. In terms of character, I accept that the use and development of the appeal site as a traveller site does not conform to the predominant pattern of development found in the local area. However, I find that the development of the appeal site which, by its very nature, has to be aligned at right angles to Stonage Lane, is preferable to the development of an alternative site inside the roadside hedge on rising land immediately to the west of the appeal site. Whilst this is also within the appellant's ownership it would, in my view, be more visually intrusive as it would not benefit from the same degree of natural screening.
25. Therefore, having regard to the relevant provisions of the Framework and Traveller policy, I conclude that the appeal development would not result in any material harm to the character and appearance of the site or its surroundings and that any conflict with LP Policies ST5, EC3 (landscape character) and HG11 would be very limited.

### ***Other material considerations***

#### ***Pitch needs, requirements and alternative provision***

26. The two public sites in the district are both full and there are no other allocated traveller sites in the district. I heard that the new Gypsy and Traveller Accommodation Assessment indicates a need for 10 pitches in the five year period to 2015 and a further 8 pitches in the period 2015-2020 but have not been provided with a copy of its findings. The Council states that it has permitted 12 pitches since 2010 but I was not provided with details. In any event, as the appellant and his family have been technically homeless since 2008 and are still living on an unauthorised site, having previously been evicted from another owned by the County Council, the level of need up to 2015 is clearly an under-estimate.

27. The Council does not currently have a 5 year supply of sites and, until recently, its general position was to encourage private site provision, the suitability of which would be assessed against criteria-based local development plan policies. However, I heard that the Council is now committed to preparing a Gypsy and Traveller Sites Allocation Development Plan Document (SADPD) as part of its Local Development Scheme once work on the Emerging Local Plan resumes early in 2014. However, I heard that there is no timetable for its preparation, publication and adoption and the Council acknowledged that this was likely to be two or three years away.
28. In the circumstances I give significant weight to the lack of any alternative sites, the lack of a 5 year supply of sites and the fact that such a supply may not be available for three years.

*Personal circumstances and Human Rights issues*

29. The appellant and his family have five children, four of whom are dependents and currently living with them at the appeal site. The children attend school or college in Crewkerne where I heard that they are well-settled and doing well. This is despite the fact that the family has a history of living on unauthorised sites with the threat of eviction hanging over their heads. I also heard that two of the children are on work experience at the nearby equestrian yard further down Stonage Lane and that their employer is so satisfied with the arrangement that she would be prepared to extend this.
30. Clearly this is a family that wants and needs a settled base. Were the appeal to fail, the family faces being evicted, uprooted again and forced to live on the road with all the hardship this would entail, including possible disruption to the children's education and the loss of work experience for two of them. I give these matters considerable weight.
31. The alternative of a temporary permission was discussed during the hearing, which would be an option given the recent change in planning circumstances referred to above. However, the appellant was strongly opposed to this as it would not give his family the certainty provided by a permanent settled base. I also heard that the site is ideal for his needs: he owns it; it adjoins his land where he keeps his livestock; it is in a sustainable location, and the children can walk along a public right of way across fields to the main road to catch their bus to school and college. There is no certainty that a more suitable site would be forthcoming through the SADPD process and, even if this were to be the case, it would be several years before one was available for occupation by the appellant and his family.
32. Clearly, eviction from the site would amount to interference with the appellant's right to family and home under Article 8 of The Human Rights Act 1998. With reference to the possible or even likely disruption to the children's education, the courts have held that their interests are a paramount concern. Therefore, I give these matters substantial weight.

**Overall conclusions**

33. It is a matter of fact that the junction between Stonage Lane and the A3066 is substandard with restricted visibility to the south. However, I have found that

the additional traffic movements generated by the appeal development would not materially add to the use of the junction and that, with due care and attention by all drivers, any additional use resulting from the appeal development would not result in any material harm to highway safety.

34. I have found that the appeal development would not have a harmful visual impact and only a limited adverse impact on the character of the site and its surroundings.
35. To be weighed in the balance against the very limited harm identified are a number of other material considerations. These include unmet need; the lack of alternative sites; the Council's failure to provide a five year supply of sites, as required by the Traveller policy; the imposition of conditions which could further limit the harm identified, and the appellant's personal circumstances and human rights considerations if the appeal were to fail.
36. A number of other matters have been referred to on behalf of the parish council and by local residents including protected hedges, improvements to the access, pollution, flood risk to the development, protected species and overdevelopment of the site in future. However, there is either no substantial evidence to support these concerns or they can generally be addressed by appropriate conditions. Otherwise, none of the other matters raised outweighs my conclusions on the main issues. Any evidence of anti-social behaviour that may be attributable to the appellant and his family should be reported to the relevant authorities who would decide what, if any, action to take. However, the Council did not object to the appeal development on this basis.
37. On balance, I consider that other material considerations outweigh the limited harm identified. Dismissal of the appeal would be excessive or disproportionate and would outweigh any harm to the public interest arising from a grant of permanent planning permission. Therefore, I shall allow the appeal subject to the conditions discussed below.

### **Conditions**

38. I have considered the conditions suggested by the Council in the light of the advice set out in Circular 11/95 and the discussions which took place during the hearing. There is a need to limit occupancy of the site to gypsies and travellers because permission would not otherwise be forthcoming for the use of the appeal site for residential purposes. In view of the appellant's personal circumstances and in order to ensure that the site is only occupied by the appellant, his wife and their dependents, there is a need for a personal occupancy condition and for the site to be cleared and restored to its previous condition as and when the site is vacated, in the interests of appearance.
39. As development has already commenced there is a need for a condition requiring a site development scheme to be submitted, approved and implemented otherwise the permitted use of the site shall cease. Such a scheme should include details of the proposed consolidation of the existing access, in the interests of highway safety; the means of foul and surface water drainage, in the absence of any such details having been submitted, existing and proposed external lighting, proposed landscaping and aftercare, refuse storage and a site restoration scheme, in the interests of appearance.

40. The appeal plans otherwise provide sufficient information regarding the internal layout of the site that a condition requiring comprehensive details of this to be submitted and approved is unnecessary. However, given that it is the appellant's intention to remove one of the three existing touring caravans on the land and site 2 larger mobile homes on it instead, I consider a condition requiring him to give the Council one week's written notice in advance of when he intends to deliver these to the appeal site is necessary, in the interests of highway safety and, in case any temporary alteration to the appeal site access is required to facilitate this, appearance.
41. There is no need for suggested condition 4 as worded; however, I shall impose a condition requiring the parking and turning area to be kept available for their intended use, to ensure that vehicles can exit the site in forward gear in the interests of highway safety. There is also a need for conditions preventing any commercial use of the land taking place and for restricting the weight of any vehicles kept on the land to 3.5 tonnes or less, with the exception of a single motorised horse box, in the interests of appearance and highway safety.

*C.S.Kirkbride*

INSPECTOR



### SCHEDULE OF CONDITIONS

- 1) The site shall not be occupied by any persons other than gypsies and travellers as defined in Annex 1: Glossary of the Planning policy for traveller sites.
- 2) The occupation of the site hereby permitted shall be carried on only by the following and their resident dependants: Billy Hughes and Emma Hughes.
- 3) When the land ceases to be occupied by those named in condition 2 above the use hereby permitted shall cease and all caravans, structures, materials and equipment brought on to or erected on the land, or works undertaken to it in connection with the use, shall be removed and the land shall be restored to its condition before the development took place.
- 4) There shall be no more than 2 pitches on the site and on each of the 2 pitches hereby approved 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, of which only 1 caravan shall be a static caravan.
- 5) One week's notice in writing shall be given to the Council of the date the 2 mobile homes hereby permitted are to be delivered to the site.
- 6) 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 2 months of the date of this decision a scheme for the means of foul and surface water drainage of the site; consolidation of the surface of the existing access; proposed and existing external lighting on the boundary of and within the site; tree, hedge and shrub planting including details of species, plant sizes and proposed numbers and densities; refuse storage and the restoration of the site to its condition before the development took place at the end of the period when the site is occupied by those permitted to do so, (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 10 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.

- 7) At the same time as the site development scheme required by condition 6 above is submitted to the local planning authority there shall be submitted a schedule of maintenance for a period of five years of any proposed planting to strengthen the existing boundary hedgerows; the schedule to make provision for the replacement, in the same position, of any tree, section of hedge or shrub that is removed, uprooted or destroyed or dies or, in the opinion of the local planning authority, becomes seriously damaged or defective, with another of the same species and size as that originally planted. The maintenance shall be carried out in accordance with the approved schedule.
- 8) The development hereby permitted shall otherwise be carried out in accordance with the following approved plans: 1053/02A and 1053/03.
- 9) The parking and turning area shown on the approved plans shall be kept clear of obstruction and shall not be used other than for its intended purpose.
- 10) No commercial activities shall take place on the land, including the storage of materials.
- 11) No vehicle over 3.5 tonnes shall be stationed, parked or stored on this site save for a single motorised horse box owned by the appellant.

## **APPEARANCES**

### **FOR THE APPELLANT:**

Annie Murdoch	The appellant's agent
Billy and Emma Hughes	The appellant and his wife

### **FOR THE LOCAL PLANNING AUTHORITY:**

Andrew Gunn, BA(Hons) MRTPI	Team Leader (Area West), South Somerset District Council
Jon Fellingham, BA(Hons)	Principal Planning Liaison Officer, Transport Development Group, Somerset County Council (the Highway Authority)
Robert Archer, DipLArch CLA MLI	Landscape Architect, South Somerset District Council

### **INTERESTED PERSONS:**

Jade Lyus, Solicitor	Of Clarke Willmott LLP, on behalf of Haselbury Plucknett Parish Council
Pauline Hughes	A relation of the appellants
Kathy Gallagher, Christine Barrett, Mr R C Wilson, C E Dalley and H Raymond	Local residents

## **DOCUMENTS**

- 1 Copy of the Council's Hearing notification letter dated 09/10/13 and list of consultees
- 2 Copy of email correspondence between Jeremy Hurlstone and Jonathan Fellingham dated 09/05/13 relating to speed limits along the A3066 in the vicinity of the junction with Stonage Lane and on highway safety matters relating to the use of the junction (submitted for the appellants)
- 3 Observations on vehicles using the Stonage Lane/A3066 junction made by Emma Hughes on 13 & 17 August and 10, 12, 16 & 28 October 2013
- 4 Extract from Manual for Streets 2 on 'Visibility' as referred to by the Highway Authority during the hearing

## **PLANS**

- A Plan showing routes of public rights of way (in purple) in the vicinity of the appeal site provided by the Council at the site visit