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Your Ref: 19/09079/FUL
Our Ref: APP/Y3940/W/20/3257110

16 March 2023

Dear Sir/Madam,

Town and Country Planning Act 1990
Appeal by Mr Rudi Sykes
Site Address: Land at Brewers Pit, Sandy Furlong, Hilmarton , Wiltshire , SN11 8SS

I enclose a copy of our Inspector's decision on the above appeal(s).

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Thank you in advance for taking the time to provide us with valuable feedback.

Yours sincerely,

Benjamin Honeychurch
Benjamin Honeychurch

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The Planning Inspectorate

Appeal Decision

Hearing Held on 23 February 2023
Site visit made on 23 February 2023

by David Murray BA (Hons) DMS MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 March 2023

Appeal Ref: APP/Y3940/W/20/3257110
Land at Brewers Pit, Bushton Road, Sandy Furlong, Hilmarton, Wiltshire, SN11 8SS.

- 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 Rudi Sykes against the decision of Wiltshire Council.
- The application Ref. 19/09079/FUL, dated 2 September 2019, was refused by notice dated 3 April 2020.
- The development proposed is the change of use of the land to 1 no. Gypsy Traveller pitch and associated works including 1 mobile home, 1 touring caravan, and conversion of stable to dayroom and sealed septic system.

Decision

1. The appeal is allowed and planning permission is granted for the change of use of the land to 1 no. Gypsy Traveller pitch and associated works including 1 mobile home, 1 touring caravan, and conversion of stable to dayroom and sealed septic system, at Land at Brewers Pit, Bushton Road, Sandy Furlong, Hilmarton, Wiltshire, SN11 8SS, in accordance with the terms of the application, Ref. 19/09079/FUL, dated 2 September 2019, and the plans submitted with it, subject to the conditions set out in the attached Schedule.

Procedural Matters

2. The parties completed a Statement of Common Ground (SCG) just before the Hearing. This confirms that following the submission of further information the Council has withdrawn the second reason for refusal concerning the provision of services to the site.

3. The Council accepts that the appellant and his family are Romany Gypsies with a mainly itinerant lifestyle and I have no reason to disagree.

Main Issues

4. The main issues are:

   - Whether the proposal accords with the development strategy;
   - Whether the site is at risk of flooding and poses a risk to the occupants;
   - The effect on the character and appearance of the landscape;
   - The need for and supply of gypsy/traveller sites locally; and

- The personal circumstances of the appellant and family and any children.

Reasons

Background

5. The appeal site comprises a broadly rectangular area of land which lies in an area of open countryside to the east of the village of Hilmarton. The land fronts Bushton Road, to which there is a vehicular access, and is bounded on the northern side by a brook before this passes into a culvert underneath the road. At the time of my visit the site contained a day room, campervan, touring caravan and stable as well as vehicles and domestic paraphernalia. The application is therefore partly retrospective. I note that planning permission was granted for equestrian use in 2016 and the erection of a stable building. This is the building that has been converted into a day room.

Policy context

6. The development plan for the area includes saved policies in the North Wiltshire Local Plan 2011 and the Wiltshire Core Strategy 2015 (CS). The Council says that there are no relevant policies in connection with the appeal proposal in the 2011 Local Plan.

7. Of the CS policies, the most relevant is Core Policy 47 concerning provision for Gypsies and Travellers. Core Policy 51 regarding 'Landscape' and Core Policy 57 on 'Design and place shaping' are also pertinent. Dr Ruston for the appellant says that these latter policies should be given less weight as they are not wholly in accordance with the Planning policy for traveller sites 2015 (PPTS). However, the PPTS indicates that sites in open countryside should be very strictly limited and the National Planning Policy Framework (the Framework) also seeks to protect valued landscapes and recognises the character and beauty of the countryside. Although the area around the appeal site has not been shown to be a *valued* landscape I am satisfied that these two policies are not materially inconsistent with national policy and should be given full weight.

8. CS Policy 67 also deals with Floor Risk, which is a main issue, but the policy was not referred to in reason for refusal No.1. However, the Council said that the wording of the policy is more related to the provision and assessment of sites for permanent housing rather than other forms of development.

Development strategy

9. In essence if the development of a gypsy or traveller site meets the criteria in Core Policy 47 and there are no other policy barriers then it should be permitted. The Council agree that other than criterion (i) (a flooding barrier) and criterion (vi) (unacceptable impact on the landscape) the proposal either meets the other criteria of the policy or these are not relevant to the case. These two aspects will be reviewed within the main issues and concluded afterwards.

Whether site at risk of flooding and users at risk from flooding

10. In assessing this issue I have had regard to the Flood Risk Assessment (FRA) submitted with the application and to the detailed comments and objections of the Environment Agency (EA).

11. The flooding issue also needs to be considered in the context of paragraph 159 of the Framework that inappropriate development in areas of risk of flooding should

be avoided by directing development away from areas of highest risk. However, where development in such an area is acceptable in principle the development should be safe for its life-time without increasing the risk of flooding elsewhere.

12. The parties agree that the site lies in Flood Zone 3 where there is a high probability of flooding from the unnamed tributary to the Cowage Brook. A residential caravan site intended for permanent residential use is classed as a 'highly vulnerable' use within Annex 3 of the Framework. Further, guidance in Table 2 of paragraph 079[1] of the national Planning Practice Guidance (PPG) indicates that a highly vulnerable use should not be permitted in Flood Zone 3, irrespective of being in Flood Zone A or B.

13. Notwithstanding this objection in principle, the 'sequential test' should be applied to see if there are other sites available with a lower risk of flooding; and an 'exception test' as per guidance in paragraphs 024 and 027[2]of the PPG. This test needs to demonstrate that a particular site has wider sustainability benefits to the community that outweigh flood risk and, secondly, that the development will be safe for its users without increasing flood risk elsewhere.

14. In relation to the sequential test it is clear that the appellant decided to pursue the appeal site because of the lack of any other suitable alternative site for him and his family to resort to as a Gypsy or Traveller. The appellant's team have therefore not been able to carry out any form of sequential assessment to choose a less risky location in flooding terms. Neither can the Council demonstrate that other specific sites are suitable and available for the appellant as a Gypsy or Traveller with less risk of flooding. Nevertheless, I agree with the Council that, in general terms, the physical characteristics and hydrology of the county are such that there is likely to be other comparative land within and around existing settlements that does not have a significant barrier to development and is likely to be less of a flooding risk in sequential terms. Overall on the evidence submitted in this case I am not satisfied that the sequential test has been met.

15. In respect of the exception test, the appellant's team suggest that the provision of a pitch for a Gypsy or Traveller where there is little or no other provision at the moment is a critical public benefit. I will weight this up in the planning balance as it relates to another main issue.

16. Concerning whether the site would be safe for the users there is some disagreement between the appellant's civil engineer and the EA about the potential depth of flood water across the site, taking into account the effects of climate change. The EA say that the undulating nature of the site mean that areas close to the brook would have a potential flood depth of 0.5m. This coupled with the projected velocity of flood water would result in a hazard rating of 'Danger to most' and therefore a significant risk to anyone crossing these deeper areas of the site.

17. The appellant's team accepts that there is some variation in the site levels and acknowledge that the position of the mobile home shown on the proposed site layout plan (drawing 1799/02A) would be where the potential flood water would be deepest. This would affect the pedestrian route to the dayroom and the access to the site. In order to overcome this the appellant proposes to site the

[1] Reference ID: 7-078-20220825
[2] Reference ID: 7-024-20220825 and Reference ID: 7-027-20220825

mobile home in a different position adjacent to the hedge alongside the highway. This would involve relocating an existing stable. However the potential flood depth on the route to the dayroom and the access would be in the order of 0.1m.

18. Finally on safety the appellant's team acknowledge limitations with the EA flood warning system for this area and suggests that an enhanced flood warning system be installed. Other detailed aspects to make the site safe in a flood event were discussed at the hearing and I asked the parties to agree a set of recommendations after the close of the hearing.

19. The final aspect of the exception test deals with the effect on flooding elsewhere and the parties agree that this risk would not be affected by the development proposed.

20. Overall on this issue I find that the proposal conflicts with the national policy on flooding as it has not been demonstrated that there are no other suitable and alternative sites available at a lower risk of flooding and so the sequential test has not been met. Neither is the exception test met in whole at the moment because the proposed siting of the mobile home would be likely to result in a 'danger to most' users although the proposal could be amended by relocating the proposed position of the mobile home to higher land within the site. As such there is also conflict with part (i) of Core Policy 47.

Effect on landscape

21. The appeal site lies in the open countryside away from any settlement. The local landscape is relatively flat with long distance views to the higher land forming part of the North Wessex Downs Area of Outstanding Natural Beauty to the south-east. The North Wiltshire Landscape Character Assessment says that the local area has an essentially tranquil and pastoral character which is vulnerable to change either though cumulative small scale development over time or through larger scale development with a more obvious immediate effect.

22. The change to the landscape caused by the proposal must be considered in the context of the site prior to the retrospective application. The photographs appended to Mr Goodwin's statement show the site as at 2018 before the erection of the stable building permitted in 2015. It is apparent that the road side hedge has been allowed to grow to a height of about 3m. Consequently, although the development on the site has been screened, the open nature of the field enclosed by hedges and isolated mature trees, which is characteristic of the landscape, has been lost.

23. Notwithstanding this change to the character of the land, the retention, thickening and increase in height of the roadside hedge effectively screens the residential use that has been started. Only the top of the roof of the original stable building (now converted to the day room) is visible to the public realm outside of the site. Views of the trappings of residential use, like vehicles, childrens' play equipment and a large pile of logs, are limited to being seen through the small gap in the hedge formed by the access.

24. At the hearing there was some discussion that the appellant's plans for electrical supply may need the erection of solar panels on the south-east facing roof slope which runs alongside the roadside hedge and I paid special attention to this at the site visit. In my view the hedge could be retained up to a height just above the eaves of the building to ensure that it did not overshadow the panels. Most

of the present height of the hedge could remain. I also considered the potential repositioning of the site of the mobile home and concluded that it would be about similar to the height of the existing stable building already in this location and would be well screened and not prominent outside of the site.

25. I realise that the height and screening effect of the hedge cannot be relied on in perpetuity but considered at the moment I find that in visual terms the proposal only has a very limited adverse effect on the character and appearance of the local landscape. As such I am satisfied that it does not cause an 'unacceptable impact' in the context of criterion (vi) of Core Policy 47. Neither would it have a materially harmful impact with reference to Core Policy 51 as the negative impacts are capable of being addressed by conditions on landscape screening and design measures. Likewise there is no conflict with the general provisions of Core Policy 57.

Need and supply of gypsy and traveller sites

26. The PPTS indicates that in producing their Local Plan Councils should identify and update annually a supply of specific deliverable sites sufficient to provide 5 years' worth of sites against their locally set targets.

27. Core Policy 47 indicates that provision should be made for 66 permanent pitches for gypsies and travellers during the period 2011-2016 and a further 42 similar pitches in the period 2016-2021. The SCG indicates that these accommodation needs have been met through the grant of planning permission on appropriate sites. In terms of future need the 2022-2038 Gypsy and Traveller Accommodation Assessment (GTAA) indicates that for the period 2022-27 there is a need for 79 pitches for nomadic travellers. The Council accepts that this need has not started to be met and the individual needs of the appellant and family are acknowledged by the Council.

28. The Council also accepts that the present development plan does not allocate sites for Gypsies and Travellers and it appears that it has never done so. The Council therefore rely on the results of individual applications to meet the strategic need for gypsy and traveller sites. A Gypsy and Traveller Development Plan Document (DPD) to be undertaken alongside the Local plan Review was programmed in the 2017 Local Development Scheme (LDS) for adoption in the first quarter of 2021. However the 2022 version of the LDS puts back the adoption of the Gypsies and Travellers DPD to, at best, the end of 2024.

29. This is an on-going failure of policy on the provision and supply of sites and goes against the requirements of the PPTS. I find that there is currently an ongoing need for Gypsy and Traveller sites which will not be catered for through the formal plan led system for some time. These are factors to which significant weight must be attached.

Personal circumstances

30. The main personal circumstances put forward are set out in the *pro forma* issued by the Council and completed by the appellant in respect of claims that may be made under Human Rights legislation. The *pro forma* was completed in 2019 and so some details, like the ages of the three children, need to be increased by about three years.

31. The appellant and his partner explain that they had difficulty in finding any site in the county that met their needs. For a short period they had lived in a house but

the appellant could not settle there as he has a cultural aversion to bricks and mortar. The appellant is a Romany Gypsy with a nomadic habit of life but he and his partner wanted to have a settled base for their family and enable the children to go to school. The appellant said that the children attend the local school at Hillmarton where the appellant's partner also helps out. Having close and permanent access to a school is clearly in the best interest of these children for their educational and social development.

32. If the appeal is dismissed the appellant said that there were no other gypsy or traveller sites available that he could turn to and the family would likely be faced with a roadside existence. This would be likely to deprive the children of permanent and consistent education. The Council also confirms that it could not identify an alternative site for the appellant and family to move to. These are factors to which significant weight must be given.

Planning balance

33. At the start of the planning balance I have borne in mind the requirements of the Public Sector Equality Duty and placed no other single aspect above the best interest of any child.

34. On the main issues I have found that the site lies in Flood Zone 3 and the proposal involves a highly vulnerable use therefore it should not normally be permitted in such an area. Neither does the proposal meet the 'sequential test' as it not been demonstrated in flooding terms that there are no other sites available with a lesser risk of flooding. However in terms of the 'exception test' it is clear to me that locally there is currently a lack of provision for sites for Gypsies and Travellers and I agree with the appellant that a contribution towards this provision is in the public interest and this factor is a significant community benefit to meet part (a) of the test.

35. While the proposal does not meet part (b) of the test regarding the safety of the site for its users, I am satisfied that the proposal can be revised, particularly on the siting of the mobile home, to ensure that the users would be subject to a very low hazard of flood water within the site. Other conditions can be imposed to ensure that occupiers of the site have reasonable warning of a flood event and that the residential use of the site would not increase the risk of flooding elsewhere. On this basis the details of the exception test can be met.

36. In terms of the local impact of the proposal on the countryside landscape and character I have found that any adverse visual effect would be limited and can be maintained in this manner by landscaping conditions. There is no conflict with part (vi) of Core Policy 47 or Policy 57.

37. In development plan terms when read as a whole I conclude that the proposal conflicts with Core Policy 47 but only in respect of criterion (i) as flooding is a barrier to development. This position has to be balanced with other considerations.

38. It is clear to me that the Council cannot demonstrate a five year supply for new sites at the moment as required by the PPTS and the considerable local need for Gypsy and Traveller sites is unlikely to be met soon though the plan led system. The failure of positive policy, as opposed to the provision by windfall sites, is a significant factor in favour of the proposal. Further, I have no doubt that the appellant would have difficulty in finding a suitable and available alternative site

and would be faced with a life on the roadside. This would not be in the best interests of the children.

39. Given the limited visual and physical harm that the proposal causes, and the changes that can be made to meet the exception test and make the development safe for its lifetime, I find that these other considerations outweigh the conflict with the development plan and the strategic national policy on flooding grounds to justify a permanent permission.

Conditions

40. The Council recommends 11 conditions on any permission on which I will consider under the same numbering. Where necessary I will modify these to better meet the tests set out in the Framework. No.1 on specifying the approved plans is reasonable and necessary in the interests of certainty and I will impose this but modify it to refer to where other plans are agreed pursuant to other conditions. No.2 on limiting the occupation of the site by Gypsies and Travellers is necessary as that is what has been considered as an exceptional case although I will modify the standard condition in the light of the decision of the Court of Appeal in *Lisa Smith*[3]. Condition No.3 is not necessary as only one pitch is put forward in this proposal but I shall impose a variation of Condition No.4 to be specific about the number of static and touring caravans on the pitch in the interests of amenity.

41. Condition No.5 as worded would be difficult to monitor and enforce and is not necessary but I shall impose the standard condition on limiting the maximum size of vehicle on site to 3.5 tonnes. Condition No.6 as drafted is excessive and not necessary but I shall impose a similar condition requiring the submission of a Site Development Scheme and include within this Scheme items where further details need to be agreed with the Council and implemented and retained. This condition can be enforced though a Breach of Condition Notice rather than the complete cessation of the use approved. Coupled with this, Condition No.7 on the implementation of the landscaping scheme is necessary to maintain the limited impact of the development in the landscape.

42. Condition No.8 can be included within the Site Development Scheme and conditions No's 8, 9 and 10 are superseded by the conditions agreed with the EA post Hearing and I will impose these to minimise the effect of flooding on the users of this site. Finally I will not impose condition No.11 as a temporary permission has not been shown to be necessary or appropriate.

Conclusion

43. For the reasons give above I conclude that the appeal should be allowed.

David Murray

INSPRECTOR

[3] *Smith v SSHCLG & Others [2022] EWCA Civ 1391*

Schedule of conditions

1) The development hereby permitted shall be carried out in accordance with the following approved plans:- • Site Location Plan; • Site Survey 1799/01A; • Proposed Site Layout 1799/02A, all received by LPA 1st October 2019; unless superseded by other plans pursuant to a following condition.

2) Within six months of the date of this decision a Site Development Scheme shall be submitted to the Council. The Scheme shall include:

   (a) The landscaping of the site including the retention of existing trees and hedgerows;

   (b) The disposal of foul drainage and flood proofing measures for this system;

   (c) The supply of electricity including the installation of of solar power and back up generator;

   (d) The layout of the site including the re-siting of the mobile home to higher land;

   (e) A method to anchor the mobile home caravan in times of flood to prevent it from being washed away.

   The approved details of the Scheme as agreed by the Council shall be implemented within six months of their agreement and retained thereafter for as long as the residential use remains.

3) Within 3 months of the date of this decision a Flood Evacuation Plan shall have been submitted for the written approval of the local planning authority and the said scheme shall include a timetable for its implementation.

4) The development shall be carried out in accordance with the submitted flood risk assessment (Land at Brewers Pit, Hilmarton, Flood Risk Assessment, dated February 2018, ref: 407.07455.00001 - Issue 1) and will include the following mitigation measures:

   - a minimum finished floor level of 86mAOD will be provided for the mobile home
   - the mobile home (and any walkway structures) will be securely anchored to ensure these are not mobilised during a flood event.

   These mitigation measures shall be fully implemented and maintained thereafter throughout the lifetime of the development.

5) The site shall not be occupied by any persons other than gypsies and travellers, defined as persons of a 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 travel temporarily or permanently, but excluding members of an organised group of travelling showpeople or circus people travelling together as such.

6) No more than two caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 as amended, of which no more than one shall be static caravans, shall be stationed on the site at any time in accordance with the Proposed Site Layout Plan (1799/02A), received 1st October 2019.

7) No vehicle over 3.5 tonnes shall be stationed, parked or stored on this site, and no commercial activity or use, including the storage of materials and waste, shall be carried out on the site.

8) All new planting required as part of the landscaping scheme shall be carried out by the end of the next available planting scheme. All shrubs, trees and hedge planting shall be maintained free from weeds and shall be protected from damage by vermin and stock. Any trees or plants, including extant planting shown on the proposed landscaping scheme to be retained, which within a period of five years, die, are removed, or become seriously damaged or diseased shall be replaced in the next planting season with others of a similar size and species, unless otherwise agreed in writing by the local planning authority.

APPEARANCES

FOR THE APPELLANT:

Dr S Ruston MRTPI	Planning Consultant
Mr I Walton BSc (Hons) MSc, MICE Eng	Consulting Civil Engineer
Mr R Sykes	Appellant
Ms L Noyes	Appellant's partner
Mr L Sykes	Appellant's father

FOR THE LOCAL PLANNING AUTHORITY:

Mr S Smith, BA (Hons)MTP, MRTPI Mr	Team Leader, Wiltshire Council.
Mr M Goodwin, BA (Hons) BLA, CMCI	Landscape Officer, Wiltshire Council
Mr H Totz (by video link)	Senior Planning Officer (Dev Plans), Wiltshire Council.
Mr M Holm	Flood Risk Advisor, Environment Agency.
Mr M Pearce	Planning Advisor, Environment Agency.

DOCUMENTS SUBMITTED AT OR AFRTER THE HEARING

1 Signed Statement of Common Ground (SCG).
2 Conditions on flooding agreed by the main parties.