

CHERWELL DISTRICT COUNCIL

TOWN AND COUNTRY PLANNING ACT 1990

Appeal by J Sweeney against the decision by Cherwell District Council to refuse planning permission for the change of Use of land to a 6no pitch Gypsy and Traveller site to include 6no mobiles, 6no tourers and associated operational development including hardstanding and fencing

Appellant : J Sweeney

Appeal Site : Land South Side Of
Widnell Lane
Piddington

LPA Reference : 20/01747/F

Planning : APP/C3105/W/20/3262394
Inspectorate
Reference

1 APPEAL SITE

1.1 The appeal site is located approximately 1km to the west of the village of Piddington, 1.5km to the east of Upper Arcott and 3km from the village of Ambrosden. The B4011 lies approximately 35m to the west of the site and to the west of the B4011 lies HM Prison Bullingdon. The site of the proposed development is an agricultural field which is currently laid to grass. The site is enclosed on the roadside frontage by mature native hedgerow to the northern boundary and the southern boundary is also made up of a mature native hedgerow.

2 THE DEVELOPMENT

2.1 The appeal relates to the proposed change of use of the land to be used as a gypsy and traveller caravan site comprising 6 pitches, each pitch containing one mobile home and one touring caravan. The submitted plan shows an existing access; however, at the time of the site visit no such access existed. The access in this location would be approximately 9.5m

wide to allow for two-way traffic. The proposal also includes construction of a driveway through the site with each pitch accessed from the main site driveway. The site access would be hard surfaced and the driveways within the site then constructed from permeable materials. A paddock area is proposed in the south-western corner of the site. Foul sewerage would be provided by way of a water treatment plant, of which details have been submitted with the application.

3 REASON FOR REFUSAL

3.1 Planning Committee resolved at their 8 October 2020 meeting to refuse the application for three reasons and the decision notice was issued on 15 October 2020. Having fully considered the submitted information, planning history and representations made, the planning application (20/01747/F) was refused for the following reasons:

1. *The proposed development, by virtue of its siting in the open countryside, overall scale and appearance, would have an urbanising effect on the open countryside, and would result in significant and demonstrable harm to the rural character and appearance of the area. The proposal is therefore contrary to Policies ESD13 and ESD15 of the Cherwell local Plan Part 1, saved Policies C8 and C28 of the Cherwell local Plan 1996 and Government guidance within the National Planning Policy Framework.*
2. *The planning application has not been supported by adequate information to demonstrate the impact of the proposed development on protected species has been properly understood and the requirement for mitigation to secure a net gain in biodiversity can be met. The proposal is therefore contrary to Policy ESD10 of the Cherwell Local Plan 2011-2031 Part 1 and Government guidance contained within the National Planning Policy Framework.*
3. *A Flood Risk Assessment has not been submitted with this application. Therefore, an assessment has not been made of the flood risks arising from the proposed development and it has not been clearly demonstrated that the development and its future users will be safe over the lifetime of the development. The proposal is therefore contrary to Policy ESD6 of the Cherwell Local Plan Part 1 and Government guidance contained within the National Planning Policy Framework.*

The full decision notice and the case officer's report were sent with the Council's Questionnaire.

4 RELEVANT NATIONAL AND LOCAL PLANNING POLICY

- 4.1 Below are the policies referred to in the Council's reasons for refusal as well as others that were relevant to the overall consideration of the original application.

Cherwell Local Plan 2011 – 2031 Part 1 ('CLP 2015')

PSD1 - Presumption in Favour of Sustainable Development

BSC6 - Travelling communities

ESD1 - Mitigating and Adapting to Climate Change

ESD6 - Sustainable Flood Risk Management

ESD7 - Sustainable Drainage Systems

ESD10 - Protection and Enhancement of Biodiversity and the Natural Environment

ESD13 - Local Landscape Protection and Enhancement

ESD15 - The Character of the Built and Historic Environment

Saved Policies of the Cherwell Local Plan 1996 ('CLP 1996')

C8: Sporadic development in the countryside

C30: Design of new residential development

ENV1: Environmental pollution

5 COMMENTS ON THE APPELLANT'S GROUNDS OF APPEAL

First reason for refusal

- 5.1 The Appellant's statement of case recognises that the appeal development would have an urbanising effect on the open countryside and that some harm would be caused to the rural character and appearance of the landscape. However, the Appellant contends that this harm could be appropriately mitigated through landscaping conditions and cites PPTS Policy H which states that Councils should attach weight to sites being well planned or soft landscaped in such a way as to positively enhance the environment and increase its openness.

- 5.2 The Council accepts that there are limited views into the site from the wider area and the views into the site would be mainly from Widnell Lane. However, in an appeal decision relating to the adjacent site, refs. 17/01962/F and APP/C3105/W/18/3209349, the Inspector considered that the formation of six pitches and the stationing of caravans on the site would involve the encroachment of development into the field and that this would cause some harm to the character and appearance of the area. The Inspector considered that this development failed to comply with Policies ESD13 and ESD15 of the CLP 2015 and Policy C28 of the CLP 1996.
- 5.3 The development subject to this appeal would be in close proximity to that site and of a similar scale. It is therefore considered that the Inspector's conclusions would also apply to this site. Furthermore, as the nearby development was allowed at appeal, there would be cumulative harm from the two developments in close proximity to each other. The Council submits that conditions relating to landscaping could not mitigate this harm; landscaping cannot be relied upon to hide, or used to justify, visually harmful development and it has been established through the appeal on the nearby site that the development of this land would be contrary to the Council's design policies.
- 5.4 The Appellant mentions that the Council's Landscape Officer has not objected to the application. This is correct; however, the Landscape Officer is a consultee commenting on a certain aspect of the proposal's impact. This lack of objection does not mean that there would be no harm to landscape or visual amenity; the same was true of the appeal on the nearby site; and in this instance the first reason for refusal clearly sets out the Council's position on the proposal's impact on the landscape and visual amenity.

Second reason for refusal

- 5.5 The appeal site has mature hedgerows bounding three sides of the site and the proposed access would involve the removal of a strip of hedgerow. The Council's ecological records had findings of Great Crested Newts within the site and there is a pond within 2m of the southwest corner of the site. The Appellant submitted a document with the application which briefly mentioned ecological sites such as SSSIs, Special Areas of Conservation and Designated Ancient Woodland; however, there was no ecological survey undertaken.
- 5.6 A Preliminary Ecological Appraisal has been submitted as part of this appeal. The Phase 1 Habitat Survey recorded a number of different birds within the site and states that Great Crested Newts could potentially be present on the site. Mitigation measures are put forward for nesting birds and other species; however, the report recommends that further surveys

for Great Crested Newts would need to be undertaken. These surveys have not been undertaken and no mitigation strategy has been put forward.

- 5.7 In the absence of this information, it is therefore considered that it has still not been demonstrated that the proposal would not cause harm to any protected species or its habitat which is reasonably likely to be present and affected by the development.

Third reason for refusal

- 5.8 The Appellant has stated that no Flood Risk Assessment ('FRA') is required because the site area is less than 1 hectare in Flood Zone 1. However, as set out in the committee report, whilst the site is identified by the Environment Agency as being in Flood Zone 1 the Oxfordshire Flood Toolkit records show the site to be in an area with a high chance of flooding from surface water. Policy ESD6 of the CLP 2015 and Government guidance within the PPG require FRAs to be submitted when development sites are located in areas known to have experienced flooding or drainage problems.
- 5.9 No FRA has been submitted and without knowing the extent of any site specific flood-risk and the geology of the area it cannot be established as to what form of drainage would be appropriate for the site or if indeed the site could be appropriately drained to ensure that it would not be to the detriment of the operation of the site or exacerbate flood-risk on surrounding land.

6 CONCLUSIONS

For the reasons set out in its decision notice and this statement of case, the Council submits that the appeal proposal clearly conflicts with Government guidance contained within the National Planning Policy Framework as well as development plan policy. Accordingly, the Inspector is respectfully requested to uphold the decision made by the Local Planning Authority and dismiss this appeal.

7 SUGGESTED CONDITIONS

If, notwithstanding the above, the Inspector is minded to allow the appeal, the following conditions are suggested as necessary to make the development acceptable:

1. The development to which this permission relates shall be begun not later than the expiration of three years beginning with the date of this permission.

Reason - To comply with the provisions of Section 91 of the Town and Country Planning Act 1990, as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

2. Except where otherwise stipulated by conditions attached to this permission, the development shall be carried out strictly in accordance with the following plans and documents: Application Form; Site Location Plan and Proposed Block Plan.

Reason – For the avoidance of doubt, to ensure that the development is carried out only as approved by the Local Planning Authority and comply with Government guidance contained within the National Planning Policy Framework.

3. The site shall not be occupied by any persons other than gypsies and travellers as defined in Annex 1 of the Planning Policy for Traveller Sites (August 2015).

Reason - This consent is only granted in view of the special circumstances and needs of the applicant, which are sufficient to justify overriding the normal planning policy considerations which would normally lead to a refusal of planning consent and to comply with Government advice contained in the PPG

4. There shall be no more than six pitches on the site, and no more than two caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 shall be stationed on each residential pitch at any time.

Reason - This consent is only granted in view of the special circumstances and needs of the applicant, which are sufficient to justify overriding the normal planning policy considerations which would normally lead to a refusal of planning consent and to comply with Government advice contained in the PPG

5. One of the caravans stationed on each pitch shall be a static caravan or mobile home, and that static caravan or mobile home shall comply with the specification of paragraphs 4.8 and 4.9.4 in British Standard BS 3632:2015 – Residential park homes – Specification.

Reason - This consent is only granted in view of the special circumstances and needs of the applicant, which are sufficient to justify overriding the normal planning policy considerations which would normally lead to a refusal of planning consent and to comply with Government advice contained in the PPG

6. Prior to the commencement of the development hereby approved, full details of the means of access between the land and the highway, including, position, layout, construction, drainage and vision splays shall be submitted to and approved in writing by the Local Planning Authority. Thereafter, the means of access shall be constructed and retained in accordance with the approved details.

Reason - In the interests of highway safety, to ensure a satisfactory standard of construction and layout for the development and to comply with Government guidance contained within the National Planning Policy Framework

7. Prior to commencement of the development, full details of the internal road and turning area including swept path analysis showing that an 11.6m long refuse collection vehicle can enter and leave the site in forward gear, shall be submitted to and approved in writing by the Local Planning Authority. There shall be no occupation of the site until the internal road and turning area have been constructed in accordance with the approved details.

Reason - In the interests of highway safety and to comply with Government guidance contained within the National Planning Policy Framework

8. No development shall take place until a site development scheme has been submitted to, and approved in writing by, the Local Planning Authority. The scheme shall include:
 - a) Details of proposed tree and shrub planting, including their species, number, sizes and positions, together with grass seeded/ turfed areas.
 - b) Details of the existing trees and hedgerows to be retained and those to be felled, including the minimum distance between the base of each retained tree and hedgerow and the nearest edge of any hardstanding or excavation.
 - c) Details of the hard surface areas, including vehicular access, turning and parking space.
 - d) Details of site enclosures.
 - e) Position of pitches and caravans.
 - f) Location of waste bin storage.

The development shall be carried out in strict accordance with the approved site development scheme and the hard landscape elements shall be carried out prior to the first occupation of the development and shall be retained as such thereafter.

Reason - In the interests of the visual amenities of the area, to ensure the creation of a pleasant environment for the development and to comply with Policy ESD15 of the Cherwell Local Plan 2011 – 2031 Part 1, Saved Policy C28 of the Cherwell Local Plan 1996 and Government guidance contained within the National Planning Policy Framework.

9. All planting, seeding or turfing comprised in the approved site development scheme shall be carried out in the first planting and seeding season following the first occupation of the site. Any trees and 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.

Reason - In the interests of the visual amenities of the area, to ensure the creation of a pleasant environment for the development and to comply with Policy ESD15 of the Cherwell Local Plan 2011 – 2031 Part 1, Saved Policy C28 of the Cherwell Local Plan 1996 and Government guidance contained within the National Planning Policy Framework.

10. No development shall take place until detailed schemes for the foul and surface water drainage of the site have been submitted to, and approved in writing by, the Local Planning Authority. The surface water scheme shall be based on sustainable drainage principles, and no surface water from the site shall be discharged onto the public highway or into the adopted highway drainage system. The approved foul and surface water drainage schemes shall be implemented prior to the first occupation of the site, and they shall be retained thereafter.

Reason - To ensure satisfactory drainage of the site in the interests of public health, to avoid flooding of adjacent land and property and to comply with Policy ESD6 of the Cherwell Local Plan 2011 – 2031 Part 1, Saved Policy ENV1 of the Cherwell Local Plan 1996 and Government guidance contained within the National Planning Policy Framework.

11. No development shall take place until a landscape and ecological management plan (LEMP), to secure a biodiversity net gain from the development site, has been submitted to, and approved in writing by, the Local Planning Authority. The LEMP shall be carried out in accordance with the approved details and shall be retained thereafter.

Reason -To protect habitats of importance to biodiversity conservation from any loss or damage in accordance with Policy ESD10 of the Cherwell Local Plan 2011 – 2031 Part 1 and Government guidance contained within the National Planning Policy Framework.

12. Prior to the commencement of the development hereby approved, including any demolition and any works of site clearance, a mitigation strategy for great crested newts, which shall include timing of works, exclusion fencing, the location and design of alternative ponds/habitats together with the timing of their provision, shall be submitted to and approved in writing by the Local Planning Authority. Thereafter, the mitigation works shall be carried out in accordance with the approved details.

Reason - To ensure that the development does not cause harm to any protected species or their habitats in accordance with Policy ESD10 of the Cherwell Local Plan 2011 – 2031 Part 1 and Government guidance contained within the National Planning Policy Framework.

13. No external lighting shall be installed on the site, other than in accordance with a scheme, including details of the position, height and type of lights, which has been submitted to and approved in writing by the Local Planning Authority.

Reason - To ensure the satisfactory appearance of the completed development and to comply with Policy ESD15 of the Cherwell Local Plan 2011 – 2031 Part 1, Saved Policy C28 of the Cherwell Local Plan 1996 and Government guidance contained within the National Planning Policy Framework.

14. No commercial activities shall take place on the land, including the storage of materials, and no vehicle over 3.5 tonnes shall be stationed, parked or stored on this site at any time whatsoever.

Reason - In order to safeguard the amenities and character of the area and in the interests of highway safety and to comply with Policy ESD15 of the Cherwell Local Plan 2011 – 2031 Part 1, Saved Policy C28 of the Cherwell Local Plan 1996 and Government guidance contained within the National Planning Policy Framework.

15. The site shall not be occupied until a water supply and an electricity supply have been provided in accordance with schemes which have been submitted to and approved in writing by the Local Planning Authority.

Reason - To ensure the satisfactory appearance of the completed development and to comply with Policy ESD15 of the Cherwell Local Plan 2011 – 2031 Part 1, Saved Policy C28 of the Cherwell Local Plan 1996 and Government guidance contained within the National Planning Policy Framework.