



Appeal Decision

Site visit made on 31 January 2022

by Timothy C King BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 May 2022

Appeal Ref: APP/C3105/W/20/3262394

Land on the south side of Widnell Lane, Piddington, Bicester

- 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 J Sweeney against the decision of Cherwell District Council.
 - The application Ref 20/01474/F, dated 22 June 2020, was refused by notice dated 15 October 2020.
 - The development proposed is described as 'Change of use of land to a 6no pitch Gypsy & Traveller site to include 6no mobiles, 6no tourers and associated operational development including hardstanding and fencing.'
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Decision

1. The appeal is dismissed.

Main Issues

2. These are whether the proposal represents an acceptable form of development having regard to the following matters:
 - national policy, and the objectives of the development plan in respect of gypsy and traveller accommodation;
 - the character and appearance of the area, having regard to its countryside location;
 - the biodiversity of the site; and
 - whether the proposed development would give rise to an unacceptable risk of flooding.

Reasons

Policy matters

3. National policy is contained in the government's Planning Policy for Traveller Sites, 2015 (PPTS) which states that applications should be assessed and determined in accordance with the presumption in favour of sustainable development. In addition, Councils should very strictly limit new traveller site developments in the open countryside that is away from existing settlements.
4. Policy H of the PPTS says that Councils should, amongst other things, consider the level of need for additional gypsy and traveller accommodation and the availability of alternative accommodation.

5. The Council indicates that a Gypsy, Traveller and Travelling Showpeople Accommodation Assessment (GTAA) was published in 2017, concerning both the Cherwell Council area and also a number of other neighbouring local authorities. Its findings identified a new objective assessment of need for each Council based on the definitions in Annex 1 of the government's Planning Policy for Traveller Sites, 2015 (PPTS), and showed a need for 7 additional pitches within Cherwell by 2031 in order to meet the needs of those meeting that definition.
6. Further, the GTAA suggests that the need could rise in light of further information and, in this context the Council has highlighted a potential need for at least a further 8 pitches following the recent closure of a local caravan park.
7. In October 2020, when the Council resolved to refuse planning permission for the development now at appeal, the committee report explained that, regarding a five year land supply for pitches, the Council could only demonstrate a supply of 3.8 years' supply for the period 2020 to 2025, equating to a shortfall of 3 pitches.
8. An objection has been received from an interested party raising concerns as to what he considers to be a local over-provision of sites used for gypsy accommodation, and the resultant cumulative effects, appears to throw doubt on the accuracy of the data used in the compilation of the GTAA, and has made a brief analysis of such. This study serves a much wider area than that under Cherwell's authority, and identifies the needs of, Oxford, South Oxfordshire, Vale of White Horse Councils in addition to that of the Cherwell area. Whilst I note the objector's concerns I am also mindful of the Council's representations which indicate that, since the GTAA was published in 2017, it has informed the examination and adoption of recent Local Plans covered by the study's area. Accordingly, as the GTAA, and its basis will have been explored during the local plans' making process and, importantly, their examination in public prior to adoption, I am entitled to assume that the data used holds sufficient accuracy to achieve its purpose.
9. The Council, in its reasons for refusal, does not refer to Policy BSC 6 of the Cherwell Local Plan 2011-2031 (CLP). This policy, titled 'Travelling Communities' is, though, directly applicable to the proposal. Referring to the need for additional pitches it sets out a list of criteria to be satisfied when considering the suitability of locations for new such accommodation. A sequential approach is taken and the initial criterion when considering suitability is whether the site lies within 3km road distance of the built up limits of specified towns or a Category A village.
10. Here, the appeal site, an open piece of land within the countryside, is distanced some 2.5km from Arncott, a village identified in the Local Plan as a Category A settlement, equating to one of the most sustainable villages in the district. Arncott also has regular bus services to both Bicester and Oxford, and there is a bus stop on the B4011 which is only some 150m from the site.
11. The site also lies immediately adjacent to an area of land which, following a successful appeal (*APP/C3105/W/18/3209349*), enjoys an extant planning permission, granted in October 2019, for a residential gypsy site comprising six pitches, each with two caravans. From my site visit it did not appear that this permission had been implemented. In the circumstances the Council considers that the site has appropriate accessibility for gypsy and traveller

accommodation, constituting sustainable development, as advocated by the PPTS, and being also in accordance with CLP policy PSD 1.

12. I agree with the previous Inspector's approach here, and am satisfied that the site is in an acceptable location, consistent with the findings of the previous Inspector in the 2019 appeal. On this first main issue I therefore conclude that the location of the appeal site would accord with both national and local policy.

Character and appearance

13. The site is part of a substantial area of former agricultural land which stretches eastwards from the B4011. Accessed from Widnell Lane, it is bounded on three sides by hedgerows, although, when looking into the site from Widnell Lane, there is no apparent boundary with the adjoining site which has the extant permission for six new pitches. At my site visit I noted that a considerable amount of hardcore had been brought onto the land and spread widely. A splayed access had also been created, and high double gates, of the metal railing type had been installed, set back from Widnell Lane. This has necessitated the removal of a section of hedgerow. As a result, when looking into the site, expansive views, both long and wide, can be gained of the open land beyond.
14. No caravans were present on the adjoining land. When looking into the site from Widnell Lane I observed a chain link fence some distance to the east although without entering the land it was difficult to discern whether this fence ran the line of demarcation between the site and that area of land the subject of the previous appeal.
15. CLP policy ESD 13 requires that new development respects and enhances local character with appropriate mitigation taken where damage to landscape character cannot be avoided. Proposals will not be permitted in instances where there would, amongst other things, be undue visual intrusion into the open countryside and it would be inconsistent with local character. Further, CLP policy ESD 15 expects new development to integrate into its surroundings through sensitive siting and good layout, whilst making an efficient use of land.
16. In its decision notice the Council also refers to saved policies C8 and C28 from the Cherwell local plan 1996. The former serves to resist sporadic development in the open countryside with the latter concerned with layout and visual appearance. The saved policies remain part of the local development plan as they have not yet been replaced by the strategic policies in the CLP.
17. The creation of six pitches with the stationing of caravans on the site would involve encroachment into the countryside and, should the approved scheme be implemented on the adjoining site, there could potentially be a cumulative impact. That said, both are modest schemes relative to the respective site areas. The two-dimensional site plan submitted with the current scheme, although limited in detail would, similar to the approved development, indicate an intended orderly layout from which adequate space would be available for planting and landscaping providing screening for the development in mitigation. Were I minded to allow the appeal and grant planning permission a suitably worded condition could be imposed which would address this aspect, amongst other matters.

18. Given this, I am satisfied that the proposed development would not appear as sporadic, and the objectives of saved policy C8 would be safeguarded. Although there would be some degree of harm to the character of the landscape I consider that, in the changed context, this would be minimised, and I am satisfied that the open countryside beyond would not be significantly affected.
19. Accordingly, on this main issue, I conclude that the proposed development would respect and enhance local character with appropriate mitigation and not result in undue visual intrusion, in accordance with the objectives and requirements of CLP policies ESD 13 and ESD 15.

Biodiversity of the site

20. Subsequent to the Council refusing planning permission the appellant commissioned specialist consultants to undertake a Preliminary Ecological Appraisal (PEA), comprising a data search and Phase 1 habitat survey so as to assess the baseline ecological conditions of the site and its potential to support protected species and species of conservation concern. A search for signs of protected species was extended to four nearby ponds, including one which lies just beyond the south-west corner of the site. The PEA, dated 23 November 2020, recommended, amongst other things, that further surveys be carried out regarding the presence of Great crested newts (GCN) and reptiles.
21. The above PEA, and also the evidence presented at the previous appeal regarding the adjoining site, had identified the presence of GCNs which are a European Protected Species (EPS). The GCN and its habitats are fully protected under the Wildlife and Countryside Act, 1981 and the Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019.
22. The PEA also recommended that further survey work, involving a series of visits at specific times of the year, should be carried out to determine whether the development will impact on reptiles, and makes reference to facilitating an access track from the adjacent field to the east, and that there be clearance to allow reptiles to be safely relocated away from the construction areas. The PEA also recommended that the existing hedgerows should be protected, retained and enhanced and, given that these could support foraging and commuting bats further survey work should be undertaken.
23. The PEA further advised that an Ecological Clerk of Works should be present on site during any site clearance activities, which are likely to involve the removal/disturbance of any vegetation. Any common toads found, should be allowed to move away into adjacent habitats unharmed, of their own accord. Recommendations were also made as to mitigation measures to be taken with regard to bats, badgers and nesting birds, along with outlining proposals for biodiversity net gain.
24. Accordingly, there is a reasonable likelihood of legally protected species being present and being adversely affected by the development proposals. Given the findings of the appellant's PEA it is clear that this assessment is not adequate for assessing the effects of the proposals on EPS. On this basis, and in the absence of avoidance and mitigation measures I would consider that construction and development operation activities could result in significant loss of great crested newt habitat which would be injurious to the species.

25. Circular 06/2005 states that the presence of a protected species is a material consideration when a development proposal is being considered which would be likely to result in harm to the species or its habitat. It goes on to say that it is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision.
26. The Circular also indicates that the only circumstance where it may be acceptable to delay carrying out necessary survey work until after the planning application is determined is if the applicant/appellant has undertaken recent surveys for protected species. In this instance the PEA is some 15 months old and, as mentioned, was limited in scope.
27. Developing land that would result in a breach of the protection afforded to EPS requires a mitigation or derogation licence, to avoid an offence under the Conservation of Species and Habitats Regulations 2017. There is no requirement for a derogation licence to be provided prior to grant of planning permission, but there must be a reasonable prospect of the licence being granted by Natural England (NE), having regards to the requirements of the Habitats Directive.
28. Decisions about whether a licence can be granted are the responsibility of NE and are separate from the decision to authorise (or not) planning permission. NE advise that if planning permission is required it should be obtained before an application is made for a mitigation licence. The Circular advises that the duty under Regulation 9(3) of the Habitats Regulations, to have regard to the requirements of the Habitats Directive in the exercise of functions, applies to cases involving effects on EPS.
29. The Inspector, in the 2019 appeal, commented that GCNs had been recorded in the vicinity of the site, and took the view that a mitigation strategy, prepared in accordance with the method statement in the then appellant's survey, should avoid any adverse effects on the species. In taking this approach he imposed a condition requiring for such. However, due to the limited extent of the Phase 1 habitat survey in relation to the current appeal – the appellant's consultant explains that the site was visited on only one single day thereby excluding findings as to seasonal variation - and in having due regard to the Circular which says that surveys should only be required by condition in exceptional circumstances, I am not satisfied that imposing a condition in an attempt to address this matter is appropriate in this particular instance.
30. Paragraph 174 of the National Planning Policy Framework (the Framework) advises that proposals should contribute to and enhance the natural and local environment by, amongst other things, protecting and enhancing valued landscapes and sites of biodiversity, and minimising the impacts on and providing net gains for biodiversity. Further, paragraph 180 advises that if significant harm to priority habitats and species resulting from a development cannot be avoided, adequately mitigated or, as a last resort, compensated for, then planning permission should be refused. These objectives are reflected in the requirements of CLP policy ESD 10.
31. It is likely therefore that the development proposals would lead to an offence under the Habitats Regulations and, given the absence of adequate survey information which itself is contrary to the recommendations of the appellant's

own initial ecological survey and, moreover, the appellant's consultant's recommendations, I consider that it has not been satisfactorily demonstrated that the proposal would not cause harm to any protected species or their habitats which are reasonably likely to be present and affected by the development. The proposal is therefore contrary to CLP policy ESD 10, advice contained in both the PPG and Framework, and also NE's Standing Advice.

Flood risk

32. The site is identified by the Environment Agency as being within Flood Zone 1 and, with its area also measuring under 1 hectare, no site specific flood risk assessment is statutorily required to accompany the proposal. However, the Council makes reference, and has provided a link, to the Oxfordshire County Council 'Flood Toolkit' which shows part of the site to be in an area with a high chance of flooding from surface water.
33. Paragraph 167, and its accompanying footnote, of the Framework indicates that site specific flood risk assessments should accompany proposals where the development of land is vulnerable to particular forms of flooding and involves the introduction of a more vulnerable use. In this connection the Framework's Annex 5, which lists a flood risk vulnerability classification, categorises land used for the siting of caravans and mobile homes as 'highly vulnerable'.
34. The previous Inspector, in allowing the appeal on the adjoining site, addressed the matter of foul and surface water drainage by way of imposing a condition requiring that details of such be submitted to the Council for subsequent written approval. I see no reason why, if allowing the appeal, I could not adopt a similar approach and imposed an appropriate condition to this end, thereby according with the aims of CLP policy ESD 6.

Other considerations

35. I have had regard to the various grounds of objection to the proposed development of the land as raised by interested parties. Such matters as the sustainability of the site, a considered harm to local ecology and flood risk have already been discussed. Neither the Council nor the local highway authority has raised concerns as to the effect on the local highway network, and I have seen nothing to suggest that the development would impact otherwise. An objection has also been raised as to the effects of potential noise disturbance from the nearby Piddington military training area on future occupiers. In this regard I note that, in allowing the 2019 appeal, the Inspector concluded that the degree of noise that might emanate from the Ministry of Defence owned site would not unacceptably harm the living conditions of future residents. I agree with this assessment.

Conclusions

36. The proposal would contribute to meeting the identified local need for gypsy and traveller accommodation. In addition, both main parties agree that this is an accessible and suitable location, and accords with the development plan in this respect. These are matters to which I afford significant weight. Also, I have found that the proposed development would not cause undue visual intrusion to the character and appearance of the immediate locality. Further, in having regard to the extant planning permission for 6 pitches on the

adjoining piece of land, I find that the proposal represents an acceptable form of development.

37. Nonetheless, this, in turn, must be weighed with the ecological position set out above. In the absence of any detailed survey findings, as was recommended by the appellant's consultants when compiling the PEA, to demonstrate otherwise, the potential for ecological harm is contrary to statutory requirements, government policy and advice, and cannot be satisfactorily addressed by way of condition. I must therefore conclude that the proposal in the form proposed, is not in accordance with the development plan as a whole. This suggests that planning permission should be refused.

38. In conclusion, and for the above reasons, the appeal is dismissed.

Timothy C King

INSPECTOR