



## Appeal Decision

Hearing Held on 17 September 2019

Site visit made on 17 September 2019

**by Andrew McGlone BSc MCD MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 8 October 2019**

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**Appeal Ref: APP/B3030/W/19/3225352**

**Land north of Crossways, off Main Street, Bathley, Newark,  
Nottinghamshire NG23 6DL**

- 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 Ashley Dunne against the decision of Newark & Sherwood District Council.
  - The application Ref 18/02219/FUL, dated 23 November 2018, was refused by notice dated 28 January 2019.
  - The development proposed is a change of use of land to use as residential caravan site for one gypsy family with two caravans, including no more than one static caravan/mobile home, laying of hardstanding, construction of access and erection of ancillary utility building.
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### Decision

1. The appeal is allowed and planning permission is granted for a change of use of land to use as residential caravan site for one gypsy family with two caravans, including no more than one static caravan/mobile home, laying of hardstanding, construction of access and erection of ancillary utility building at Land north of Crossways, off Main Street, Bathley, Newark, Nottinghamshire NG23 6DL in accordance with the terms of the application, Ref 18/02219/FUL, dated 23 November 2018, subject to the conditions in the attached schedule.

### Procedural Matters

2. The main parties agree, based on the evidence submitted to the Council during the course of the planning application, that the appellant and his wife are gypsies and travellers having regard to the definition set out in The Planning Policy for Traveller Sites (PPTS). I agree, based on the evidence before me and as a result of discussions held at the Hearing.
3. Since the Council refused planning permission, the Council has adopted its Amended Core Strategy (CS). Policies in the CS have largely amended those within the Newark and Sherwood Core Strategy DPD which the Council relied on in refusing planning permission. As a result, the CS policies now carry full weight. The CS along with the Allocations and Development Management Development Plan Document (DPD), adopted in July 2013, form the development plan for the administrative area of Newark and Sherwood. There has also been a revision to the National Planning Policy Framework (the Framework). I note that both parties' have, in their appeal submissions, set out their cases having regard to the CS, DPD and the Framework. At the Hearing, all parties addressed these policy documents.

4. Despite submitting a signed Statement of Common Ground (SoCG), The Council, at the start of the Hearing, confirmed that they wished to strikeout paragraph 5.6 which stated "The findings of the traffic survey submitted on behalf of the appellant during the application process are not disputed." I have considered the appeal on this basis.

### **Main Issues**

5. The main issues are: (i) highway safety, with regards to the proposed access; (ii) whether the proposed development accords with development plan policy and the provisions of the PPTS for the location of such development; and (iii) whether any harm arising from the proposal would be outweighed by other considerations weighing in favour of the development, including the need for traveller sites, the availability of sites and the personal circumstances of the proposed occupiers.

### **Reasons**

6. The appeal site lies to the west of Main Street roughly 55 metres to the north east of the crossroad junction of Main Street, Caunton Road and Vicarage Lane. Caunton Road heads westward to Caunton, while Vicarage Lane extends eastwards to the A1 and North Muskham which is around a mile away. The settlements of Norwell and Newark-on-Trent are around 1.8 miles and 4.5 miles away respectively. Main Street continues southwards into the village of Bathley, around 450 metres away. This is the lowest ranking in the Council's Settlement Hierarchy set out in CS Spatial Policy 1.
7. The site forms part of a larger land holding that is currently overgrown and enclosed by hedgerows. To the south is the residential property of 'Crossways'. Open fields are to the north and west. Away from the central area of Bathley, there are intermittent properties to the south, east and west of the site. The site lies within the open countryside, but not the Green Belt.
8. CS Spatial Policy 3 explains that development not in villages or settlements, in the open countryside, will be strictly controlled and restricted to uses which require a rural setting. Policies to deal with such applications are set out in the DPD. It was agreed at the Hearing that the proposal does not fall within the categories of development listed in DPD Policy DM8. However, the DPD does not allocate any land for new gypsy sites and, as a result, new sites can only come forward at present through the development management process.
9. CS Core Policy 4 sets out that the District Council will address future gypsy and traveller pitch provision in accordance with the most up to date Gypsy and Traveller Accommodation Assessment (GTAA) through all necessary means including: the allocation of new sites through the development plan; and the granting of planning permission for pitches on new sites in line with Core Policy 5. The dispute between the main parties, in respect of the first two main issues, focusses on criterion 2 and 3 of this policy. It is common ground that the proposal would accord with the remaining criteria of CS Core Policy 5. I have no reason to take a different view.

### *Highway safety*

10. Criterion 3 of CS Core Policy 5, CS Spatial Policy 7 and DMD Policy DM5 jointly require development proposals to provide safe, convenient and attractive accesses for all, including the elderly and disabled, and others with restricted mobility, and provide links to the existing network of footways, bridleways and

cycleways so as to maximise opportunities for their use.

11. Main Street, from the crossroads and to the north of the site, undulates and curves to the right then the left. The roads alignment together with hedgerows and banking affect visibility to the north. The road is narrow at around 3.3 metres in width, but it does widen towards the junction. Main Street (to the south of the crossroads), Caunton Road and Vicarage Lane all appear to be wider than the country lane. A variety of vehicles use the local road network, including cars, buses and large farm vehicles. Cyclists, pedestrians and horse riders also use the roads near to the site which are generally unlit and subject of a national speed limit. There are no footways on any of the roads.
12. The appellant's Transport Technical Note – March 2019 (TTN) contains a manual survey of traffic movements. The survey was undertaken between the hours of 07:00 and 13:00. In this time, 89 no. two-way traffic movements were recorded. Whilst the survey was not undertaken for the full day, it shows that, even if I were to assume a broadly similar set of movements for the evening rush hour period, the roads near to the site are lightly trafficked.
13. There is no dispute that the proposal would increase the use of the local road network. The extent of the increase varies between the main parties, but I agree with the Council's version of the TRICS database category as it is far more representative of the proposed use. Even so, in applying this the Council have adopted figures that do not reflect the proposed occupation of the site by a single gypsy family, who would typically live within one static caravan/mobile home and use the touring caravan when travelling. Thus, it is reasonable to assume the proposal would generate around 3.56 vehicle trips per day, and if I were to adopt the Council's view that 4 person trips per day would be generated, the total trips per day could be around 7.56. These number of trips would not be significant in the context of two-way traffic movements recorded in the TTN. The impact would be even less when a full day of two-way traffic movements is accounted for.
14. While I shall explore accessibility in greater detail in the next main issue, it is evident that future occupants of the site would be highly dependent on private vehicles to access facilities and services. The appellant explained at the Hearing that they would be most likely to turn out of the site towards the crossroads, and hence with the flow of morning traffic heading southbound, before going onto North Muskham, the A1 or Newark. This may well be true, but journeys to Norwell (turning left out of the site) cannot be ruled out. Nor could the time or direction of travel be controlled. It is, however, highly unlikely that every journey to and from the site would include towing a caravan. Even if it did, roads near to the site are already used by larger farm vehicles daily.
15. Main Street (to the south of the proposed access), Caunton Road and Vicarage Lane generally offer good forward visibility which allows drivers adequate opportunity to respond to meeting another road user. The respective widths of the roads also manage vehicle speeds. Visibility in each direction is good at the crossroads. Residents and the Council explained to me that the width of local roads can mean that vehicles need to manoeuvre and/or utilise grass verges or passing places to pass one another. This is not ideal, but it is a situation that does occur on rural roads. The proposal would not change this, though vehicle movements associated with the proposal would add to the likelihood of this situation occurring, which is an inconvenience to the flow of traffic. Even so, this is not the same as there being an unacceptable impact on highway safety.

16. I heard that there have been accidents or near misses near to the site. Some of the experiences were described anecdotally, others relate to incidents over ten years ago. While I have no reason to doubt that incidents have arisen, it is difficult based on the evidence, to go any further other than to recognise the potential for incidents to arise. None of the incidents described to me indicate that pedestrians, horses or cyclists have been involved. That said, the road conditions are not particularly appealing to use by these road users, or other vulnerable users during the hours of darkness or inclement weather. Interested parties explain that local roads are well used when the A1 is blocked. While it is suggested this happens on a weekly basis, there is no substantive evidence before me to support this. Nor was the effect on highway safety explained to me by the Highway Authority.
17. Given the visibility to the north of the proposed access, there could be an unacceptable impact on highway safety. To address this, the appellant proposes to set the access back from the lane, clear the vegetation and form a visibility splay of 2.4 metres by 43 metres in either direction. This would provide a safe and convenient access to the highway network and ensure the safety of road users, subject to the imposition of a planning condition. A planning condition could also ensure the first ten metres of the access is formed with a sealed surface so that vehicles can enter and leave the appeal site safely.
18. The proposal would lead to tension between achieving safe, convenient and attractive accesses for all and providing links to the existing network of footways so as to maximise opportunities for their use. However, this would equally apply to properties near to the site and Framework paragraph 103 explains that opportunities to maximise sustainable transport solutions will vary between urban and rural areas. Taking into account the proposed visibility splay, the short distance to the crossroads and the use of the local road network, the proposal would not materially increase traffic problems and the nature of traffic generated would be appropriate for the highway network in the context of its existing use. While vehicles may need to manoeuvre so that road users can pass one another, this would only inconvenience the flow of traffic and not harm highway safety.
19. Drawing these matters together, I consider that the proposal, given its scale, would not lead to an unacceptable impact on highway safety or cause severe residual cumulative impacts on the road network. Thus, I conclude, in respect of this issue that, despite the tension outlined above, the proposal would accord with criterion 3 of CS Core Policy 5, CS Spatial Policy 7 and DMD Policy DM5 along with Framework paragraphs 103, 108 and 109. Jointly, among other things, these seek proposals to provide safe and convenient access to the highway network; and development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.

#### *Location of the development*

20. Policy H of the PPTS seeks to very strictly limit new traveller site development in the open countryside that is away from existing settlements or outside areas allocated in the development plan. The phrase 'away from' is not defined. Just like CS Core Policy 5, the PPTS does not rule new traveller development in the countryside. The Council interpret 'away from' as meaning that sites should be within (or immediately adjacent to) a rural or semi-rural settlement. On the other hand, the appellant suggests that 'away from' infers a significant degree

of detachment and relies on an appeal decision at Sparrow Cottage (Ref: APP/L3245/A/14/2215836). I consider the Council's take on 'away from' to be too narrow, due to the site's proximity to the community of Bathley which is also likely to include the occupants of Crossways and other properties to the south, east and west.

21. Criterion 2 of CS Core Policy 5 requires: the site to be reasonably situated with access to essential services of mains water, electricity supply, drainage and sanitation and to a range of basic and everyday community services and facilities – including education, health, shopping and transport facilities. There is no definition of the term 'reasonably situated' so a judgement is required. CS Spatial Policy 7 seeks to encourage and support development proposals that minimise the need for travel and through the provision or enhancement of local services and facilities.
22. The site is detached from Bathley, yet the intervening distance is modest, and the site lies next to Crossways. There are minimal facilities and services in Bathley, and the bus stop is just beyond the distance that the Highway Authority recommend. Caunton offers slightly more facilities and services, but having regard to Document 1, journeys to North Muskham, Norwell and Newark-on-Trent would all be required to reach a range of everyday community services and facilities, such as education, health, shopping and transport facilities. I do, however, agree with the Council that the proposal would not place undue pressure on local services and facilities. Future occupants would be likely to make a modest contribution to these. There is also no evidence that the site is not reasonably situated with access to essential services of mains water, electricity supply, drainage and sanitation.
23. Future occupants of the site may be able to walk to or flag down bus services which pass the site. However, while these services would be an option available to the occupants, they are not frequent, and I understand low patronage numbers mean that they are under threat.
24. Journeys on foot would be shared with other road users. Future occupants could walk to and from Bathley, but this journey would not be attractive during the hours of darkness or inclement weather. Journeys on foot to other nearby settlements would be unattractive for the same reasons or because they are too far away. Cycling would be an option, despite the Council's safety concerns, given the sign at the crossroads which advocates a cycling 'loop' route. Even so, these matters do not change my view that, as with other occupants in Bathley or nearby, there would be a high dependency on private vehicles by future occupants of the site to access facilities and services further afield such as education, health and shopping facilities. As set out earlier, the proposal would, in this respect, lead to tension with CS Spatial Policy 7, DPD Policy DM5 and Framework paragraph 108.
25. At the Hearing, the Council referred to a recent appeal decision in which that scheme was held to be isolated. However, I have no details of the scheme or the appeal decision before me to establish whether the circumstances are directly comparable to the proposal. Thus, I afford this matter no weight.
26. I note the Council's view about whether the proposal would be sustainable development, especially in relation to the concerns raised about highway safety. While there are shortcomings with the proposal, in terms of its location and how future occupants would access facilities and services, in the round, I

do not consider that the site would be isolated.

27. On this issue, I conclude that the proposed development would, on balance, accord with development plan policy and the provisions of the PPTS for the location of such development. Thus, the proposal would accord with CS Spatial Policy 7, criterion 2 of CS Core Policy 5 and as a result CS Core Policy 4 along with PPTS Policy H. Together, these seek to very strictly limit new traveller site development in the open countryside that is away from existing settlements; to minimise the need for travel; and for proposals to provide access to essential services and a range of basic and everyday community facilities and services.

*Other considerations*

*Need for gypsy sites*

28. Notwithstanding my findings on the first two main issues, given the tension that I have recognised, the PPTS requires that the level of local provision and need should be considered when dealing with proposals for gypsy sites. It is common ground that the Council cannot currently demonstrate a five-year supply of permanent traveller pitches.
29. The Inspector examining the CS considered that the GTAA is very likely to have underestimated need. As a result, main modifications were made to then draft CS Core Policies 4 and 5 prior to their adoption. I note that the Council are in the process of preparing a new GTAA but work on this document is not yet complete or at a stage whereby future pitch requirements have been established. An Amended Allocations and Development Management DPD is also being prepared which will include a revised pitch requirement and site allocation(s) to meet any residual need. This is, however, some time off from being ready to for Examination.
30. Hence, the most recent GTAA (2016) forecast a total unmet need in the District for the provision of 39 no. permanent pitches. These figures assume that 86 no. pitches will become available in each five-year period (i.e. a total of 258 pitches) as a result of turnover on existing sites. The Council was unable to confirm at the Hearing how many of these pitches have been delivered.
31. Given the unmet need and the Examining Inspector's clear view that this assessment underestimates the need, I disagree with the Council's view about the lack of land supply not being relevant given the speculative nature of the application. Through questioning at the Hearing, the Council explained that this is due to the appellant not being local to the area. However, the appellant, his wife and small child have recently moved into the District and they have made a planning application with the intention to live on the site. I understood the Council's point about needing to address the District's need and inward and outward migration, but any assessment of need is not made particular to individuals. Furthermore, the proposed site could be occupied by any gypsy and traveller providing they met the PPTS definition. Given this, and as the PPTS sets out the Government's aim to promote more private traveller sites, this adds moderate weight in favour of the proposal.

*Availability of gypsy site and personal circumstances*

32. The appellant and his wife have a young daughter. Prior to the Hearing, the appellant and his family lived in Kent. The appellant found work in the south-east of England when living in Kent and travelled along the east coast to the East Midlands. Written evidence submitted stated the site in Kent was his

- father's, but at the Hearing it was confirmed to be his uncle's site. Either way, I was informed that this site had recently been sold, though there was no substantive evidence of this.
33. For three days prior to the Hearing, the appellant and his family have lived on the roadside north of Newark-on-Trent. The appellant confirmed that there was no opportunity to go back to Kent, where they had just come from, and that they would continue to live on the roadside pending the outcome of the appeal. His wife's family live in the Leicester area on a site with three pitches, but each pitch is occupied by family members. There may be space for the appellant's touring caravan, but I have no reason to doubt that this would not be a suitable long-term arrangement.
34. The appellant is looking for a site in the Newark area, close to his wife's family, where he can enrol his child into nursery and then school. While, the appellant's circumstances have recently changed, the lack of a settled and fixed base will prevent the child from attending nursery. In the next year or so, the security of a settled base and a fixed address would help encourage and maintain school attendance. This is an important matter that adds substantial positive weight in favour of the proposal.
35. I heard anecdotal evidence from the main parties and interested parties about a site on Tolney Lane. I was informed by the appellant that there are no pitches available on this site. The Council said that pitches may be available but could not offer any substantive evidence to show this. In any event, this site is subject to flood events which cause residents to be evacuated as it is cut off. While points have been made about this site expanding without the benefit of planning permission, this is a matter outside the scope of this appeal. Neither party has provided substantive details of any other alternative site in the District. Given the appellant's aspiration to be within the East Midlands, the Council suggested that alternative sites across the East Midlands should be considered. However, even if I were to adopt such an approach, the Council did not offer any substantive evidence of any other sites. Thus, the only alternative open to the appellant and his family would be, as he explained to me at the Hearing, to live at the roadside and wait for a pitch to come forward through the Council. This factor adds significant weight in favour of the proposal but given my findings in respect of need and alternative sites, the evidence points to a general planning permission.

#### *Other matters*

36. Interested parties are concerned that the number of caravans could increase over time. However, a planning condition could be imposed to control this, and any increase would need to be subject of a further planning application. If there was a change in the number of caravans without the benefit of planning permission, it would be a matter for the Council to consider initially.
37. The dayroom would be part of the accommodation available to the occupants and offer a shower room, toilet and a space that the occupants could use. There is sufficient scope within either the dayroom or within the site itself for refuse and recycling to be stored.
38. I note the views of interested parties in terms of community interaction, the fear of crime, anti-social behaviour and criminal behaviour, but there is no substantive evidence to suggest that these concerns would become a reality. The existing and proposed boundaries would help assimilate the proposed

development into its surroundings and ensure that there would be no adverse effects on the living conditions of the occupants of Crossways.

39. Concerns about a precedent being set are generalised and not specific to any particular site or sites. In any event, it would be very unlikely that any other site would have the same relationship to nearby settlements, the road network and facilities and services. While, it is suggested that there are brownfield sites elsewhere, I do not have details of any such sites. Furthermore, despite the refusal of two previous schemes on the site historically for different uses<sup>1</sup>, I have determined the appeal scheme on its own planning merits.

### **The Planning Balance**

40. I have concluded that the proposal would not, on balance, cause harm in terms of highway safety or through its location having regard to the development plan policies and the Framework, which is a material consideration. The proposal would bring about benefits relating to an unmet need, the lack of alternative accommodation and the personal circumstances of the appellant and his family. These would, in the context of providing a further gypsy site, only further tip the balance in favour of the appeal. As such the balance is clearly in favour of the grant of permanent permission.

### **Conditions**

41. I have had regard to the list of suggested planning conditions, and the comments of the main parties and interested parties at the Hearing. In the interests of certainty, I have imposed an approved plans condition. I have imposed a planning condition about materials to be used for the day room in the interests of the character and appearance of the area. For the same reason, despite the existing hedgerows, I have amalgamated and imposed a condition to secure details of hard and soft landscaping to assimilate the development into its surroundings.
42. Given the case advanced by the appellant, the work that they undertake and the support provided by the other considerations, I have imposed planning conditions to control: the occupation of the pitch; the number and type of caravans on the pitch; to prevent commercial activities and the parking of a commercial vehicle over a particular weight. These controls are necessary, in the interests of certainty, the character and appearance of the area, and to address an unmet need. A condition is necessary, in the interests of highway safety so that the visibility splays are implemented and maintained thereafter.

### **Conclusion**

43. For the reasons set out above, I conclude that the appeal should be allowed.

*Andrew McGlone*

INSPECTOR

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<sup>1</sup> Council Refs: E/32/27 and 3279661

## SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: site layout plan; proposed day room floor plan; proposed front elevation of day room; proposed rear elevation of day room; proposed side elevations of day room; PBA2; and 24773\_08\_020\_01.
- 3) The development hereby permitted shall be constructed in accordance with the materials detailed as part of the planning application.
- 4) Prior to the occupation of the site full details of hard and soft landscape works shall be submitted to and approved in writing by the Local Planning Authority. These details shall include:
  - a schedule (including planting plans and written specifications, including cultivation and other operations associated with plant and grass establishment) of trees, shrubs and other plants, noting species, plant sizes, proposed numbers and densities. The scheme shall be designed so as to enhance the nature conservation value of the site, including the use of locally native plant species;
  - an implementation and phasing programme;
  - means of enclosure;
  - car parking layouts and materials; and
  - hard surfacing materials;

The approved landscaping shall be completed during the first planting season following the first occupation of the site, or in accordance with the implementation and phasing programme. Any trees/shrubs which, within a period of five years of being planted die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species unless otherwise agreed in writing by the Local Planning Authority.

- 5) 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 or its equivalent in replacement national policy.
- 6) No commercial activities shall take place on the land, including the storage of materials. No more than one commercial vehicle shall be kept on the land for the use by the occupiers of the caravans hereby permitted and this vehicle shall not exceed 3.5 tonnes in weight.
- 7) 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 a static caravan, shall be stationed on the site at any time.
- 8) No part of the development hereby permitted shall be brought into use until the 2.4 metre by 43 metre access visibility splays shown on plan Ref: 24773\_08\_020\_01 have been implemented. The area within the visibility splays referred to in this condition shall thereafter be maintained free of any obstruction exceeding 0.6 metres in height for as long as the development exists.

END OF SCHEDULE

## **APPEARANCES**

### FOR THE APPELLANT:

Ashley Dunne  
Philip Brown

Appellant  
Philip Brown Associates

### FOR THE LOCAL PLANNING AUTHORITY:

Nicolla Ellis  
Matthew Tubb  
Stella Euerby  
Clare Walker  
Laura Gardner

Newark and Sherwood District Council  
Newark and Sherwood District Council  
Nottingham County Council  
Newark and Sherwood District Council  
Newark and Sherwood District Council

### INTERESTED PERSONS:

Councillor Bruce Laughton  
Mark Hunter  
John Cross  
Brian Cross  
Nigel Harris  
Julie Pulford  
David Gatiss  
Rita Davison  
Malcolm Davison  
Mick Dixon  
D Dixon  
Christine Johnson  
Wendy Smalley  
Philippa White  
David Hemstock  
Mark Addison  
J Ellis and J Ellis  
Deborah Jaines  
J H and A P Lynn  
R Bolt  
Sally Grogan  
Natalie Dunn  
S Andrews  
Jim Hawkins  
Mrs J Hawkins

Boyer Planning

## DOCUMENTS

### **Documents submitted at the Hearing**

- 1 Table of current settlement facilities; map of Public Rights of Way; and map of street lighting
- 2 Bus timetable for services 332, 333 and 335
- 3 Bus timetable for services 37, 39 and 77