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Appeal Decision

Inquiry opened on 27 July 2010

Site visit made on 27 July 2010

by **Richard Clegg** BA(Hons) DMS MRTPI

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

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Decision date:
18 January 2011

Appeal Ref: APP/Y3940/A/10/2122592

Land adjacent Framptons Farm, B4069, Sutton Benger, Wiltshire, SN15 4RL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Mr M Ward against the decision of Wiltshire Council.
- The application Ref N/09/01033/S73A, dated 10 June 2009, was refused by notice dated 12 August 2009.
- The application sought planning permission for the change of use of land to include the stationing of one touring caravan and one mobile home, the erection of a day room building and a hardstanding area for one gypsy pitch, without complying with a condition attached to planning permission Ref 08/02114//FUL, dated 4 December 2008.
- The condition in dispute is No 1 which states that: The use hereby permitted shall be for a limited period being the period 3 years from the date of this decision. At the end of this period the use hereby permitted shall cease, all materials and equipment brought onto the premises in connection with the use shall be removed, and the land restored to its former condition, or such condition as may be authorised by any other extant planning permission.
- The reason given for the condition is: The provision of potential sites has yet to be considered by the Implementation Executive under the Local Development Scheme. A permanent permission in advance of this process would be premature.
- The Inquiry sat for two days, on 27 and 28 July 2010.

Decision

1. I allow the appeal and grant planning permission for the change of use of land to include the stationing of one touring caravan and one mobile home, the erection of a day room building and a hardstanding area for one gypsy pitch on land adjacent Framptons Farm, B4069, Sutton Benger, Wiltshire, SN15 4RL, in accordance with the application Ref N/09/01033/S73A dated 10 June 2009, subject to the conditions in the attached schedule.

Application for costs

2. At the Inquiry an application for costs was made by the appellant against the Council. This application is the subject of a separate Decision.

Procedural matters

3. On the application form, the location of the site is given simply as land adjacent Framptons Farm, Sutton Benger. The site is on the B4069, and I have identified it accordingly in the appeal details above.

4. In a written answer on 26 July 2010, the Government announced its intention to replace ODPM Circular 01/2006 – Planning for Gypsy and Traveller Caravan Sites with new light-touch guidance, and this was subsequently publicised in a press release on 29 August. After the inquiry closed, the main parties were given the opportunity to comment on this intention in relation to their cases.

Main Issue

5. I consider that the main issue in this appeal is whether a time-limited condition is reasonable and necessary having regard to the preparation of the Council's Gypsy and Traveller Site Allocations Development Plan Document (DPD).

Reasons

The Development Plan

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6. The appeal site is in the open countryside about 0.5km to the east of Sutton Benger. It is occupied by the appellant and his family in accordance with the extant planning permission, and on the occasion of my visit, there were a mobile home, a touring caravan and a timber day room on the land. The Development Plan for this part of Wiltshire includes the saved policies of the Wiltshire and Swindon Structure Plan 2016 and those of the North Wiltshire Local Plan 2011.
7. Policy DP15 of the Structure Plan is concerned with accommodation for gypsies. It explains that suitable sites may be found both within and outside settlements: they should have a minimum impact on adjoining land uses and the natural and built environment. In addition, sites should be well located to meet the needs of occupants and permitted business activities and there should be acceptable access and services. The land adjacent to Framptons Farm is not subject to any landscape designation constraint, and there is substantial tree and hedgerow cover along the frontage of the site and continuing beyond it in both directions. In consequence the site is not a prominent feature in the locality, and it does not appear out of keeping with its surroundings. Apart from agricultural land, there is land with planning permission for another temporary gypsy site immediately to the south and west, and a small group of dilapidated buildings and a sewage treatment plant are also nearby. There is nothing before me to indicate that the site has any adverse impact on adjoining uses. The appellant had no objection to a condition preventing commercial activities from taking place on the site, and, although there is no footway along the B4069 in the vicinity of the site, it is within easy reach of Sutton Benger and of Christian Malford to the east where there are several local facilities. The committee report on the original proposal explains that the Highway Authority was satisfied with the adequacy of the access to the site.
8. In the Local Plan, Policy H9 explains that gypsy sites will be permitted, provided that there is reasonable access to local community facilities and services, and that the development would not unreasonably prejudice the amenities of neighbouring residential occupiers and land. There is a nearby residential site in the form of the adjacent land with planning permission for four gypsy pitches, which would not be adversely affected by a similar use on the appeal site, and the other criteria reflect matters covered in Policy DP15. It is common ground between the main parties that the appeal proposal is

consistent with the gypsy policies in the Development Plan, and I share this view.

9. The former North Wiltshire District Council referred to Policy C3 of the Local Plan in its committee report on the original proposal. This policy sets out a series of criteria against which all new development should be assessed. Amongst other matters, proposals should respect the character of the area, avoid the unacceptable loss of amenities to other uses, ensure a safe access, and promote sustainable patterns of development. Insofar as gypsy sites are concerned, Circular 01/2006 makes it clear that issues of sustainability should not only be considered in terms of transport mode and distances from services, but that co-existence with the local community, easier access to health services, regular school attendance, avoidance of the need for long-distance travelling and possible environmental damage resulting from unauthorised encampments, and avoidance of areas of high flood risk should also be taken into account. There is no detailed evidence to indicate that the site is within an area of high flood risk, and its use as a settled base would be consistent with the other considerations. Proposals should not be rejected if they would give rise to modest additional daily vehicle movements. Even if most trips to and from the site, which is in an open countryside location and on a stretch of road with no footway, are made by car this would not involve lengthy journeys to reach local facilities and the site only accommodates a single pitch. The proposal does not represent an unsustainable form of gypsy site development, nor does it conflict with the other criteria in Policy C3 of the Local Plan.

Prematurity and the emerging Development Plan Document

10. The Council is concerned that, having regard to the preparation of its Gypsy and Traveller Site Allocations DPD, it would be premature to grant a permanent planning permission for a gypsy site on the land adjacent to Framptons Farm. An Issues and General Approach Consultation Document was published in April 2010. It discussed the issues concerning site provision in Wiltshire, referred to the level of anticipated pitch provision, set out a methodology for site selection, and issued an invitation for sites to be put forward. The document refers to a residual level of need for the period 2006-2011 of 49 pitches for Wiltshire and 16 for the North area in which the appeal site is located. Subsequently the Council has revised these figures as a result of updating its evidence base, and at the inquiry it explained that the residual number of pitches required in Wiltshire and the North area is 52 and 20 respectively¹. These levels of need are derived from the requirements given in the Proposed Changes to the draft revised Regional Spatial Strategy for the South West. In a letter dated 27 May 2010 to Council leaders, the Secretary of State highlighted the Government's commitment to abolish regional strategies, but the Council explained that it was continuing to work to bring forward 20 pitches in the North area.
11. The Issues and General Approach consultation period ended in June last year, and work has now started on assessing candidate sites. No details of possible sites for inclusion in the emerging DPD had been published at the time of the inquiry, but the Council explained that all those with a temporary planning permission would be considered for inclusion on the shortlist of candidate sites. It was intended that an Options Report would be produced by July/ August

¹ Table 3 in Appendix 1 of Document 2.

2010. Subsequent stages would involve identification of the preferred option and preparation of the submission document. Following examination, it is anticipated that the DPD will be adopted in November 2011. I note that the timetable put forward at the inquiry² does not include the consultation period on the Options Report, although the Council took the view that there is scope within the overall programme for this to be accommodated. However, bearing in mind that work was still underway on possible site options at the date of the inquiry, and that there are three stages of the plan-making process (Options, Preferred Option and Final Document) to be completed before examination, it may be difficult to maintain the intended programme should any complications arise.

12. The Government document *The Planning System: General Principles* sets out the approach to questions of prematurity. It explains that it may be justifiable to refuse planning permission on the ground of prematurity where a DPD is being prepared if a proposal is so substantial or the cumulative effect would be so significant that granting permission would pre-determine decisions about the scale, location or phasing of new development. The appeal proposal is a modest scheme involving a single gypsy pitch. The Council argued that the granting of planning permission on a permanent basis would encourage similar proposals to come forward in respect of other temporary sites, which it calculated as comprising about 22 pitches. However the full circumstances concerning these sites are not before me. Moreover, the Council itself granted permanent planning permission for seven pitches at Glenville Nurseries in Wootton Bassett in October 2009, after the decision to refuse planning permission for the appeal proposal. I consider that this larger scheme would have been more likely to encourage applications for permanent gypsy sites than the single pitch of the appeal proposal. The schedule of applications and appeals submitted by the Council includes no record of a further application in the period between October 2009 and March 2010, in respect of a site previously identified as having temporary permission. Whilst some such applications may be submitted, the information before me does not indicate that the appeal proposal would be likely to result in a cumulatively significant effect in respect of proposals for permanent gypsy sites. For the above reasons, I do not consider that the granting of a permanent planning permission in respect of the appeal proposal would predetermine decisions about the allocation of gypsy sites which are to be addressed in the emerging DPD.
13. The Council suggested that if the methodology for site selection in the emerging DPD were endorsed this would undermine the consultation process. I note that the Council itself has considered the gypsy site against the three tier site selection methodology in the Issues and General Approach Consultation Document, and at the inquiry it expressed the view that the development met the criteria in each tier. Whilst I do not disagree with this view, the emerging DPD was still at a relatively early stage in the plan-making process at the date of the inquiry and it only carried limited weight. The policies of greatest relevance are those in the Development Plan, with which the proposal for a permanent site complies. Moreover, whilst it is intended to replace Circular 01/2006 it remains national policy at the present time, and the proposal is

² Included in Appendix 1 of Document 2.

consistent with the sustainability considerations set out therein. The granting of a permanent permission would not endorse the draft site selection methodology, and consequently it would not prejudice the DPD process in this way.

14. Nor does attributing limited weight to the DPD undermine its credibility. I have taken into account the extent of preparatory work which has been undertaken, but at the date of the inquiry no response to the initial consultation document had been published and possible locations for sites had not been identified. The emerging DPD was, therefore, at a relatively early stage in the plan-making process. As such, in accordance with the advice in paragraph 18 of *The Planning System: General Principles*, it could not carry considerable weight as suggested by the Council.
15. Whilst the time-limited condition was imposed to tackle a specific concern about the effect of the proposal in relation to the emerging DPD, the granting of a permanent planning permission would not be premature. No other reason for the condition has been put forward. It follows that the time-limited condition is unnecessary, and it does not meet the first test for conditions in the annex to Circular 11/95. I do not consider that planning permission would have had to be refused if the condition had not been imposed.
16. Paragraphs 45-46 of ODPM Circular 01/2006 provide advice on the use of time-limited conditions in respect of proposals for gypsy sites. Where there is unmet need, but no available alternative provision, and a reasonable expectation exists that new sites are likely to come forward to meet that need, for example through the preparation of a DPD, consideration should be given to granting a temporary permission. As paragraph 45 explains, this part of Circular 01/2006 should be read with Circular 11/95. The annex to that circular makes it clear that conditions should only be imposed where the tests at paragraph 14 are met, the first of which is the test of necessity. There is no need for a time-limited condition in respect of the gypsy site, and consequently, whilst the circumstances which may justify a temporary permission exist in Wiltshire, they do not indicate that such a condition should be imposed in this case.
17. The appellant's agent argued that the time-limited condition on the existing permission was unreasonable since it placed a severe limitation on his ability to dispose of the property should his personal circumstances change, given the likely higher cost of a site with planning permission elsewhere. In addition it was an impediment to the construction of the day room building thereby affecting the family's living standards. Although the permanent building, comprising a day room/ kitchen and a bathroom has not been erected there is a timber building on the site which currently serves as a day room, and there was no evidence from the appellant that the family's present living standards were unsatisfactory. All the indications from the appellant's evidence are that he and his family wish to remain on the appeal site. Nevertheless circumstances may change. If they did, given the shortage of sites it is possible that the land could be sold to another gypsy family, and I do not agree that a time-limited condition would place a severe limitation on the freedom of the appellant to dispose of his property. The Council accepted that the site would be worth less with a temporary permission than with a permanent permission, but there is nothing before me to indicate that the difference in value would be so great as to affect the ability of the family to relocate. In

respect of these matters, I do not consider that a time-limited condition would be unreasonable.

18. Notwithstanding the preparation of the Gypsy and Traveller Site Allocations DPD, for the reasons given above (paras 12-16) I conclude that a time-limited condition on the gypsy site is unnecessary.

Other matters

19. It is common ground between the main parties that there is an unmet need for gypsy and traveller sites both within Wiltshire and in the North area. The Council has identified a residual need for 20 pitches in the North area for 2006-2011. Beyond this period there will be a need for further provision. The appellant had calculated that this would amount to 16 pitches in the North area, which was not disputed by the Council. The immediate need for a relatively high level of permanent pitches carries significant weight in favour of the appeal proposal.
20. There are no policies in the Development Plan which specifically address the need for gypsy accommodation in the North area, and this will not be remedied until the emerging DPD is at a more advanced stage. The existing policies in the Structure and Local Plans provide for the assessment of proposed sites, but there is no means of ensuring that a particular level of pitches comes forward. The nature of the current policy framework for gypsy sites provides some additional weight in favour of the proposal.
21. The appellant travels to seek work as a builder, and he may be away from the site for several weeks at a time. Gypsy status is agreed in the statement of common ground, and I am satisfied, having regard to the definition in Circular 01/2006, that the occupiers of the site are gypsies for the purpose of planning policy. The appellant and his family have a personal need for a site, which is a consideration of significant weight. The main parties agree that there are currently no alternative sites available in the North area of the County. The Council anticipates adoption of the Gypsy and Traveller Site Allocations DPD in November 2011, only one month before the expiry of the existing permission for the appeal site. It is agreed that a period of time will be required following adoption to bring forward any sites which are not already occupied. The potential absence of an alternative site following the expiry of the temporary permission adds some further weight to the personal need for permanent accommodation. The family has a daughter of school age and a son who is currently at nursery. A settled base facilitates access to education and healthcare services, and this is an important consideration.

Conclusions

22. The proposal for a permanent gypsy site is consistent with policies in the Development Plan and Circular 01/2006. The emerging Gypsy and Traveller Site Allocations DPD is a material consideration: however at the date of the inquiry it was at a relatively early stage in its preparation, and the granting of planning permission on an indefinite basis would not prejudice its preparation. A time-limited condition is not necessary on the ground of prematurity, and there is no other reason to restrict the use of the site in this way. Gypsy and personal considerations carry weight in favour of the proposal, but as no material harm would be caused, they are not needed to provide support for the

proposal in reaching my overall conclusion. Representations were made to the effect that the human rights of the appellant and his family would be violated if the appeal were dismissed. As I have decided to allow the appeal, I do not need to deal with the question of whether the decision would result in a violation of their human rights.

23. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should be allowed.

Conditions

24. I have already referred to a condition restricting commercial activities on the site which I intend to impose. As the site is in the open countryside where development is carefully controlled, a condition is necessary to limit occupation of the site to gypsies. However a personal occupancy condition is not appropriate, as my decision does not rely on the personal need and circumstances of the occupants. To ensure that the development would be in keeping with its surroundings, details of the materials to be used in the day room building should be submitted for approval, and no fencing and gates should be erected or external lighting installed other than in accordance with the site development scheme approved in relation to the existing planning permission. For the same reason, the number and type of caravans should be specified, and there should be no vehicles over 3.5 tonnes on the site. However, given the extent of tree and hedgerow cover along the frontage a landscaping condition is unnecessary. In the interest of highway safety, gates at the entrance to the pitch should be fitted so that they open away from the access road. The only plan submitted with the application was a location plan, but the effect of the proposal is to seek a fresh permission for the development for the use of the land as a gypsy site. In the interests of proper planning and for the avoidance of doubt, it is necessary that the proposal is carried out in accordance with the relevant approved plans relating to the original permission. The main parties agreed that the approved proposed site plan had been superseded by the layout forming part of the site development scheme.

Richard Clegg

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans: the location plan ref 08_192_001A, the site development scheme ref 08-192-005A (submitted in respect of planning permission ref 08/02114/FUL), and the floor plan and elevations of the day room building on drawing ref 08_192_004 (submitted in respect of planning application ref 08/02114/FUL).
- 2) The site shall not be occupied by any persons other than gypsies and travellers as defined in paragraph 15 of ODPM Circular 01/2006.
- 3) No more than two caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 (of which no

more than one shall be a static caravan or mobile home) shall be stationed on the site at any time.

- 4) Construction of the day room building shall not take place until samples of the materials to be used in the construction of its external surfaces have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
- 5) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that Order with or without modification), no fences, gates or walls shall be erected within the site and no external lighting shall be installed other than in accordance with the site development scheme ref 08_192_005A and the accompanying sheet of photographs (photos 1-3).
- 6) No commercial activities shall take place on the land, including the external storage of materials.
- 7) No vehicle over 3.5 tonnes shall be stationed, parked or stored on the site.
- 8) The gates at the access to the pitch shall be fitted so as to prevent them opening towards the access road.

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

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Mr E Grant of Counsel Instructed by the Solicitor to Wiltshire Council.
He called
Mrs T Smith BA(Hons) Area Team Leader.
BTP MRTPI
Mr J Millard Senior Spatial Plans Officer.

FOR THE APPELLANT:

Mr M Green Partner, Green Planning Solutions LLP.
He gave evidence
himself, and called
Mr M Ward Appellant.

DOCUMENTS

- 1a-d Plans relating to the temporary planning permission for a gypsy pitch on the appeal site. Submitted by Mr Grant.
- 2 Appendices to the addendum to Mrs Smith's proof of evidence.
- 3 Statement of common ground.
- 4 Minutes of the meeting of North Wiltshire District Council Development Control Committee – 26 November 2008. Submitted by Mr Grant.
- 5 Minutes of the meeting of Wiltshire Council Northern Area Planning Committee – 12 August 2009. Submitted by Mr Grant.
- 6a-c Planning application, design & access statement and accompanying letters relating to the temporary planning permission for a gypsy pitch on the appeal site. Submitted by Mr Grant.
- 7a-b Site development scheme plan and details of external lighting relating to the temporary planning permission for a gypsy pitch on the appeal site. Submitted by Mr Grant.
- 8 Temporary planning permission for four gypsy pitches on land adjacent to the appeal site. Submitted by Mr Grant.
- 9a-b Planning application and planning design & access statement relating to Document 8. Submitted by Mr Grant.
- 10a-c Plans relating to Document 8. Submitted by Mr Grant.
- 11 Planning Policy Statement 3 – Housing. Submitted by Mr Grant.
- 12 Email dated 3 March 2010 from the Council's Senior Traveller Liaison Officer concerning public gypsy sites. Submitted by Mr Grant.
- 13 Note on sources of information in Appendix 1 of Document 2. Submitted by Mr Grant.

MR PATRICK WARD

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APPENDIX 8

Letters from School and Community Nurse regarding Bridget Duran

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