



Appeal Decision

Hearing held on 26 August 2009

Site visit made on 26 August 2009

by **G M Hollington MA, BPhil, MRTPI**

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

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Decision date:
14 September 2009

Appeal Ref: APP/T3915/A/09/2096174

Tricky's Paddock, Brickworth Road, Whiteparish, Salisbury, SP5 2QG

- 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 W Clarke against the decision of Salisbury District Council.
- The application Ref. S/2008/708, dated 4 April 2008, was refused by notice dated 30 July 2008.
- The development proposed is change of use of land to site a mobile home for use by a gypsy family.

Application for Costs

1. At the Hearing, an application for costs was made by Mr Clarke against Wiltshire Council. This application is the subject of a separate Decision.

Procedural Matter

2. The appellant has submitted an amended plan, Ref. 06/TRICKY/01 Rev. A. I shall determine the appeal on the basis of this, as it differs so little from its predecessor that no parties' interests would be prejudiced. The local planning authority (LPA) has no objection to this.

Decision

3. I allow the appeal, and grant planning permission for change of use of land to site a mobile home for use by a gypsy family at Tricky's Paddock, Brickworth Road, Whiteparish, Salisbury, SP5 2QG in accordance with the terms of the application, Ref. S/2008/708, dated 4 April 2008, and the amended plan, Ref. 06/TRICKY/01 Rev. A, subject to the following conditions:
 - 1) The use hereby permitted shall be carried on only by Mr William Clarke, Ms Tammy Beswick and their resident dependants and shall be for a limited period being the period of three years from the date of this decision, or the period during which the premises are occupied by them, whichever is the shorter.
 - 2) When the premises cease to be occupied by Mr William Clarke, Ms Tammy Beswick and their resident dependants or at the end of three years, whichever shall first occur, the use hereby permitted shall cease, all materials and equipment brought on to the premises in connection with the use shall be removed and the land restored to its former condition in accordance with a scheme of work submitted to and approved in writing by the local planning authority.

- 3) No more than one caravan, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968, shall be stationed on the site at any time.
- 4) The use hereby permitted shall cease and all caravans, structures, equipment and materials brought onto the land for the purposes of such use shall be removed within 28 days of the date of failure to meet any one of the requirements set out in (i) to (iv) below:
 - i) within 3 months of the date of this decision a scheme for: boundary treatment, tree, hedge and shrub planting, including details of species, plant sizes and proposed numbers and densities (hereafter referred to as the site development scheme) shall have been submitted for the written approval of the local planning authority and the said scheme shall include a timetable for its implementation.
 - ii) if within 11 months of the date of this decision the site development scheme has not been approved by the local planning authority or, if the local planning authority refuse to approve the scheme, or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
 - iii) if an appeal is made in pursuance of (ii) above, that appeal shall have been finally determined and the submitted site development scheme shall have been approved by the Secretary of State.
 - iv) the approved scheme shall have been carried out and completed in accordance with the approved timetable.
- 5) No vehicle over 3.5 tonnes shall be stationed, parked or stored on this site.
- 6) No commercial activities shall take place on the land, including the storage of materials.
- 7) No structure or erection or planting exceeding one metre in height shall be placed between the A27 carriageway and the 122m by 2.4m visibility splay as shown on the 1:1,250 drawing accompanying the highway authority letter (Ref. JEH/JCF/S/08/0708) dated 15 December 2008.
- 8) The approved parking and turning areas shall not thereafter be used for any purpose other than the parking and turning of vehicles.

Main Issues

4. I consider the main issues in this appeal to be:
 - (a) the effect of the proposed development on the character and appearance of the surrounding area;
 - (b) the effect of the proposed development on patterns of travel, particularly car use;
 - (c) the effect of the proposed development on highway safety; and
 - (d) whether any conflict with policy or other harm would be outweighed by other material considerations, including the need generally for gypsy caravan sites and the intended occupiers' personal and family circumstances.

Reasons

(a) Character & Appearance

5. The appeal site is a field set in pleasant, undulating countryside alongside the A27 road. A mobile home is already on the site and the proposed mobile home would be similarly positioned in the south-east corner, away from the road. The mobile home can be seen from the A36 road to the south and a public footpath to the north but the main impact of the development would be in views from the A27 itself, as the field is exposed to view from the road (without any boundary hedge) and the ground rises away from this.
6. The mobile home is and would be partly screened as one approaches from the east, from where it would also be seen against the backdrop of a dwelling and large buildings of agricultural appearance. No such screening is available to ameliorate the view when approaching from the west and passing close to the site.
7. The main parties agree that, as advised by Circular 01/2006: *Planning for Gypsy and Traveller Caravan Sites*, rural settings not the subject of special planning constraints are acceptable in principle for gypsy and traveller caravan sites. The LPA acknowledges that, notwithstanding its reference in the reasons for refusal, the area's Special Landscape Area designation should not, in itself, be used to refuse planning permission for such sites. Furthermore, much of south Wiltshire is a designated Area of Outstanding Natural Beauty and one would not expect to find gypsy and traveller sites within an urban area, thus limiting the opportunities to find such sites.
8. Nevertheless, the appeal site is exposed to view, in open countryside. The proposed mobile home and inevitable associated items such as a vehicle and domestic paraphernalia would be intrusive in the countryside. Because of the relatively elevated position of the mobile home and the generally slow growing nature of indigenous species, mitigation of the impact by landscaping would be difficult to achieve.
9. I therefore conclude on this issue that the proposed development would harm the character and appearance of the surrounding area. It would conflict with the relevant aims of policies DP1 and C9 of the Wiltshire and Swindon Structure Plan 2016 and policies G1, G2, C2, C6 and H34 of the Salisbury District Local Plan.

(b) Patterns of Travel

10. The appeal site is approximately 1.5km from Whiteparish, with its good range of village services and facilities, and about 700m from the petrol filling station and shop at the A27/A36 junction; bus services stop in both places. These distances are well within those suggested by Planning Policy Guidance note (PPG) 13: *Transport* as offering the potential to replace short car trips.
11. Nevertheless, to get to both locations requires using the A27 road, which lacks footways, cycleways and street lighting. In my view, the road is not conducive to either walking or cycling. It is probable, therefore, that most, if not all, trips to/from the appeal site would be by private motor vehicle. The main parties agree that, when occupied, the site would be likely to generate 7-10 vehicle

movements per day. This is somewhat greater than might expected from agricultural use of the same access.

12. It is an objective of PPG13 to reduce the need to travel, especially by car, and this is reflected by Structure Plan policy DP1 and Local Plan policy G1. Circular 01/2006, *Designing Gypsy and Traveller Sites: A Good Practice Guide* and Local Plan policy H34 each encourage the provision of gypsy and traveller sites in or near existing settlements.
13. However, while referring to the needs for access to services and facilities, Structure Plan policy DP15 does not rule out countryside locations and Circular 01/2006 urges realism about the availability, or likely availability, of alternatives to the car in accessing local services. It also points out there are other issues of sustainability, including the benefits of easier access to education and health services.
14. In the case of the appeal proposal, only modest additional daily vehicle movements would be likely to arise and the car distances to the nearest services and facilities are not great. There would also be wider benefits in terms of sustainability from enabling access to health services and providing a settled base that reduces the need for longer-distance travel and the potential environmental damage elsewhere of unauthorised encampments.
15. My conclusion on this issue, therefore, is that the proposed development would not be so poorly related to local services and facilities as to be unacceptable and it would result in little harm to patterns of travel, particularly car use. The conflict with the aims of national guidance and Local Plan policies G1 and H34 would be minimal.

(c) Highway Safety

16. The A27 is a well used road but there have been no recorded personal injury accidents in the vicinity of the proposed access in recent years, apart from one caused by a deer. Visibility to the east from the access would be some 160m but the highway authority has doubts about the effects of vegetation growth, on land outside the appellant's control. I would expect some variation in visibility with the seasons (the highway authority trims hedges twice a year) but not sufficiently to reduce visibility in this direction to an unacceptable degree.
17. There is unobstructed visibility to the west across the appellant's land of about 122m; if the neighbour's land is also taken into account, this rises to some 160m. A speed survey has found the 85th percentile wet weather speeds in each direction to be around 50mph (81kph). The *Design Manual for Roads and Bridges* (DMRB), TD 42/95, advises that, for design speeds of 85kph and 100kph, the "y" distances for visibility should be 160m and 215m, respectively. The road is subject to the national speed limit of 60mph but, as actual speeds are known, I consider it appropriate to apply the 85kph distance.
18. The appellant suggests that the more recent *Manual for Streets* (MfS) should be taken into consideration, as the research on which it is based has a more general application. However, MfS explicitly states that it applies or may be applicable to lightly-trafficked residential streets or high streets and lightly-trafficked lanes in rural areas. It provides stopping sight distances only for 85th

percentile speeds up to 60kph and suggests DMRB may be more appropriate for higher speeds. The A27 is not the type of road envisaged for the application of MfS and, in my view, DMRB is more appropriate for assessment of the appeal proposal.

19. The available visibility to the west across the appeal site itself falls short of the recommended 160m, but not so seriously that I consider road safety would be significantly jeopardised. Furthermore, it is in the neighbour's own interest to maintain unobstructed visibility for the access to the land to the west and so it would not be unreasonable to rely on the likelihood of the full 160m normally being available.
20. I note that the Inspectors in the 1991 and 1992 appeals regarding the development of land at the appeal site considered the highway visibility to be inadequate, but the former does not appear to have had the benefit of any speed survey and the latter was dealing with a much larger proposal (15 pitches) with significantly less visibility (80m and 40m). On the other hand, the 1995 appeal Inspector regarded visibility as deficient but considered the level of traffic generated (by one caravan for one gypsy family) need not be so great as to warrant refusal of planning permission on this ground alone.
21. The current proposal is of the same scale as that considered in 1995, and Circular 01/2006 advises that proposals should not be rejected if they would only give rise to modest additional daily vehicle movements and/or the impact on minor roads would not be significant. The appeal proposal would generate only a small number of additional movements.
22. Consequently, I conclude on this issue that the proposed development would not result in unacceptable harm to highway safety. It would not conflict materially with the aims of Local Plan policy G2.

(d) Other Material Considerations

23. The appellant is a Romany Gypsy and the LPA does not dispute that he satisfies the definition of "gypsies and travellers" set out in Circular 01/2006. Nor does it dispute that there is a need to provide additional gypsy accommodation in its area. The *Wiltshire and Swindon Gypsy & Traveller Study - 2006* recommended provision of new permanent pitches in Salisbury by 2011 for nine households, but this was criticised in a benchmarking report. The recommendation of the draft revised Regional Spatial Strategy for the South West is a requirement to 2011 for 18 residential pitches in the Salisbury District housing market area; at its advanced stage of preparation, I give this significant weight.
24. There are substantial numbers of caravans on unauthorised sites both regionally and nationally, with seven such caravans in the Salisbury area. All three permanent residential sites run by Wiltshire Council in this area are fully occupied, with 29 families on waiting lists but some turnover of plots. There is, therefore, a general need for sites which weighs in favour of the appeal proposal.
25. Structure Plan policy DP15 and Local Plan policy H34 pre-date Circular 01/2006 and are not based on a quantitative assessment of need. A Development Plan Document (DPD) to allocate gypsy and traveller caravan sites is not expected

to be adopted until December 2010. These policy failings add weight to the general needs.

26. I turn now to the personal circumstances of the appellant and his family. The site would be occupied by William Clarke, his partner, Tammy Beswick, and their children, Michael (aged 6 years) and Molly May (now past her first birthday).
27. Mr Clarke travels looking for work and lives in a touring caravan on the side of the road or on other unauthorised sites in the Wiltshire and Hampshire area. Having looked for land, he bought the appeal site in 2007 but has not lived on it – there remains an extant enforcement notice (the subject of the 1991 appeal) requiring the removal of a mobile home. He has not since sought other land and family feuds mean it would be unsafe for him to occupy two of the Council sites.
28. When Ms Beswick became pregnant for the second time, she returned to live with her aunt and her mother as she could not cope with living without access to basic facilities. She and the children continue to live in Southampton but the appellant is unable to join them (except for brief stays) as he has an aversion to “bricks and mortar” accommodation, which goes against his culture and traditions.
29. The family members are each registered with GPs in Southampton. Molly’s birth was difficult and mother and daughter have needed check-ups but are now well. Because of the separation from his family, Mr Clarke suffers at times for depression, for which he takes medication. Circular 01/2006 refers to the link between the lack of good quality sites for gypsies and travellers and poor health, which the LPA also acknowledges.
30. Enabling regular attendance at school is a reason for Ms Beswick’s living in Southampton, where Michael is at primary school. Mr Clarke wishes Michael to be able to both travel and attend school. I consider the family’s health and education needs are factors which add to their need for a settled base. In principle, these benefits cannot only be met by the appeal site, but no alternative for them has been identified.
31. Under Article 8 of the European Convention on Human Rights, everyone has the right to respect for his private and family life, his home and his correspondence. Dismissal of the appeal would, in all likelihood, prevent the appellant and his family from living on the site, without any certainty of suitable alternative accommodation being readily available. I recognise that, by perpetuating the separation of the family, this would represent an interference with their home and family life and is a factor in favour of the proposal.

Overall Conclusion

32. I have come to the views that the proposed development would be visually intrusive in open countryside and cause harm to the character and appearance of the surrounding area; it would be difficult to overcome this through landscaping. The relationship to local services and facilities is such that there would be little harm to patterns of travel, particularly car use, and the available visibility for drivers would avoid unacceptable harm to highway safety.

33. It is not disputed that Mr Clarke meets the definition of "gypsies and travellers" and there are general needs, nationally and locally, for additional gypsy and traveller caravan sites. The family's personal circumstances do not dictate that only a site in this location could meet their needs, but the appellant would have no alternative other than to continue to move on to unauthorised sites. A stable site would enable the family to live together and gain access to health and education services, but the LPA has not suggested any satisfactory alternative location.
34. My overall conclusion, therefore, is that the harm which would be caused by the development in terms of its effect upon the economic well-being of the country (because of its harm to the character and appearance of the site and its surroundings) is considerable and a permanent permission would not be appropriate. However, given the combined general and personal needs for a site, the lack of a suitable alternative site within the locality and the likelihood of alternative sites becoming available within the next few years through the Local Development Framework process, I have considered the possibility of a temporary planning permission.
35. Circular 01/2006 advises that, where there is an unmet need and no alternative gypsy and traveller site provision in an area but there is a realistic expectation that new sites are likely to become available at the end of a temporary period, consideration should be given to granting a temporary permission; such a situation may arise where a LPA is preparing its site allocations DPD.
36. The LPA has a firm intention to prepare such a DPD and is taking steps to achieve its target for adoption of December 2010. As a result, there is likely to be a material change in circumstances, leading to a realistic likelihood of suitable, affordable and acceptable accommodation. Intended adoption of the DPD is in a little over one year's time but there is a risk of slippage and then a need to bring forward the resulting sites.
37. The harm to the area's character and appearance should not be perpetuated longer than is necessary and I consider that a temporary planning permission for a period of three years is appropriate and reasonable in the circumstances. The protection of the public interest cannot be achieved by means which are less interfering of the appellant's rights. They are proportionate and necessary in the circumstances and would not result in a violation of his rights under Article 8 of the European Convention on Human Rights.
38. I have also taken into account all the other matters raised at the Hearing and in the written representations, including flooding and local residents' concerns. The latter include that a precedent would be set for additional, similar development, but the number of caravans can be limited by planning condition and Circular 01/2006 points out that the fact that temporary permission has been granted should not be regarded as setting a precedent for the determination of any future applications for full permission for use of the land as a caravan site.
39. Having become aware that the proposed siting of the mobile home is in Flood Zone 1 (low risk) rather than Flood Zone 3 (high risk), the Environment Agency has withdrawn its objection on flood risk grounds but wishes consideration to

be given to safe access/egress during an emergency. A large part of the site's frontage to Brickworth Road lies outside Flood Zone 3 and so I see no difficulty in achieving this.

40. None of the other matters is of such significance as to outweigh the considerations which have led to my overall conclusion.

Conditions

41. I have considered the need for conditions in the light of the advice in Circular 11/95: *The Use of Conditions in Planning Permissions*. I shall limit the permission to a period of three years (with the site to be restored thereafter), so that the DPD can be adopted and sites brought forward, and to named occupiers, as their personal circumstances have contributed to my decision.
42. To minimise harm to the area's character and appearance and to safeguard local residents' living conditions, it is necessary to prevent commercial activities and the parking of large vehicles, and to restrict the number of caravans. The planning application seeks only one caravan but it is not unusual for gypsies and travellers also to have a tourer-type caravan for travelling. However, because of the exposed nature of the site, I shall limit the number to one – if any tourer were required, this could be stored unoccupied elsewhere when not travelling. No day room is sought.
43. Details of landscaping and boundary treatment are necessary, also to minimise harm to the area's character and appearance. The importance of landscaping for this intrusive site justifies its requirement despite the permission being temporary, although the scope of the scheme will need to reflect the time limitation.
44. In the interest of highway safety, I shall impose conditions to ensure adequate visibility across the site and retention of the parking and turning areas.

G M Hollington

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr M Willers	of Counsel
Mr G Frostick, BTP, DipEnvP, MRTPI, MIHT	Bellamy Roberts LLP
Mr W Clarke	Appellant
Revd R Redding	
Mr S Bees	Community Development Officer, Wiltshire Racial Equality Council
Mr W Sherred	Executive Member, Romany Gypsy Council

FOR THE LOCAL PLANNING AUTHORITY:

Mr S Chambers, BSc(Hons), MA, MRTPI	Director, LPC (Trull) Ltd
Mr R Hannis	Area Development Control Engineer, Wiltshire Council

INTERESTED PERSONS:

Mr P Hedley	Local resident
Mr R Sherwin	Local resident
Mrs H Parsons	Local resident
Mrs S Campbell	Member, Whiteparish Parish Council
Mr L Randall	Member, Wiltshire Council
Mr R Britton	Member, Wiltshire Council
Mr T Dray	Local resident

DOCUMENTS

- Submitted by the appellant
- 1 Hearing submissions
 - 2 TD 41/95: *Vehicular Access to All Purpose Trunk Roads*
 - 3 Extracts from *Manual for Streets*
 - 4 Appeal decision Ref. APP/P0119/A/07/2045500 (Henfield)
 - 5 Appeal decisions Ref. APP/E2205/C/08/2074129 and
APP/E2205/A/08/2073290 (Biddenden)
 - 6 *South Cambridgeshire v SSCLG & Brown* [2008] EWCA Civ 1010