



Appeal Decision

Inquiry opened on 1 December 2011

Site visit made on 2 December 2011

by R J Marshall LLB Dip TP MRTPI

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

Decision date: 24 February 2012

Appeal Ref: APP/Y3940/A/11/2156159

Land adjacent West Wiltshire Crematorium, Littleton, Semington, Wiltshire

- 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 Patrick Ward against the decision of Wiltshire Council.
 - The application Ref W/11/01206/FUL, dated 4 March 2011, was refused by notice dated 15 June 2011.
 - The development proposed was described as "Change of use to small private gypsy and traveller site for 3 pitches for 8 caravans and associated ancillary works and development (including hardstanding, utility blocks, drainage etc.) and associated keeping of horses".
 - The inquiry sat for 3 days on 1 and 2 December 2011 and 5 January 2012.
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Decision

1. The appeal is allowed and planning permission is granted for "Change of use to small private gypsy and traveller site for 3 pitches for 8 caravans and associated ancillary works and development (including hardstanding and drainage)" at Land adjacent West Wiltshire Crematorium, Littleton, Semington, Wiltshire in accordance with the terms of the application, Ref W/11/01206/FUL, dated 4 March 2011, subject to the conditions on the attached list.

Applications for costs

2. At the Hearing applications for costs were made by both parties against each other. They will be the subject of separate Decisions.

Preliminary matters

3. In the bullet points above the application description and site address is taken from the Council's decision notice and the grounds of appeal, rather than the application forms. It was agreed that this generally best reflects what had been applied for and more accurately gives the site location.
4. However, both parties agreed that the reference to the "associated keeping of horses" should be deleted from the application description. This is because it is sought only to graze horses, which does not require planning permission.
5. The appellant also sought to have the reference to utility blocks removed as the submitted plans do not properly show what is intended and details of their elevations have not been provided. Although utility blocks are required a separate application would be made for them in the event of this appeal being allowed.

6. The above changes would not prejudice anyone with an interest in the appeal. I held that I would determine the proposed development as so amended and this is reflected in my decision paragraph above.
7. I have also had regard to discrepancies in the application plans. However, they do not prevent a decision being made on the proposal, especially as matters such as the area for pitches and the siting of caravans may be controlled by condition.
8. At planning application stage the appellant submitted a supporting statement providing details of the health of one of the children on site. This was initially published on the Council's website and was taken into account in its decision. The Council later sought to have this at least in part removed from the public section of the file due to Data Protection Act concerns. However, the child's mother was content for the information to be in the public domain. Given this I held that it should remain publicly available and that I would have regard to it in my decision.

The appeal site and planning background

9. The appeal site is a roughly rectangular shaped area of land. It lies in a rural area to the east of a roundabout junction between the A361 and the A350. The site fronts onto the former road. To the west of the site are the grounds of a large crematorium. To the north, on the opposite side of the A361 and with intervening fields, lies the small village of Semington. The town of Trowbridge is just over 3 miles distant along the A361.
10. The site is currently occupied as a gypsy site by the appellant and his extended family. It was initially occupied unlawfully. However, in July 2008 retrospective planning permission was granted for a development expressed in similar terms to the current proposal. The permission was for a temporary period, with an expiry date of July 2011, and was made personal to the applicant and his family. The reasons given for these limitations being that the development was not appropriate on a permanent basis and that permission was only granted having regard to personal needs. The proposal before me is in effect for the continuation of the site for gypsy occupation, albeit on a permanent and unencumbered basis.

Local Policy and National Guidance on Gypsy sites

11. The proposal is for a gypsy site and undisputed evidence clearly shows the appellant and those who seek to continue occupying the site are gypsies as defined in *Circular 01/2006 Planning for Gypsy and Traveller Caravan sites*. Consequently relevant Policies regarding gypsies and travellers should be applied.
12. Two of the key Policies from the development plan are, therefore, DP15 of the *Wiltshire and Swindon Structure Plan 2016 (2006)* and CF12 of the *West Wiltshire District Plan First Alteration (2004)* which relate to gypsy sites. The Structure Plan acknowledges the need for additional caravan pitches for gypsies and Policy DP15 supports bona fide proposals for such development on suitable sites. The Local Plan seeks to ensure that adequate gypsy caravan site provision is made and Policy CF12 says proposals for such uses will be permitted in appropriate locations subject to a range of criteria being met.

13. The Council has published the *Wiltshire Core Strategy Consultation Document (2011)*. This seeks to ensure that the need for new pitches is met and contains draft Core Policy 31 on meeting the needs of gypsies and travellers. At this early stage, as the Council accepts, only limited weight can be given to this Policy. The Council is also in the process of preparing a *Gypsy and Traveller Site Allocations Development Plan Document (DPD)*. This also is at an early stage towards adoption.
14. Government guidance is contained in *Circular 01/2006*. The Council says that this now needs to be examined critically. This is because of the Secretary of State's announcement that he intends to revoke the Circular, and his recently published consultation document including a draft planning Policy Statement *Planning for traveller sites*. In this it is said that the current planning policy for gypsy sites does not work and that a new approach is needed. The substance of the consultation document gives an indication as to the Government's intentions and is thus a material consideration. However, the current Circular has yet to be revoked and the consultation may prompt amendments to the draft guidance which reduces the weight that may be given to it at this stage. Furthermore, as the Circular remains in place, I am bound still to have regard to it in determining this appeal.

Main issues

15. The main issues in this appeal are:

first, the effect of the proposal on the adjoining crematorium;

second, whether the use of the appeal site as a gypsy site constitutes an encroachment into open countryside and the impact of the proposal on the character and appearance of the surrounding area;

third, whether the site is a sufficiently sustainable location for what is proposed and whether satisfactory living conditions would be provided;

fourth, the effect of the proposal on highway safety and the free flow of traffic;

fifth, the need for the continued use of the site as proposed having regard to site provision and personal circumstances and;

sixth, are the Council's concerns on prematurity well founded.

Main Issues

Effect on adjoining land uses

16. The Council is concerned that the normal activities associated with a gypsy and traveller site, such as barking dogs, would be an unwelcome source of disturbance to mourners at the crematorium. However, although the appeal site adjoins the grounds of the crematorium the main building upon them is well removed from the boundary with the appeal site in a well landscaped setting. A substantial landscaping strip within the crematorium grounds runs alongside the boundary with the appeal site.
17. Furthermore, the current occupation of the appeal site, and the area shown on the application plans for the continued provision of pitches and the siting of caravans, is limited to its eastern end. As such it is well removed from western boundary of the site with the crematorium. The imposition of a planning

condition in the event of the appeal being allowed could ensure that this would remain the case.

18. Given the above I consider that the day to day residential occupation of the appeal site by gypsy or traveller families should cause no undue disturbance to those using the crematorium. There is, moreover, no evidence that barking dogs are a particular problem on gypsy sites or that they have been on this site. As recognised in *Circular 01/2006* noise and disturbance can sometimes arise from the movement of vehicles to and from such sites. However, given the limited size of the site, and the background noise of traffic adjoining road, such movements should not impact unduly on those seeking peace and quiet at the crematorium. Allegations by the Council that concerns had been raised in the past concerning anti-social behaviour on the site were not supported by substantial evidence.
19. The Council had initially been concerned about the impact of equestrian uses on the crematorium. However, the reference to such uses has been removed from the proposal. The intended grazing of horses could take place on any agricultural land and would be unlikely to cause unacceptable noise and disturbance.
20. It is concluded the proposal would not have a detrimental effect on the adjoining crematorium. Thus the objective of Local Plan Policy CF12 in seeking to prevent nuisance to adjoining land uses would be met.

Encroachment into countryside and effect on the character and appearance of the surrounding area

21. The appeal site is on land that was previously an undeveloped field. The use of the site as a gypsy site and attendant development is therefore an encroachment into the countryside. Local Plan Policy CF12 says that in considering proposals for gypsy sites regard should be had to such encroachment.
22. However, the area in which the appeal site lies, although reasonably attractive is not subject to any special planning constraints or designations. Government guidance in *Circular 01/2006*, which post-dates the Local Plan, says that such rural settings are acceptable in principle for gypsy sites. Thus there can be no objection to what is proposed solely on the grounds of encroachment into the countryside. Otherwise the effect would be likely to prevent any gypsy sites in rural settings.
23. Such encroachment is, though, only one factor in the Council's reason for refusal on this issue. It is also alleged that there would be an adverse impact on the character and appearance of the area.
24. Roadside bunding has been provided on the site frontage with the A361. In itself I do not find this as intrusive as alleged by some and it provides a reasonably effective screen to the area on which the pitches have been created. From the road frontage and the roundabout to the east only the uppermost parts of the caravans on these pitches are seen even with the limited planting currently on the bunds. The impact of the proposal would be similar. The eventual provision of utility blocks, to be separately applied for, need be no more intrusive if of a scale and type common to most gypsy sites. Moreover, the appeal site is seen from the A361 in conjunction with a substantial roundabout, street lights and well manicured roadside verges.

These features give a slightly urbanised appearance to the area. In this context, and with the level of screening referred to, the continued use that is sought would not be overly intrusive or out of keeping. Nor would it detract from the attractive well landscaped grounds of the adjoining crematorium.

25. Turning to other potential viewpoints, an extensive tree belt effectively screens the site from views from the A350. The lie of the land and intervening screening would prevent the continued use of the site as proposed being noticeable to any substantial degree from high ground to the south of Semington. A public footpath runs along the western boundary of the site. From here the siting of the caravans and the hardstandings appear rather intrusive to the detriment of the site's immediate surroundings. However, sufficient space exists for landscape planting, which could be required by condition, to provide an acceptably effective screen.
26. There are 2 single pitch gypsy sites to the east of the roundabout junction of the A361 and A350. However, these sites are small and do not appear to intrude unduly upon the landscape. Moreover, the substantial visual impact of the A350 and the roundabout ensures that the area in which these other sites are located appears divorced from the appeal site. I thus attach little weight to concerns on cumulative visual impact.
27. The Council objects to the visual impact of a tall building on the appeal site with a pyramidal roof. However, this building, which is taller than most utility blocks found on gypsy sites, was constructed unlawfully and does not comprise part of the development for which planning permission is sought.
28. It is concluded that the use of the appeal site as a gypsy site constitutes an encroachment into open countryside and to that extent its continued use for this purpose would conflict with Local Plan Policy CF12. However, the proposal would not have an unacceptably detrimental impact on the character and appearance of the surrounding area and encroachment into the countryside alone would not conflict with guidance in *Circular 01/2006*.
29. In arriving at this conclusion account has been taken of advice in *Planning for traveller sites* that new development in the countryside should be strictly limited. However, it does not appear to necessarily rule out gypsy site provision in such areas and as already stated the potential for amendment to this guidance reduces the weight that may be given to it at this stage.

Sustainability of site and living conditions

30. Local Plan Policy CF12 requires that in considering proposals for gypsy sites regard must be had to the proximity of local services and facilities. The Council says that this requirement is not met because of the site's rural location.
31. However, *Circular 01/2006* makes it clear that gypsy and traveller sites are acceptable in principle in rural settings. In this case, moreover, the site is in reasonable proximity to Semington, a village that contains a primary school, public house, village hall and church. In winter months in particular the unlit and unmade up nature of the public footpath to the village may result in village facilities being accessed by car. However, *Circular 01/2006* advises that in assessing the suitability of rural sites a realistic view should be taken about the availability of alternatives to the car for accessing local services. Senior schools, healthcare facilities, and a wide range of shops etc. are found in Trowbridge and Melksham. The former town is only just over 3 miles from the

site and Melksham is even closer. The appeal site is well connected by main road to both towns and there is a regular and reasonably frequent bus service past the site to Trowbridge. The bus stop for that service is only a short distance from the appeal site.

32. Having regard to the above I consider that the site is reasonably accessible to facilities. Moreover, *Circular 01/2006* advises that issues of sustainability should not only be considered in terms of transport mode and distance from services. Other matters to take into account include: the wider benefits of easier access to GP and other health services; children attending school on a regular basis; and the provision of a settled base that reduces the need for long distance travelling and the possible environmental damage caused by unauthorised encampments.
33. Given the site's reasonable proximity to local services in Semington, to the wider range of facilities in the 2 nearby towns and to the other advantages of a settled site detailed above, I consider the proposal to be sufficiently sustainable.
34. In arriving at this view I have taken into account the Council's concern that those occupying the site would be cut off from the facilities in Semington by the A361. In particular it was said that it would be unsafe for children to cross this road without supervision.
35. The A361 is a busy road and subject to the national 60mph speed limit. It is part of the Department of Transport's preferred routing for long distance traffic. However, a short distance from the application site, and accessible to it along a highway verge, is a pedestrian refuge on the A361. From what I saw this provides for safe pedestrian access across the road. No highways evidence has been provided to the contrary and nor has the Council explained why it has concerns on pedestrian safety and yet was prepared to grant temporary permission for the use in the past. I accept that parents may be reluctant to allow young children in particular to cross the road unsupervised. However, it is not uncommon for such children to be accompanied in many areas for a variety of reasons. The location of this site would not impose substantially greater constraints upon access to facilities than might exist in many areas.
36. The Parish Council says that the site does not provide a pleasant environment in which to live given its proximity to busy and noisy roads and the "imprisoning" effect of the bunds that screen the site. However, there is no technical noise evidence to show that the site is unsuitable for residential occupation and the on-site environment, even with the existence of the bunds, is not unacceptably constrained.
37. It is concluded that the site is a sufficiently sustainable location for what is proposed and that satisfactory living conditions would be provided. As such there would be compliance with *Circular 01/2006* and with Local Plan Policy CF12 in so far that it seeks to ensure that gypsy sites provide for the needs and safety of future occupants and their children.
38. In arriving at this conclusion I have taken into account guidance in *Circular 01/2006* that one of the considerations in sustainability in cases such as this is the promotion of a peaceful and integrated co-existence between the site and the local community. The Council says that this has been prejudiced by the initial unlawful occupation of the site and that community cohesion would be

harmed by the cumulative impact of this proposal and the 2 sites to the east. However, given the small scale of the development, and its acceptable impact visually, there is no reason why over time it should not, even in conjunction with the other sites, become an accepted part of the community.

Highway safety

39. The Council's concern on this issue relates to the proposed retention of the vehicular access onto the A361 to serve the site. This access was provided in connection with the temporary use of the site. The Council supports its concern with reference to Structure Plan Policy T8 which generally seeks to prevent new accesses directly onto the national primary route network.
40. The Council says that it is unreasonable for drivers travelling on the A361 to need to be alert to vehicles turning into the appeal site so close to the A361/A350 roundabout. However, the access has in fact been sited a substantial distance from the roundabout and in a location agreed by the highway authority as safe. All that I saw supports the view that it is acceptably located from a highway safety viewpoint. I have been given no technical/professional evidence to the contrary. Nor has any such evidence been given to support local concerns on the adequacy of sight lines. Moreover, the explanatory text to Policy T8 appears to show that it has more to do with ensuring the free flow of traffic than highway safety.
41. Turning to this other highway consideration, a restriction on the number of accesses to roads of this type is sometimes imposed to ensure the free flow of traffic. However, in this location with roundabout junctions to the east and west of the site there is already disruption, or potential disruption, to traffic flows in the vicinity of the site. Moreover, it is likely that there would be only limited vehicle movements to and from the site. All this points to the likelihood that the proposed development would not unduly disrupt traffic on the A361 and no substantial evidence has been provided to the contrary.
42. It is concluded that the proposal would not have a harmful effect on highway safety, nor unduly restrict the free flow of traffic. As such there would be no conflict with the objectives of Structure Plan Policy T8 or with Local Plan Policy CF12 in so far that it seeks to ensure that highway safety is not compromised.

Need for the proposal

43. The appellant says that taking the period up to 2016 there is currently a need for 14 gypsy/traveller pitches in this part of Wiltshire. The Council fully accepts that there is an unmet need for pitches in this period, but gives the figure as 10 pitches. Whilst I note the difference between the parties, even on the Council's estimate there is a fairly substantial level of need locally. The concerns of the Parish on the Council's assessment of need are noted. However, there is no substantial evidence that the Council's assessment of need is unduly high.
44. The Council says that it is aiming to meet the need for gypsy sites through the *Gypsy and Traveller Site Allocations Development Plan Document (DPD)*. However, this is at an early stage of preparation. Delays for various reasons mean that the Council does not anticipate adoption until 2014. There is then likely to be a further delay until sites are provided. I consider the appellant's estimate of sites not coming forward until 2015 not to be unreasonable, especially as further slippage could easily occur in the preparation of the *DPD*.

45. There is thus a fairly substantial existing unmet need and it is likely to be around another 3 years before sites become available through the Local Development Framework (LDF) process. This is a matter on which I attach significant weight. The Council has made a bid for a Homes and Communities Agency grant to assist with gypsy site provision. However, it is too early to know whether the bid would succeed and little evidence has been given on how any such funding would assist in providing new sites in this area.
46. Turning to individual need, evidence has been provided on the personal circumstances of the appellant and those living on the site. A significant number of those on site have health issues of various degrees of severity. There are 8 children on the site of school age. These factors do not point to the site being uniquely suitable for its current occupants. Access to health and education services is potentially accessible from many areas. However, it does reinforce the benefits of having a settled base. It is this that enables access to health services and education provision to be most readily obtained. This benefit would most likely be lost if the appellant had to move from this site for there is no evidence of pitches being available on suitable alternative sites. Moreover, the appeal site is beneficial in providing somewhere large enough for the appellant and his extended family to reside. It is clear from the witness statements that considerable mutual support is provided.
47. If this appeal was dismissed it is open to the Council to take enforcement action to secure the removal of the use. Even with a reasonable period of compliance being given this could, on the evidence above, lead to those occupying the site having to resort to unlawful roadside locations. Thus the individual needs of the appellant and his extended family add weight his case.
48. It is concluded that there is a need for the proposed development having regard to site provision. Personal circumstances add weight to the need for a site.

Prematurity

49. The Council says that granting permission could prejudice the emerging *Gypsy and Traveller Site Allocations Development Plan Document (DPD)* by contradicting the criteria that the Council is putting forward for considering such sites and thus undermining the credibility of the emerging Policy.
50. I have dealt above with my concerns on refusing permission in circumstances where there is a need for development of this kind and the *DPD* is unlikely to result in the provision of sites for another 3 years.
51. Moreover, Government Guidance in *The Planning System: General Principles* is that refusal of planning permission on grounds of prematurity will not usually be justified. Justification for such a decision would only exist where the proposed development is so substantial, or where the cumulative effect would be so significant, that granting permission could prejudice the *DPD* by predetermining decisions about the scale, location or phasing of new development which are being addressed in the *DPD*.
52. In this case the proposed development is small scale and the Council has not clearly demonstrated how the cumulative effect of such development would be sufficient to prejudice the outcome of the *DPD* process.

53. Nor has the Council provided substantial justification for its view that granting permission would undermine the credibility of the emerging *DPD*. Giving limited weight to this document does not undermine its credibility. It is merely a function of the relatively early stage it has reached in the plan preparation process.
54. It is therefore concluded that the Council's concerns on prematurity are not well founded.

Final Assessment

55. There remains an ongoing need for gypsy site provision. The Council's *DPD* that seeks to address this is unlikely to lead to the provision of gypsy sites until 2015. I have found the site to be satisfactory in terms of its effect on the adjoining land use and its impact on the character and appearance of the surrounding area. It comprises a sufficiently sustainable location for the proposed development and would provide satisfactory living conditions. There would be no detriment to highway safety and the free flow of traffic. As such there would generally not be the conflict with Local Plan Policy CF12 that the Council alleges. The fact that there would be an encroachment into the countryside should not in itself stand against the proposal given guidance in *Circular 01/2006*. All this points strongly towards allowing the appeal. The Council's concerns on prematurity are not well founded and should not weigh against the proposal especially given my findings on the other issues.
56. The fact that the appellant and his family would benefit from the stable base provided by living on the appeal site, and the lack of other pitches for them to occupy, adds weight to this view. It is, however, not a determinative factor so occupation does not need to be limited.
57. Bearing all the above in mind I consider the proposal to be acceptable subject to conditions as set out below.

Conditions

58. Given the specific Policy justification for the proposal I shall restrict occupation of the site to gypsies and travellers. To protect the character and appearance of the area I shall: limit the size of vehicles that may be stored on the site; prevent commercial activity on the site; require the site to be landscaped; limit the area of the site on which pitches may be formed and caravans sited; and restrict the number of pitches and caravans. To fulfil the same function I shall limit the number of caravans and restrict the number that may be static. However, I see no need to go beyond that and prevent a single pitch being occupied by more than one family, and indeed such a condition would be difficult to enforce. To ensure satisfactory drainage I shall require a foul drainage scheme to be approved and implemented.
59. As the use of the site for the purposes sought has already commenced, with the benefit to the temporary permission, there is no need for the standard time limit for the commencement of development. However, it has made it necessary to re-word the suggested landscaping and drainage conditions referred to above to ensure compliance. I have done so in a way that follows established practice.
60. Given my findings on need, the suitability of the site and the alleged prematurity I shall not make the permission personal to the appellant or make

it temporary. In so doing so account has been taken of the fact that in appeal decision APP/Y3940/A/09/2109292, relating to one of the gypsy pitches to the east of the appeal site, permission was made temporary. However, that case was linked to a complex enforcement appeal and for all the reasons given such a restriction is not appropriate in the case before me. More pertinent, in my view, is the decision on appeal APP/Y3940/A/10/2122592, for a gypsy pitch at Sutton Benger, Wiltshire without compliance with a temporary condition. It was held that this condition was not justified on grounds of prematurity and I have been given no substantial reason to come to a different view in this case.

61. I shall not prevent the burning of materials generally on site as that is too onerous a restriction. I see no need to specifically prohibit the burning of commercial waste given that commercial activity as a whole is to be prevented.

Conclusion

62. For the reasons given above the appeal is allowed.

R J Marshall

INSPECTOR

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Mr G Kean	Solicitor for the Council
He called	
Cllr J Seed	Wiltshire Councillor
Mr M Wilmott BSc	Area Development Manager
(Hons) DipTP DM MRTPI	
Mrs C Gibson BA (Hons)	Of Wiltshire Council
MRTPI	

FOR THE APPELLANT:

Mr M Green	Advocate and witness – of Green Planning Solutions LLP
He called	
Mr P Ward	Appellant
Mr T Ward	Occupant of appeal site
Mrs M Ward	Occupant of appeal site
Mr D Ward	Occupant of appeal site

INTERESTED PERSONS:

Mr B Smyth	Parish Councillor
Mr F Dobbyn	Parish Councillor
MR E Clark	Former District and County Councillor

DOCUMENTS

- 1 Letter of notification of inquiry and those notified.
- 2 Council list of appearances.
- 3 Draft Statement of Common Ground.
- 4 Signed Statement of Common Ground.
- 5 Copy of appeal decisions APP/Y3940/C/09/2105006, 7 and 9 and APP/Y3940/A/09/2109292.
- 6 E mail from D Hames to J Seed.
- 7 Note from Cllr Clark withdrawing request to speak.
- 8 Council minute on LDF.
- 9 Council agenda item on LDF.
- 10 Various witness statements.
- 11 Secretary of State Direction on saved policies.
- 12 Letter of 1 December 2011 from Education Transport Area Co-ordinator.
- 13 Suggested conditions.
- 14 Closing submissions for Parish Council.
- 15 Closing submissions for Wiltshire Council.
- 16 Closing submissions for Appellant.
- 17 Appellant's skeleton cost claim.
- 18 Council response to cost claim.
- 19 Council cost claim

Conditions

- 1) The site shall not be occupied by any persons other than gypsies and travellers as defined in paragraph 15 of ODPM Circular 01/2006.
- 2) No commercial activities shall take place on the land, including the storage of materials.
- 3) No vehicle over 3.5 tonnes shall be stationed, parked or stored on this site.
- 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 schemes for: the means of foul water drainage of the site; landscaping including details of species, plant sizes and proposed numbers and densities; shall have been submitted for the written approval of the local planning authority and the said schemes shall include a timetable for their implementation.
 - ii) within 11 months of the date of this decision the drainage and landscaping schemes shall have 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 schemes shall have been carried out and completed in accordance with the approved timetable.
- 5) Pitches shall not be formed, nor caravans sited, on land other than the eastern part of the site identified for this purpose on the submitted 1.500 scale plan identified and marked as plan B. Other than the access road shown on plan B there shall be no hardstanding other than in the areas identified in plans B and C for the formation of pitches and the siting of caravans.
- 6) No more than 8 caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 (of which no more than 4 shall be a static caravan) shall be stationed on the site at any time.
- 7) There shall be no more than 3 pitches on the site.



Costs Decision

Inquiry opened on 1 December 2011

Site visit made on 2 December 2011

by **R J Marshall LLB Dip TP MRTPI**

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

Decision date: 24 February 2012

Costs application in relation to Appeal Ref: APP/Y3940/A/11/2156159 Land adjacent West Wiltshire Crematorium, Littleton, Semington, Wiltshire

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr Patrick Ward for a full, or in the alternative partial, award of costs against Wiltshire Council.
 - The inquiry was in connection with an appeal against the refusal of planning permission for development described as "Change of use to small private gypsy and traveller site for 3 pitches for 8 caravans and associated ancillary works and development (including hardstanding, utility blocks, drainage etc.) and associated keeping of horses".
 - The inquiry sat for 3 days on 1 and 2 December 2011 and 5 January 2012.
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Decision

1. The application for an award of costs is allowed in the terms set out below.

The submissions for Mr Patrick Ward

2. The costs application was made in writing with some minor verbal additions and amendments. The essence of the case is set out below.
3. The decision to refuse permission was unreasonable. Any concerns, if valid, could have been dealt with by condition.
4. At appeal the Council failed to provide evidence or sufficient evidence to justify its reasons for refusal, contrary to Officer advice, on the impact of the proposal. Insufficient account was taken of national Guidance in *Circular 01/2006 Planning for gypsy and traveller caravan sites*.
5. The Council's concern on prematurity ignores Government Guidance and recent Inspector's decisions in this area and is not supported by substantial evidence. Contrary to Government Guidance and recent Secretary of State decisions the Council attributed undue weight to emerging Government Guidance on gypsy sites and insufficient weight to existing Guidance.
6. The Council failed at any stage to adequately assess material considerations in favour of the proposal such as the unmet need for sites, the lack of alternative sites and personal circumstances.
7. The above considerations justify a full award of costs. Should unreasonable behaviour leading to unnecessary costs be found on only some of the matters above then a partial award of costs is justified.

The response by Wiltshire Council

8. The response by the Council was made in writing and supplemented verbally. The essence of the response is set out below.
9. In issuing draft Guidance on gypsy and traveller sites a press circular indicated that current Guidance had become outdated. The Council had reasonable expectations that the new Guidance, supporting its stance, would by now have been issued.
10. Material circumstances such as need and personal circumstances were before the Committee and taken into account.
11. Should it be found that permission should not be refused for the reasons given by the Council the progress made with the Council's *Gypsy and Traveller Site Allocations Development Plan Document (DPD)* would justify a temporary permission. This would prejudice neither the appellant nor the Council pending an assessment of what sites are acceptable for permanent provision in the District.
12. It was legitimate for the Council to have regard to encroachment into the Countryside. It is a criterion of Local Plan Policy CF12 on gypsy sites and is consistent with emerging Government Guidance. Guidance on this in *Circular 01/06* on this is out of date and will soon be withdrawn.
13. The Council has provided evidence to support its case with appropriate reference to the Development Plan. The potential for nuisance to an adjoining land use is a legitimate concern and in any event took up little Inquiry time.
14. The appellant has given undue weight to past appeal decisions. All cases are to be treated on their individual merits.
15. If costs are awarded there should be a deduction for the time unnecessarily incurred by the appellant in providing excessive evidence and failing to sign a SOCG in time.

Appellant's final response

16. The reason for refusal indicates a distinction between encroachment into the countryside and impact on character and appearance. Although it may not be the view of Council Officers the Council's principal witness considers the main issue to be encroachment and that was distinct from matters of character and appearance.
17. Evidence on personal circumstances may have been before the Committee. However, this matter is dealt with in only the briefest terms in the Council's evidence and the Council has failed to show that it was taken into account in its decision.
18. As for the time the Council is seeking to have deducted from any costs award the amount of evidence provided on behalf of the appellant is no different from that supplied on other gypsy appeals and was provided to fully cover the reasons for refusal.
19. The appellant's response to the costs claim reinforces the view that undue weight was given to emerging national Guidance and local Policies on gypsy

site provision and insufficient weight on *Circular 06/2006*. The Council's approach has thus been wholly unreasonable and unlawful.

Reasons

20. Circular 03/2009 on costs advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
21. The Costs Circular says that Councils are at risk of an award of costs against them if they delay or prevent development which should clearly be permitted. It also requires that at appeal evidence should be provided to substantiate each reason for refusal. Whilst Councillors are not bound to accept Officers' recommendations reasonable planning grounds should be given for a decision contrary to them. Moreover, where appropriate, Councils are expected to show that they have considered the possibility of imposing conditions.
22. The Council's first reason for refusal is based on conflict with various requirements of Policy CF12 of the *West Wiltshire District Plan First Alteration 2004*.
23. The first 2 grounds of concern under this Policy relate to a) the impact of the proposal on the use of the adjoining crematorium and b) encroachment and the character and appearance of the area. Decisions turning on such matters are unlikely to result in an award of costs if realistic and specific evidence was given in support. However, vague, generalised or inaccurate assertions about the impact of a proposal, which are unsupported by objective analysis, are not sufficient.
24. On the effect on the crematorium no substantial evidence was provided to support an assertion that local concerns had been raised regarding anti-social behaviour on the site. Under cross examination the Council's case on the impact on the crematorium was largely narrowed down to the potential for harm caused by barking dogs. However, no substantial evidence was given to show that this is a problem generally on gypsy sites or that it has been so here. I thus consider this reason for refusal to amount to a generalised assertion unsupported by objective analysis.
25. The Council's evidence on the impact of the proposal on the character and appearance of the area was notably sparse. However, seen in the round it went beyond just a mere assertion of encroachment but to the harm that this was alleged to cause to the character and appearance of the area. In this regard it referred to the nature of development on the site, the character and appearance of the area and from where the site can be seen. Whilst I did not find this persuasive it provided a sufficient evidential basis for the stance taken to constitute realistic and specific evidence in the terms of the Cost Circular.
26. The third and fifth grounds of concern under Policy CF12 relate to pedestrian safety and whether the site is in a sufficiently sustainable location. The 2 concerns are linked in part as the Council claims that residents' worries over the safety of crossing the main road fronting the site will cut them off from facilities in the nearest village. However, concerns on pedestrian safety are unsupported by any analysis of actual traffic speeds and flows past the site. Nor has any professional or technical evidence been provided to contradict the advice of Officers or to indicate why the Council should have taken a different

view on this matter than it did when granting temporary permission for the site in 2008.

27. In sustainability terms more generally the Council's concern is that the site is in a rural location and distant from services and in a location where housing generally would not be permitted. However, the site is in reasonable proximity to a nearby village that contains a primary school and is only a few miles from 2 towns offering a good range of services. Both towns are readily accessible by main roads. Moreover, *Circular 01/2006* advises that sustainability should not only be considered in terms of transport mode and distances from services but to various wider benefits including those provided by a settled base. There is little evidence that the Council took such considerations into account. Had it done so, and had regard to the site's reasonable proximity to services, a more reasonable approach would have been taken on sustainability.
28. In part the Council's approach on the suitability of the site for what is proposed is based on a view that *Circular 01/2006* is outdated and will be replaced. However, as the Circular remains in place regard must still be had to it in determining this proposal. The Government has recently produced a consultation document *Planning for traveller sites*. However, consultation on this may prompt amendments, which reduces the weight that may be given to it at this stage. The Council's case on the weight to be given to the emerging guidance was unclear. However, the Council's statement and its written response to this costs claim, suggests that it acted unreasonably in placing too much weight upon it at this stage.
29. The Council's fourth ground of concern under Policy CF12 relates to the principle of allowing a vehicular access onto the A361 due to its status as part of a Primary Route Network. In so doing it relies on Policy T8 of the *Wiltshire and Swindon Structure Plan* which generally seeks to prevent such accesses. However, whilst that may be so, the highways authority has not recommended that this application should be refused and the Council has failed to provide any substantial evidence by way of contrary professional opinion. Matters likely to be relevant to highway safety and the free flow of traffic such as actual traffic speeds and flows, and accident statistics were not addressed in any substantial way by the Council. As such it has acted unreasonably.
30. The second reason for refusal is based on grounds that permanent permission could prejudice the emerging *Gypsy and Travellers Site Allocations Development Plan Document (DPD)* which is in effect an argument on prematurity. However, Government Guidance in *The Planning System: General Principles* requires reasons for refusal on these grounds to be supported by clear evidence on how the grant of permission would prejudice the outcome of the DPD process. The Council's evidence in support of this ground of refusal is notably sparse and does not specifically address relevant considerations such as the scale of the development and cumulative effect. It amounts to little more, therefore to an assertion that harm would arise. The view that the credibility of the DPD would be undermined by a permission in this case has insufficient regard to the weight that can currently be attached to the emerging DPD.
31. The Council's suggestion that this concern could have been overcome by a temporary permission does not greatly assist its case against the cost claim as there is no evidence that the Council had regard to this in its determination of the application.

32. Turning to other material considerations the need for a gypsy sites generally in an area, and the specific needs of those seeking sites, are important considerations given guidance in *Circular 01/2006*. However, there is scant evidence that the Council took this into account. It is said that Members would have been aware of such matters. However, no substantial evidence was provided to show how those matters were considered and balanced against the factors regarded by the Council to cause harm. Thus the Council acted unreasonably in not having due regard to a material consideration.
33. Drawing together my views the Council provided sufficiently substantial evidence, in the terms of the Costs Circular, to justify only one of its reasons for refusal. Moreover, even on that ground I found overwhelmingly for the appellant. Looking, therefore, at the case as a whole, including my findings on the Council's failure to have proper regard to the other material considerations referred to above, I consider that the Council unreasonably prevented development that should clearly have been permitted. The appellant was thus put to the unnecessary expense of appealing and a full award of costs is justified.
34. I find that unreasonable behaviour resulting in unnecessary expense, as described in Circular 03/2009, has been demonstrated and that a full award of costs is justified.
35. In arriving at this conclusion I have had regard to the Council's view that, were I to find for the appellant on costs, there should be a deduction to account for the costs that may have arisen through his unreasonable behaviour. However, that is a matter best addressed, as it was, in the Council's claim against the appellant and is the subject of a separate decision.

Costs Order

36. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Wiltshire Council shall pay to Mr Patrick Ward, the costs of the appeal proceedings, such costs to be assessed in the Senior Courts Costs Office if not agreed. The proceedings concerned an appeal more particularly described in the heading of this decision.

RJ Marshall

INSPECTOR