The Planning Inspectorate

Appeal Decision

Hearing held on 11 December 2012

Site visit made on 11 December 2012

by Bern Hellier BA(Hons) MRTPI

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

Decision date: 8 March 2013

Appeal Ref: APP/V0510/A/2181294
Builders Yard, Hod Hall Lane, Haddenham, Ely, CB6 3UX

- 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 M Ruszkiewicz against the decision of East Cambridgeshire District Council.
- The application Ref 12/00213/FUL, dated 21 February 2012, was refused by notice dated 28 May 2012.
- The development proposed is change of use from builders yard and offices to three pitches for gypsy/travellers.

Decision

1. The appeal is allowed and planning permission is granted for change of use from builders yard and offices to three pitches for gypsy/travellers at Hod Hall Lane, Haddenham, Ely, CB6 3UX in accordance with the terms of the application, Ref 12/00213/FUL, dated 21 February 2012, and the plans submitted with it, subject to conditions set out in the accompanying Schedule.

Preliminary matters

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

3. On the day of the hearing, unknown to the participants, the Government announced that the East of England Plan was to be revoked, with effect from 3 January 2013. The further representations of the parties to this change have been taken into account.

Gypsy status

4. The proposal is for three gypsy pitches to be occupied by members of the same family. They are the appellant and his wife Clara; their daughter Elizabeth and her husband Tom Collins; and their other daughter Rosemarie who is married to Sam Wells. The Council has not disputed their gypsy status.

5. The appellant is not a gypsy but his wife is a Romany Gypsy who, before marrying in 1978, travelled with her family. After their marriage they travelled briefly. I am satisfied that Clara, who ceased travelling to bring up children and latterly for reasons of old age, meets the planning definition of a gypsy. The appellant normally travels to work from a home base. This does not amount to a nomadic existence and I find that he does not have gypsy status. He should be treated as a dependant for the purposes of the definition.

6. The daughters have both married gypsies. Tom Collins travels as a general dealer but has temporarily given up travelling to help look after their three year old son who suffers from autism. Sam Wells travels to find tree work. On the evidence put to me I have no reason to doubt that they have gypsy status.

Main issues

7. I consider there are three main issues in this appeal.
   - Whether this is a sustainable location having regard to established planning policies for gypsy sites.
   - Whether there are other considerations, including the general need for and availability of gypsy sites, future provision, and the accommodation needs and other personal circumstances of the appellant which support the proposal.
   - Whether any harm arising from the location is outweighed by other considerations.

Reasons

Planning policy

8. The development plan is currently the Core Strategy[1]. Policy CS1 establishes a spatial strategy which directs the majority of new development to the towns and larger villages, including Haddenham. The appeal site lies outside the village development boundary. Policy CS2 does not allow new housing development outside this boundary although exceptions to this policy include sites for gypsies and travellers. Policy CS3 sets out criteria for allocating gypsy and traveller sites and for considering windfall applications such as the appeal proposal. Sites should have regard to the impact on the character and appearance of the countryside (criterion b) and should be broadly in scale with the size of the nearest community (criterion g). In addition applications should be assessed against the existing level of provision and need for sites, the availability of alternative accommodation, and other personal circumstances.

9. Policy CS3 generally accords with national policy in Planning Policy for Traveller Sites[2] (PPTS). There is additional emphasis in the PPTS on the need for gypsy policies to promote peaceful and integrated co-existence between a traveller site and the local community.

10. The Council is preparing a Local Plan to supersede the existing Core Strategy. A final draft version[3] was published in December 2012. Draft Policy HOU9 would replace Policy CS3. It includes an updated assessment of need, allocates sites, and sets out revised criteria for assessing windfall applications. It is envisaged that it will be adopted by the end of 2013. It is a relevant consideration but as a draft it can be afforded little weight at this stage.

Site sustainability

11. The Council has identified two concerns. Firstly that the proposal, if allowed, would set a precedent for further similar development which cumulatively would have an adverse effect on the character and appearance of the countryside. Secondly, that the proposal would have an adverse effect on

[1] East Cambridgeshire District Council Core Strategy Development Plan Document. Adopted October 2009
[2] Planning Policy for Traveller Sites. Communities and Local Government. March 2012
[3] East Cambridgeshire District Council Local Plan. Final Draft Version. December 2012

relations with the settled community. Further representations were received in relation to the adequacy of the proposed drainage and access arrangements.

Character and appearance

12. Hod Hall Lane is a private track running at right angles from Lode Way. It terminates at a small group of established gypsy pitches about 180 metres from the junction with Lode Way. The appeal site has a frontage of 40 metres onto the lane. It is currently vacant, although the previous use was as a builders yard, and there is a brick storage building situated towards the rear.

13. The site is separated from the existing pitches to the east by two 20 metre wide plots, the nearest with ramshackle buildings set behind a gated vehicular access, the other containing impenetrable undergrowth. To the west is a plot of unmanaged scrub and woodland about 55 metres wide separating the site from the rear of 27 and 29 Lode Way. To the rear is a field currently used for pony grazing. To the front, on the opposite side of Hod Hall Lane, is ploughed agricultural land.

14. Development on the site would not be easily seen from public vantage points. Hod Hall Lane is not a public right of way and a parallel track to the south leading to the sewage works is also private. Surrounding vegetation screens the site from properties on Lode Way and Metcalfe Way.

15. The six caravans and two additional dayrooms would be visible at close quarters and the level of activity associated with the site would affect the quiet rural character of the lane. However the impact would be localised and, having regard to the previous use as a builders yard, I do not find that there would be a significant detriment to the character and appearance of the countryside or any material conflict with criterion (b) of Core Strategy Policy CS3.

16. Existing vegetation may not always be relied upon. The Council refers to an instance in nearby Wilburton where a site for travelling showpeople was allowed on appeal[1]. An adjoining strip of scrub land was identified as an important break between the site and open farmland. Subsequently the scrub was cleared and an appeal[2] for a further site on the cleared land was then allowed. In that case it was determined that a strong planted boundary feature would be sufficient to maintain the break with the farmland.

17. In the present case the site also relies to some extent on screening from the plots on either side and nearby woodland. The appellant has no control over these areas and could not prevent them being cleared of vegetation, thus opening up views of the site. This is a possibility. However, there is room within the site for planting and for strengthening the existing boundary hedges. Given this I see no reason why the site should not continue to be adequately screened from the village in the future.

18. The two plots of land between the appeal site and the existing gypsy pitches are of a similar character. However they are in other uses and an application for a gypsy pitch would be subject to different considerations. I am not persuaded that allowing the proposal would set a direct precedent in relation to these plots or to the surrounding agricultural land. The Council suggests the

[1] Appeal Ref APP/V0510/A/08/2071284 Lazy Acre, Station Road, Wilburton. December 2008
[2] Appeal Ref APP/V0510/A/11/2164119 Land north of Driftwoods, Station Road, Wilburton. February 2012

Wilburton appeals are an example of a precedent being created but the second appeal here was allowed principally because of a change in circumstances.

Impact on the settled community

19. In 2001 Haddenham had a population of 3228 occupying 1342 dwellings. There are at present some seven gypsy pitches in Haddenham of which six are in the group at the end of Hod Hall Lane. These are mostly of long standing although one pitch was approved as a sub-division of an existing pitch in 2008. This existing gypsy community is accepted within the village and there is no history of any tensions with other residents. Whilst an increase of a further three pitches would reinforce the concentration of gypsy families in the lane it would not be out of scale with nearby housing or with the village as a whole.

20. There is local concern that the site would be too close to the village. However it is some 100 metres away from Lode Way and over 50 metres away from the nearest dwelling. These separation distances would be sufficient to protect existing properties from any overlooking or noise and disturbance. It was suggested that gypsies preferred to live away from the settled community but this was disputed and it is not supported by planning policy.

21. There have been two previous unsuccessful applications for use of the appeal site as a gypsy site and the site was also put forward as a potential gypsy site allocation in the Local Plan. These and the current proposal have evoked strong opposition from local residents and the Council took the view that it would be difficult for any new occupiers to be accepted within the village. However it is not clear why they would not be assimilated in the same way as the existing traveller households.

22. It was stated that the primary school in the village was overcrowded but school populations fluctuate from year to year. One or two more children in relation to the total school population in the catchment area would not be significant.

23. I find that there is no evidence that the proposal would have an adverse effect on social cohesion within the village or that, in this respect, there would be any conflict with the PPTS or criterion (g) of Policy CS3.

Drainage

24. The existing foul sewer in Lode Way surcharges after heavy rain into the road and into the gardens of properties. A connection from the appeal site would be unlikely to exacerbate this problem. Any alternative drainage arrangement would be a building regulations matter but there is no reason in principle why a satisfactory scheme could not be achieved.

25. The site is not liable to flood and drains, in part, to a ditch on the southern boundary. The flow in this ditch is poor and the adjacent field is often waterlogged. The development of the site would increase the rate of run off and some retention of peak flows would be appropriate. Subject to a condition requiring the submission and approval of a drainage scheme I do not consider the proposal would have a materially adverse effect on the existing surface water and foul drainage situation in the village.

Access

26. Hod Hall Lane is potholed and puddled in places. It is too narrow for vehicles to pass and has no footway. It is the only means of access to the existing

gypsy plots. Any significant additional use would increase the likelihood of vehicles meeting and having to reverse resulting in increased hazards for drivers and pedestrians using the lane.

27. However, the potential fall back position of a builders yard would also generate traffic and, on the positive side there is the possibility of creating a passing place in front of the appeal site. On balance, with the provision of a passing place, I consider access arrangements would be acceptable. I note this was also the conclusion of the highway authority.

Conclusion on site sustainability

28. The impact of the proposal in relation to the settled community, drainage and access would be satisfactory. This would be a sustainable gypsy site location where there would be little harm to the character and appearance of the countryside and no material conflict with the criteria in Policy CS3.

Other considerations

General need and future provision

29. The Council has recently adopted targets for new gypsy site provision based on a gypsy and traveller accommodation needs assessment (GTANA) carried out in 2011[1]. This relies on interpreting a range of existing statistics, including the bi-annual caravan counts, together with the first hand experience and knowledge of Traveller Liaison Officers, rather than primary questionnaire based research. It identifies a need for 10 pitches between 2011 and 2016 and a further 13 in the following five years.

30. Since 2011 the Council has approved 15 pitches on two sites, one nearby at Wilburton, and one at Burwell about 20 kilometres away. A further application for 2 pitches at Soham, a similar distance away, is under consideration. An additional 6 pitches are allocated in the draft Local Plan. Over the last six years, apart from the appeal site there has been only one application for a gypsy site refused. The Council is not aware of any unauthorised sites or sites with temporary permission. At the end of Hod Hall Lane one of the plots is for sale and there appears also to be a vacant plot within the existing row.

31. There is no specific provision for inward migration of gypsies. However the 2011 assessment comes to the conclusion that there would be no net requirement for pitches because demand from gypsy families wanting to move into the area would match that from families moving out.

32. The Council has met the PPTS requirement for a five year supply of deliverable sites and all the signs on the ground are that there is currently little unmet demand. Whilst the GTANA figures are not maximum targets there is, at present, no quantitative need for additional sites. The consideration of general need and future provision therefore gives little support to the proposal.

Accommodation needs of the appellant

33. The appellant and his wife have lived in permanent accommodation in Braintree for about eight years although his wife would prefer to live in a caravan. One daughter and her husband live in a caravan in the garden. The caravan does not have permission although there is no current enforcement action and it is

[1] Cambridge Sub-Regional Gypsy and Traveller Accommodation Needs Assessment 2011

uncertain how the local planning authority in Braintree would deal with the matter. Their other daughter lives with her husband in a caravan in Aylesbury.

34. The appellant has not looked for alternative sites because he owns the appeal site although he accepted that, potentially, other sites in the area with planning permission might be physically suitable.

35. Taking account of the considerable length of time the appellant and his wife have lived in permanent accommodation and the lack of any evidence that the present living arrangements for the two daughters are unsatisfactory, I attach little weight to their accommodation needs as a factor favouring the proposal.

Personal circumstances

36. It is part of gypsy culture to live together in extended families. Moving to the appeal site would bring the family members together and in close proximity to another family member already living in Hod Hall Lane. However, Elizabeth and her husband already benefit from the support of her parents both generally and in caring for Tommy, their son. Rosemarie moved to Aylesbury because it is where her husband comes from.

37. Tommy is receiving support for his autism from health professionals in Essex. There is no reason to suppose that health care would be any different or any better in Cambridgeshire and this consideration adds little support to the proposal.

38. Health and family support arguments do not weigh significantly in favour of the proposal.

Weighing other considerations against harm

39. The appeal site is a sustainable location for a gypsy site and little harm would arise from its impact on the character and appearance of the countryside.

40. In relation to other considerations the Council is able to demonstrate that it has a five year supply of deliverable gypsy sites with planning permission and is progressing further provision through its Local Plan which is well advanced. There is therefore no unmet general need. Little weight attaches to the accommodation needs and personal circumstances of the appellant and his family.

41. In assessing the proposal against Core Strategy Policy CS3 there is a requirement to assess any harm arising from the site location criteria in conjunction with need. In the present case I find that this is a good location for a gypsy site in its own right and that in the absence of harm, whilst there is little additional support from general need or personal circumstances, the balance lies clearly in favour of the proposal.

Other matters

42. The Council considers that, because it had resolved not to include the appeal site as an allocation in its draft Local Plan, it would be perverse to grant planning permission. However there is no reason why a rejected allocation cannot be submitted as a windfall site to be assessed against current development plan policy and national guidance.

Conditions

43. The Council submitted suggested conditions and the need for others arose during the hearing. I have considered these in accordance with the policy tests in Circular 11/95[1].

44. The site has been assessed on the basis of gypsy policies and occupancy of the site should be restricted to someone of gypsy status or their dependants. In the interests of local amenity conditions are needed to limit the number of caravans, to agree the layout of caravans, dayrooms and access/parking areas and to secure a landscaping scheme with a particular requirement for planting on the southern boundary and, where relevant, to avoid the bird nesting season. For the same reason business activities and larger commercial vehicles should not be permitted on the site.

45. To minimise highway dangers conditions should provide for vehicle turning within the site and for the widening of the lane to form a passing place. To avoid exacerbating existing flooding, surface water and foul drainage arrangements should be subject to condition. Finally, because of the previous use as a builders yard, investigation of potential contamination would also be necessary.

46. The Council sought a financial contribution to meet the additional costs the development would impose on infrastructure provision. However a financial consideration would be outside the scope of a planning condition[2]. In any event the Council provided no details of the impacts that might give rise to such costs and it was not a matter which was raised in the refusal.

Conclusion

47. For the reasons given above I conclude that the appeal should be allowed.

Bern Hellier

INSPECTOR

Schedule of Conditions

1) The development hereby permitted shall begin not later than three years from the date of this decision.

2) The site shall not be occupied by any persons other than gypsies and travellers as defined in Annex 1 of *Planning Policy for Traveller Sites* published by Communities and Local Government in March 2012.

3) There shall be no more than 3 pitches on the site and on each of the pitches hereby approved no more than 2 caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968, of which no more than 1 shall be a static caravan, shall be stationed at any time.

4) No development shall take place until details of the siting of caravans, access and parking areas and design and siting of dayrooms have been submitted to and approved in writing by the local planning authority. The development

[1] Circular 11/95 Use of Conditions in Planning Permission
[2] Circular 11/95. Paragraph 83

shall be carried out in accordance with the approved details for each individual pitch prior to the occupation of that pitch.

5) No development shall take place until full details of soft landscape works and boundary treatments have been submitted to and approved in writing by the local planning authority. The details shall include: planting plans; written specifications; schedules of plants, noting species, plant sizes and proposed numbers/densities where appropriate. The details shall also:
   - indicate existing trees and hedgerows and those proposed to be retained and;
   - make provision for a strip of hedgerow/tree planting, a minimum of 5 metres deep, on the southern boundary.

   The works shall be carried out in accordance with the approved scheme prior to the first occupation of any part of the development or in accordance with a programme agreed with the local planning authority.

6) Any work to, or removal of, existing trees and hedgerows shall be carried out outside of the bird nesting season.

7) No development shall take place until full details of a passing place to the front of the site have been submitted to and approved in writing by the local planning authority. The passing place shall be constructed as approved prior to the first occupation of any part of the development.

8) No development shall take place until a scheme for the disposal of foul and surface water has been submitted to and approved in writing by the local planning authority. The scheme shall be implemented as approved prior to the first occupation of any part of the development.

9) The access and parking arrangements submitted in respect of Condition 5 shall provide sufficient space to enable vehicles to enter, turn and leave the site in forward gear and to park clear of the public highway. These works shall be completed prior to the first occupation of the development and retained thereafter for that purpose.

10) No development shall take place until a site investigation of the nature and extent of any contamination has been carried out in accordance with a methodology which has previously been submitted to and approved in writing by the local planning authority. The results of the site investigation shall be made available to the local planning authority before any development begins. If any contamination is found during the site investigation, a report specifying the measures to be taken to remediate the site to render it suitable for the development hereby permitted shall be submitted to and approved in writing by the local planning authority. The site shall be remediated in accordance with the approved measures before development begins.

11) During the course of development, if any contamination is found which has not been identified in the site investigation, additional measures for the remediation of this source of contamination shall be submitted to and approved in writing by the local planning authority. The remediation of the site shall incorporate the approved additional measures.

12) No commercial activities shall take place on the land, including the storage of materials and no vehicle over 3.5 tonnes shall be stationed, parked or stored on the land.

APPEARANCES

FOR THE APPELLANT:

Mrs P Parkin	Parkin Planning Services. Planning Consultants
Mr M Ruszkiewicz	Appellant
Mr Flanders	Previous owner/occupier of the appeal site

FOR THE LOCAL PLANNING AUTHORITY:

Mrs S Finlayson	Team Leader, Development Control, East Cambridgeshire District Council
Mr S Patience	Forward Planning Officer, East Cambridgeshire District Council
Mr Hicks	Traveller Liaison Officer, Cambridgeshire County Council

INTERESTED PERSONS:

Mr S Blackmore	Spokesperson for residents
Dr A Leggetter	Owner of adjacent field
Mr G Wilson	Ward Councillor

Other local residents contributed to the discussion

DOCUMENTS

1 Additional representations included in email from ECDC to PINS dated 10 December 2012
2 Statement of Objectors
3 Policy HOU9 of the East Cambridgeshire Local Plan. Final Draft Version approved 3 December 2012
4 Health assessment for Thomas Collins. Central Essex Community Services 3 November 2011
5 Response of appellant to RS revocation dated 1 January 2013
6 Revised Council response to RS revocation dated 11 January 2013