The Planning Inspectorate

Appeal Decision

Hearing held on 24 October 2013

Site visit made on 24 October 2013

by Gareth Symons BSc Hons DipTP MRTPI

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

Decision date: 9 January 2014

Appeal Ref: APP/Q3305/A/13/2196679
Marston View, Marston Bigot, Frome, Somerset, BA11 5DB

- 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 Ayres and Miss Coles against the decision of Mendip District Council.
- The application Ref: 2011/3187, dated 2 December 2012, was refused by notice dated 21 March 2013.
- The development proposed is 2 mobile homes, 2 caravans and 1 day room for residential occupation.

Decision

1. The appeal is allowed and planning permission is granted for 2 mobile homes, 2 touring caravans and 1 day room for residential use by Gypsies at Marston View, Marston Bigot, Frome, Somerset, BA11 5DB in accordance with the terms of the application, Ref: 2011/3187, dated 2 December 2012, subject to the following conditions:

    1) The use hereby permitted shall be carried on only by the following and their resident dependants: Mr Matthew Ayres, Miss Christine Coles, Mr James Barney and Mrs Caroline Ayres, 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 land is occupied by them, whichever is the shorter.

    2) When the land ceases to be occupied by those named in condition 1 above, or at the end of three years from the date of this decision, whichever shall first occur, the use hereby permitted shall cease and all caravans, buildings, structures, materials and equipment brought on to the land, or works undertaken to it in connection with the use shall be removed.

    3) No later than 6 months following the cessation of the use by those named in condition 1 above the land shall be restored in accordance with a scheme of work previously submitted to and approved in writing by the local planning authority. The restoration works shall be carried out in accordance with the approved scheme.

    4) No more than 4 caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 (of which no more than 2 shall be a static caravan or mobile home) shall be stationed at any time on the land.

5) The caravans and day room shall only be positioned as shown on plan ref: 1594/04A. The size of the day room shall not exceed that shown on plan ref: 1594/04A and it shall not be greater than 2.5m high from the adjoining ground level. There shall only be one day room.

6) No trade or business may be carried on at the site and no materials associated with any trade or business shall be stored on the site. No vehicle over 3.5 tonnes shall be stationed, parked or stored on the site.

Preliminary Matters

2. Occupying caravans for residential purposes is a use of land. Therefore it would be more accurate if the application description was amended to be "2 mobile homes, 2 touring caravans and 1 day room for residential use by Gypsies". The minor changes to the description of the application were agreed by the parties at the hearing.

3. Although the application was submitted on the basis of seeking a permanent planning permission that would have run with the land, the appellants have stated that they wish to seek a planning permission that is personal to them and, if that is not acceptable, then it should be for only a temporary period. Even if this had not been requested, was I to find that a permanent planning permission would not be acceptable, but there are considerations of hardship arising from the practical difficulties of finding alternative, authorised accommodation, or personal issues such as disruption to schooling, I would need to consider the option of granting temporary planning permission anyway.

4. The background of the appellants Mr Matthew Ayres and Miss Christine Coles and their family way of life, including their daughter Maryann and the two other occupants of the appeal site who are Mr James Barney and Mrs Caroline Ayres (Mr M Ayres' parents), mean that they are Gypsies for the purposes of the definition contained in Annex 1 to the Planning Policy for Traveller Sites (PPTS) March 2012 published by the Department for Communities and Local Government. The gypsy status of the site residents is accepted by the Council which is consistent with the approach taken at previous appeals involving the same appellants and the same site. As such, the policy regime applying to Gypsy families and travellers is engaged.

Background

5. The history of applications for a Gypsy caravan site on this land started in 2006 with a planning application for two mobiles homes, two dayrooms and two touring caravans. That application was refused by the Local Planning Authority (LPA) and a subsequent appeal Ref: APP/Q3305/A/07/2046511 (the 1st appeal) was dismissed on 2 January 2008 due mainly to the harm to the historic landscape of Marston Park which is a Grade II Registered Historic Park and Garden and to the setting of Marston House which is a Grade II* listed building.

6. A second appeal Ref: APP/Q3305/C/08/2072342 & 2072343 (the 2nd appeal) was against an enforcement notice issued by the LPA which proceeded under s174(2)(g) of the 1990 Act as amended, which is that the compliance period is unreasonably short. The appeal succeeded on 11 September 2008 and the period for compliance was extended to two years. That appeal Inspector referred to the 1st appeal decision and stated "that decision has been accepted

on behalf of the Appellants in that no appeal is now brought against the current enforcement notice on ground (a) – that is that planning permission should be granted". The two year period has now expired and the enforcement notice has come into effect. The Council has not sought to execute the notices' requirements until the outcome of this appeal is known.

7. A third appeal Ref: APP/Q3305/A/11/2144121 (the 3rd appeal) against a refusal of planning permission for the stationing of caravans for residential occupation with associated development was dismissed on 29 June 2011 for very much the same reasons as the 1st appeal.

Main Issues

8. The main issues in this appeal are:

- Whether the proposal would be a sustainable form of development with regard to reducing the need to travel, particularly by the private car;
- The effect of the scheme on the character and appearance of the area with particular regard to the site being within the grade II Registered Historic Park and Garden to the grade II* Listed Building, Marston House;
- Whether any conflict with policy or other harm would be outweighed by other material considerations, such as the need for Gypsy and traveller sites and the personal circumstances of the occupiers of the site.

9. Furthermore, while each appeal should be considered on its individual merits, given the very similar background of the other appeals and the previous findings of harm to the designated heritage assets, it will be necessary to examine whether the current proposal is materially different and has either overcome the harm to the historic environment or, if not, whether the weight to be given to any of the other considerations, such as the need for authorised Gypsy and traveller sites and the personal consequences of this appeal failing, has changed that might cause a different outcome to the previous appeals.

Planning Policy

10. Since the application was refused planning permission, policies 9 (The Built Historic Environment) and 36 (Sites for Gypsies and Travelling People) from the Somerset and Exmoor National Park Joint Structure Plan Review have been revoked and are thus no longer part of the development plan. In adopted policy terms this leaves saved policy EN26 from the Mendip District Local Plan which relates to development affecting the setting of listed buildings. It is noted that the policy does not reflect the test of balancing harm to a designated heritage asset against any public benefits as outlined in the National Planning Policy Framework (the Framework). Nevertheless it is consistent with the thrust of the heritage asset protection aims of the Framework and should thus be accorded significant weight.

11. Policies DP3 (Heritage Conservation) and DP15 (Gypsies, Travellers and Travelling Showpeople) from the emerging Mendip District Local Plan 2006 – 2028 Part 1 are also relevant. The weight to be attached to these policies is limited by virtue of the stage of local plan preparation whereby the draft plan is on the verge of being submitted to the Secretary of State for examination. However, they do provide a further policy context for considering the appeal, particularly policy DP15, given that there is no other planning policy relevant to

Gypsy site provision since the revoking of policy 36 from the Structure Plan. Of particular relevance is section 2 of policy DP15 and the second bullet point therein which is that planning applications for sites submitted prior to the adoption of a Site Allocations document should "have regard to access by a range of transport modes, to essential local services and facilities (including health services, shops and schools)".

12. It should be noted at this stage that the Council has confirmed that the Site Allocations Development Plan Document (DPD) referred to above, subject to taking account of a slight slippage relating to the submission of the draft Local Plan for examination, should be delivered in less than three years.

Reasons

Reducing the need to travel

13. Neither of the previous planning applications was refused due to the site's location away from access to services and facilities to meet daily living needs by a range of transport options. The LPA now considers though that the Framework and the PPTS, which replaced Circular 01/2006 *Planning for Gypsy and Traveller Caravan Sites,* have increased the emphasis on strictly controlling gypsy and traveller sites in the countryside and ensuring that development is sustainable. It is also noted that former Structure Plan policy 36 had in it a test of sites being a reasonable distance from local services and facilities which seemed to have some flexibility to it when it came to assessing how far that sites could be from sustainable locations.

14. However, in my view the previous refusals of planning permission would have been considered in a very similar national planning policy context on sustainable development set out formerly in PPS1 *Delivering Sustainable Development* and PPS7 *Sustainable Development in Rural Areas* which also sought to strictly limit new development in the countryside and to create sustainable patterns of development. I do not see that the Framework or the PPTS are significantly more limiting or have substantially changed the emphasis on the well established approach to seeking development that is sustainable. Indeed, subject to detailed consideration the PPTS envisages that although Gypsy and traveller sites in the open countryside should be strictly limited, sites may be in rural areas provided that, amongst other matters, they respect the scale of and do not dominate the nearest settled community.

15. Furthermore, when the application was submitted reference was made to the site being for "the applicant and his wife, his parents, and their niece and husband". I can see in this context that the greater number of adults might have led to concerns about increased travel. However, it has since been clarified that the niece and husband were only visiting and their accommodation needs are not part of this application. At the hearing the Council accepted that this would make the sustainability considerations more balanced. There is also no objection on sustainability grounds from the Local Highway Authority.

16. Due to the fast moving speed of the traffic along the A361 and the absence of access to public transport, most if not all of the travel from the site would be by private vehicles. However, Frome is not that far away where there is a good range of services. Consequently, the majority of travel would be over relatively short distances with a good prospect of trips being undertaken for more than

one reason. The journeys by car would not make the appeal proposal unsustainable development in the wider context set by paragraph 11 of the PPTS. Therefore, while I have had regard to access by a range of transport modes, I do not find that the appeal scheme would be in serious conflict with the sustainability aim of emerging LP policy DP15 or relevant national planning policies on the issue.

Historic Environment

17. The appeal site is a narrow strip of land at the crest of the hill next to the A361. It is at the northern edge of the Registered Historic Park and Garden. It is within the designated heritage asset which is a designed landscape that surrounds Marston House. The mainly open pastureland with mature parkland trees, and some dense woodland east of the appeal site that wraps around the rear of the house, frames the more intimate and formal landscaped grounds closer to the property. The parkland is integral to the setting of this substantial country house.

18. The material changes suggested as reasons why the appeal scheme has overcome or at least ameliorated the harm found to the designated heritage assets by the previous Inspectors are: the number of structures has been reduced; the appeal site ground levels are proposed to be lowered by 300mm; the caravans and the day room are to be moved closer to the road; the landscaping has matured; there was no previous accurate landscape assessment about the effects of the development on the heritage assets.

19. The plans submitted with the application for the scheme considered in the 3rd appeal showed two mobile homes, a day room and an area for caravan storage. It was accepted at the hearing that it was likely that there would have been two touring caravans on the storage area. On this basis the number of caravans/structures has not reduced. It is also noted that while the scheme considered in the 1st appeal decision had two day rooms, this was the only difference between then and now and in my opinion is not a material change of circumstances. The appellants' landscape architect considers that the lowering of the ground level is not necessary and because the landscaping has matured, thus making the caravans less visible, moving them closer to the road would have only a negligible effect, as opposed to a material difference.

20. The findings of the visual and heritage impact assessment are noted. The appeal site may only occupy a fraction of the overall estate and is now in separate ownership, but the change of use and the associated caravans and structures are clearly out of place with this important historical setting. The surrounding fencing and planting screen the site to a degree, but this fragmentation of the land is itself intrusive and uncharacteristic of the historic layout of this part of the park.

21. From further away such as Tuckmarsh Lane to the south it is acknowledged that although at the site visit it was possible to see the appeal site location, the caravans and day room were barely perceptible. This is clearly different from what the previous Inspector saw when reaching her conclusions in the 3rd appeal. The Council accepts that the trees around the site have become thicker and taller. However, this matter and the others raised have not overcome the fundamental harm identified by the previous Inspectors and they do not dissuade me from also finding that the appeal scheme causes harm to the significance of Marston Park and to the setting of Marston House.

22. Turning to the level of that harm there was some debate at the hearing around the view expressed by the appellants' agent that the Council seems to consider the level of harm to be less than substantial which is lower than the harm found by the 3rd Inspector at paragraph 11 of her decision where she refers to "substantial effect". In the preceding paragraph 10 of her decision the Inspector set out the context for her findings at paragraph 11 and identified that great weight should be given to a heritage asset's conservation. However, in my view substantial effect does not necessarily equate to substantial harm as the full spectrum of a proposal's effect can cover positive or neutral effects as well. Having considered the evidence before me, I am clarifying for the sake of this decision that the harm here is less than substantial which thus engages paragraph 134 of the NPPF.

23. Meeting the accommodation needs of the appellants and the other occupiers of the site would be a private benefit even though it would help to resolve some of the unmet need for sites in the Mendip area. Thus, on balance, having considered the issue very carefully which includes having special regard to the desirability of preserving the setting of listed buildings, I find conflicts with the heritage protection aims of LP policy EN26, emerging LP policy DP3 and the NPPF. I attach great weight to protecting the heritage assets.

Other Considerations

24. The PPTS requires local planning authorities to set pitch targets for gypsies and travellers which address the likely permanent and transit site accommodation needs of travellers in their area, working collaboratively with neighbouring local planning authorities. In producing their local plans they should also identify and update annually a supply of specific deliverable sites sufficient to provide five year's worth of sites against their locally set targets (to be considered deliverable, sites should be available now, offer a suitable location for development now, and be achievable with a realistic prospect that development will be delivered on the site within five years and in particular that development of the site is viable); identify a supply of specific, developable sites or broad locations for growth, for six to ten and, where possible, for years 11-15.

25. The 2011 Somerset Gypsy and Traveller Accommodation Assessment (GTAA) identified a need for 93 permanent pitches and 80 transit pitches in the District for the period 2010 to 2020. Since the publication of the GTAA only 2 permanent pitches have been granted permission in the District. The LPA does not have a five year supply of deliverable sites. In the context of paragraph 25 of the PPTS this is a significant material consideration that weighs in favour of granting a temporary planning permission. There are also no authorised sites with capacity for any more pitches and the appellants have been on the waiting list for places on the local authority site. They have also instructed estate and land agents to advise them of possible sites but none have come forward.

26. The need for sites has been a persistent problem across all of the previous appeals. Each time Inspectors have been advised that reviews are either underway or it has been suggested that a Site Allocations DPD would be in place by 2011 or it was programmed for adoption in 2014. The first date having of course passed and the second date is close to being passed. This time though there is greater credibility to the claim that the Site Allocations DPD should be in place in the next three years. The review of the LP is now significantly more advanced than before and I am told that there are no major

objections to emerging policy DP15. It is more reasonable than ever before to expect a change in planning circumstances after the next three years. This is a material change from the previous appeals which has significant weight.

27. It is appreciated from the objectors' point of view that the site has been there without planning permission since at least 2006. However, the Government's overarching aim is to ensure fair and equal treatment for travellers, in a way that facilitates their traditional and nomadic way of life while respecting the interests of the settled community. To help achieve this the Government's aims in respect of traveller sites are, amongst other matters, to ensure that local planning authorities, working collaboratively, develop fair and effective strategies to meet need through the identification of land for sites, to plan for sites over a reasonable timescale and to promote more traveller site provision while recognising that there will always be those travellers who cannot provide their own sites. This is very similar to the way that LPA's have to identify land to supply houses for the settled community.

28. Effective enforcement is also part of the Government's aim and in this respect there is the extant enforcement notice which if this appeal was to fail could be executed by the Council. There is no indication that this would not happen. With this in mind and the lack of anywhere else to go it is highly likely that the family would have go to back out onto road. That family includes a young school age child called Maryann. The "Progress Report by the ministerial working group on tacking inequalities experienced by Gypsies and Travellers" found that those living on unauthorised sites can face additional difficulties accessing health and education services and the precarious nature of their homes can further exacerbate inequalities and life chances.

29. This appeal site is unauthorised but the evidence before me shows that the presence in one place has benefitted Maryann who is clearly settled and doing well at school. Possibly disrupting or at least jeopardising that education now risks Maryann becoming part of the statistic that is at present, Gypsy and Roma pupils, along with pupils of Irish Traveller heritage, being amongst the lowest-achieving groups at every Key Stage of education, although individual pupils can and do achieve very well. In 2011 just 25% of Gypsy, Roma and Traveller pupils achieved national expectations in English and mathematics at the end of their primary education, compared with 74% of all pupils.

30. Not only is the above a significant change in circumstances since the time of the 1st appeal when Maryann had not been born and by the 3rd appeal when she was not at main stream school, it is clear that the Courts are also reminding decision takers about the statutory duty on any public authority, which include judges of a court and Planning Inspectors, to give consideration to the best interests of children. The case of *Sedgemoor District Council v Marie Hughes and Others [2012] EWHC 1997 (QB)* handed down in July 2012 is relevant. The considerations that must be considered by any public authority include the education of the child.

31. Some of the occupants of the appeal site also have various health conditions. These may not be out of the ordinary. However, in line with the findings of the previously referred to ministerial working group one of the most commonly reported barriers to accessing a General Practitioner is having proof of identity and proof of a permanent address. Travelling from one place to another also in my view increases the risk of missing notifications about health appointments.

It is not so much that the health of these Gypsies may not be as good as it could be because of the nature of this site, it is more that Gypsies and travellers, along with other vulnerable groups, experience a range of health factors and that their health is much poorer than that of the general population and other marginalised groups. I am in little doubt against these findings that moving these Gypsies would, at the very least, not improve their health.

32. Furthermore, although the previous Inspectors have found that dismissal of the previous appeals would be an interference with the appellants home and family life, this would not have been a disproportionate effect given the continuing harm to the character and appearance of the area, the setting of the listed building within the registered historic park and garden and thereby the economic well being of the country.

33. However, given the reasonable prospect of alternative sites coming forward, which would include addressing the needs of this family, there is a greater certainty that the harm would now be time limited. I also have to have regard to the seriousness of the consequences arising from the likelihood that the family will end up on the roadside and the adverse effects this could have on Maryann's education and the health of the persons who live there. Against this background it is appropriate to conclude that a temporary planning permission would still protect the public interest by a means that is less interfering to the appellants' human rights and thus would be a more proportionate response.

34. At the hearing the appellants suggested that a 4 or 5 year temporary period should be allowed. However, three years is the timeframe in which the Council has expressed the commitment to have identified alternative sites to meet the need for Gypsy and traveller accommodation in Mendip. That would include this family. In my view three years would strike the right balance between ending the harm to the heritage assets and allowing time for authorised accommodation to come forward.

Overall Balance

35. The previous appeal decisions have consistently underlined the harm to the designated heritage assets while the use of the site and its associated caravans and structures remain. I have also found such harm and judge that to be less than substantial. On this occasion however the weight to be attached to the other considerations referred to above is greater. Therefore balancing the harm against the benefits, the public interest in this case can continue to be protected by the granting of a three year temporary planning permission. Because of the circumstances of the case that permission should relate to the individual family involved and not to the wider Gypsy community.

Conditions

36. The need for conditions has been considered in the light of the advice contained in Circular 11/95 *The Use of Conditions in Planning Permissions* and the discussion during the hearing. It is clear from my reasoning why I have considered that the particular circumstances of the case justify a temporary planning permission for the site residents. A three year period would allow for the identification of Gypsy sites in the Site Allocations DPD which could address the future accommodation needs of the appellants and their family. Condition 1 is therefore relevant. Conditions 2 to 6 are needed to restore the appearance

of the site at the end of the temporary period and to minimise its impact on the local area for the time being.

37. I agree with the Council that it would be unreasonable to require the ground levels of the site to be lowered by 300mm as stated on plan ref: 1594/01A given the temporary nature of the planning permission.

Conclusion

38. Having had regard to all other matters raised, it is concluded that the appeal should succeed.

Gareth Symons

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Dr Murdoch BA(Hons) MSC PhD MA MRTPI	Murdoch Planning
Mr Crandon	Tirlun Design Associates Ltd
Mr Ayres	Appellant
Miss Coles	Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Mrs McKay BSc MA MRTPI	Mendip District Council

INTERESTED PERSONS:

Mr Candy	Trudoxhill Parish Council
Damaris Sanderson	Objector
Mrs Yeoman	Objector
Mrs Lewis	Objector

DOCUMENTS

Doc 1	Council letter of notification dated 21-9-13
Doc 2	Plans submitted with previous planning applications 119419/000 & 2010/2419