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# Appeal Decision

Hearing held on 24 April 2012

Site visit made on 24 April 2012

**by Susan Heywood BSc(Hons) MCD MRTPI**

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

**Decision date: 26 June 2012**

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**Appeal Ref: APP/B3030/A/12/2168900**

**The Stables, Wellow Road, Ollerton, Newark, Nottinghamshire NG22 9AP**

- 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 William Gray against the decision of Newark & Sherwood District Council.
  - The application Ref 11/00592/FUL, dated 21 April 2011, was refused by notice dated 4 August 2011.
  - The development is the change of use of paddock to gypsy and traveller caravan site.
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## Summary of Decision

1. I allow the appeal, subject to the conditions set out in Annex 1 to this decision.

## Main Issues

2. The main issue in this case is whether the location of the development would be acceptable having regard to policies contained in the Newark and Sherwood Core Strategy (CS) Development Plan Document and national planning policy guidance.

## Reasons

3. Planning permission is sought for the use of the site for 4 gypsy pitches for the appellant and his family, containing a total of 8 caravans. The Council confirmed that an existing amenity block shown on the plan accompanying the application should be considered as part of this appeal. I have altered the description of development in the formal decision below to reflect that fact.
4. The appeal site is located on the outskirts of the settlements of Ollerton and Boughton. The Council do not claim that the development would harm the character and appearance of the surrounding countryside. Having regard to its location between two other approved gypsy sites and the limited visibility from outside the site, I agree. The Council confirmed at the hearing that the development would comply with CS Spatial Policy 3 regarding development in rural areas. This policy broadly accords with the National Planning Policy Framework (the Framework). Other than the conflict with CS Core Policy 4 (CP4), which I address below, no conflict with any other development plan policy has been drawn to my attention.

5. The East Midlands Regional Plan (RS) identified a need for 84 pitches for gypsies and travellers in the Newark and Sherwood District up to 2012.<sup>1</sup> This figure was taken forward into CS policy CP4. CP4, which also broadly accords with the Framework, sets out the Council's intentions to identify and, where necessary, allocate a number of pitches to meet the identified need in the RS.
6. CP4 indicates that future pitch provision will be split between the Newark Urban Area (78%) and Ollerton and Boughton areas (22%). In Ollerton and Boughton, this would amount to some 18 pitches. To date, 30 pitches have been provided in and around Ollerton and Boughton (or 36 by the calculations submitted by Ollerton and Boughton Town Council).<sup>2</sup> Whichever figure is used, the appeal development would further increase the proportion of pitches in the Ollerton and Boughton areas, to well over the 18 pitches envisaged in policy CP4. Accordingly, allowing the appeal would be contrary to the preferred distribution of pitches outlined in policy CP4 and to this extent the development would conflict with that policy.
7. However, in the first instance, although the policy aims to increase the provision of sites in the Newark Urban Area, it does not rule out the possibility of sites coming forward elsewhere. Secondly, the policy goes further than merely the identification of the preferred location of sites. It is a policy which sets out the Council's strategy for identifying and, where necessary, allocating the sites to meet the identified need for gypsy pitch provision. The Council accept that this has not been done; that there is currently an unmet need in the District for 39 pitches; and that the need will not be met by the end of 2012, as required by the policy.
8. The Site Allocations Development Plan Document (SADPD) originally proposed a site at Barnby Road, Newark to meet the need, but this is not now to be progressed. Whilst the Council are considering the use of Compulsory Purchase powers to acquire two sites within the Newark Urban Area, the outcome of this process is uncertain and will take some years to conclude. In any case, it would only provide for some 17 pitches.<sup>3</sup> As such, the Council are now unable to give a timescale for the production of their SADPD for gypsy site provision.
9. I note the recent application for 10 pitches on a site at Tolney Lane, Newark. However, this is at an early stage and no decision has yet been reached on that application. Even if the Council approve that application, a not insignificant level of outstanding need would remain.
10. Policy CP4 also requires the Council to keep the levels of need beyond 2012 under review and seek to address any demand by further identification of pitches. Whilst discussions are underway with other local authorities on this matter, there are no firm proposals to address the issue of need beyond 2012.
11. The lack of achievement of these strategic aims is itself contrary to policy CP4. It is also contrary to the advice in the Government's *Planning policy for traveller sites* which requires local authorities to plan for a 5 year supply of specific deliverable sites for gypsies and travellers. It is clear from the above

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<sup>1</sup> Whilst the Government has announced its intention to revoke Regional Strategies through the Localism Act, the RS remains in force for the time being as part of the development plan.

<sup>2</sup> The figure of 36 contradicts the evidence provided by the Council in relation to the planning permission for the Shannon Caravan Park. It also includes 2 pitches at the Greenwood site which do not have permission for permanent occupancy.

<sup>3</sup> I heard that only the site at Church View would add to the supply of pitches; the site North of Ropewalk Farm has already been included within the supply.

that the outstanding unmet need in the District will not be provided through the development plan process. This matter weighs in favour of the appeal.

12. The result is that the need for gypsy pitches in the District will have to be met through the consideration of unallocated sites such as the appeal site. In accordance with the advice in *Planning policy for traveller sites*, policy CP5 (which again broadly accords with the Framework) sets a number of criteria for the consideration of individual sites on their merits. The Council are satisfied that the development complies with that policy and I agree with that conclusion.
13. *Planning policy for traveller sites* advises that the number of pitches in a particular location should be related to the size and density of the surrounding population and that the scale of such sites should not dominate the nearest settled community. I have considered the requirement in policy CP4, relating to the distribution of pitches, against this advice. The Council, and Town Council representatives, confirmed at the hearing that they do not consider that allowing this appeal would have any impact in terms of dominating the settled community. Having regard to the evidence given that the settled population of the Ollerton and Boughton areas is in excess of 10,000, and the lack of any evidence put forward that the development will have a harmful impact on any services or infrastructure, I agree with this conclusion.

#### *Other matters*

14. It is accepted by the Council that the appellants are gypsies. They therefore have a need for a site which facilitates their cultural traditions. The site also provides a settled base for a number of children who are, or would be, resident on the site to access education at the local schools. It also allows the family to access medical care if needed. These factors also provide weight in support of the appeal.
15. There was a suggestion made at the hearing that the adjoining Shannon Caravan Park has spare capacity, but the evidence only demonstrates this on one day of one year. I am not satisfied that this indicates that this site would be permanently available for the appellant and his family. In any case, the Council accept that there are no alternative sites for the appellant and family to move to.
16. The Ollerton Village Residents Association raised concerns about the speed of traffic on the surrounding roads. The appeal development comprises only 4 pitches and is therefore unlikely to significantly increase the number of traffic movements on surrounding roads. An off-road area exists at the entrance to the access road in order to allow vehicles to pull off Wellow Road to turn into the access road to the site. I note that the Council's highway officers raised no objections to the development on highway safety grounds and I have no evidence which would lead me to a different conclusion.

#### **Conclusion**

17. The site would be acceptable in accordance with CS policy CP5. It would conflict with the distribution of sites identified in policy CP4. However, the level of unmet need in the District and the failure to meet that need through the development plan process are factors which provide significant weight in favour of the appeal. The personal and educational needs of the family and the lack of alternative sites add to the weight in favour. Allowing the proposal would

cause no other harm, other than the conflict with CP4, and it would assist in meeting the outstanding need in the District.

18. Dismissing this appeal would, ultimately, lead to the appellant and those family members currently in occupation, having to leave the site, which has to be regarded as their home, without any certainty of suitable alternative accommodation being readily available. It would also force those family members currently travelling to continue an itinerant lifestyle. I note that the Council have resolved to take enforcement action to secure the removal of the family from the site. This would represent a significant interference with their home and family life which, in my view, outweighs the harm caused by the conflict with CS policy CP4. I therefore conclude that dismissal of the appeal would have a disproportionate effect upon the rights of the appellant and family under Article 8 of the European Convention on Human Rights.
19. Accordingly, I conclude that the harm caused by the conflict with policy CP4 is outweighed by other material considerations and the appeal should be allowed.

### **Conditions**

20. The Council have suggested that planning permission should be granted for a temporary period of 5 years. Circular 11/95 *The Use of Conditions in Planning Permissions* advises that temporary planning permissions may be justified where the planning circumstances are likely to change at the end of that period. There is no evidence before me to indicate that the situation in relation to the provision of gypsy pitches to meet the need will have changed at the end of a 5 year period. In any case, I have concluded that the harm is outweighed by other material considerations. A permanent planning permission is therefore justified in the circumstances of this case.
21. The Council have also suggested a condition requiring the provision of two passing bays along the access road. The access road is shared with the access to the adjoining Shannon Caravan Park to which there are two entrances. Vehicles turning off Wellow Road have sufficient space to wait off the highway to allow a vehicle already on the access road to exit. There is sufficient visibility from the south eastern end of the access road, nearest the site, towards the off-road area adjoining Wellow Road for vehicles exiting the appeal site to be able to see vehicles entering the access road. This visibility will avoid any undue conflict between vehicles on the access road. In addition, vehicles to the Shannon site are also able to use the entrance into that site which is adjacent to the off-road area. Thus reducing further any potential conflict between vehicles. I do not therefore consider that the provision of two passing places along the access road is necessary.
22. A condition is required to restrict the use of the site to gypsies and travellers only, in order to ensure that the site meets the needs of that population. In order to protect the appearance of the area conditions are required restricting the number and type of caravans to be sited on the land; restricting commercial vehicles and activities; requiring the submission of a site development scheme indicating the siting of caravans; the siting and materials of the existing utility block on plot 1; location of hardsurfacing including parking and turning areas (in the interests of highway safety); details of lighting and landscaping. Foul and surface water drainage details are required in order to ensure the protection of the environment.

**Formal Decision**

23. The appeal is allowed and planning permission is granted for the change of use of paddock to gypsy and traveller caravan site and the siting of an amenity block on plot 1 at The Stables, Wellow Road, Ollerton, Newark, Nottinghamshire NG22 9AP in accordance with the terms of the application, Ref 11/00592/FUL, dated 21 April 2011, subject to the conditions set out in Annex 1 below.

*Susan Heywood*

INSPECTOR

## ANNEX 1 CONDITIONS

- 1) The site shall not be occupied by any persons other than gypsies and travellers as defined in Annex 1, paragraph 1 of DCLG's *Planning policy for traveller sites*.
- 2) 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 static caravans) shall be stationed on the site at any time.
- 3) No commercial activities shall take place on the land, including the storage of materials.
- 4) No vehicle over 3.5 tonnes shall be stationed, parked or stored on this site.
- 5) 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, or such longer period as considered reasonable of the date of failure to meet any one the requirements set out in (i) to (iv) below:
  - i) within 3 months of the date of this decision a scheme for: the internal layout of the site, including the siting of caravans; the siting and materials for the utility block on plot 1; hardstanding, parking and turning areas; proposed and existing external lighting on the boundary of and within the site; tree, hedge and shrub planting including details of species, plant sizes and proposed numbers and densities; the means of foul and surface water drainage of the site; (hereafter referred to as the site development scheme) shall have been submitted for the written approval of the local planning authority and the said scheme shall include a timetable for its implementation.
  - ii) within 11 months of the date of this decision the site development scheme 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 scheme shall have been carried out and completed in accordance with the approved timetable.

## **APPEARANCES**

### FOR THE APPELLANT:

Dr A Murdoch Mr & Mrs Gray	Murdoch Planning Appellant & wife
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### FOR THE LOCAL PLANNING AUTHORITY:

Mrs J Lockwood	Senior Planning Officer, Newark & Sherwood District Council
Cllr Wells	Newark & Sherwood District Council, Ollerton Ward Councillor
Cllr Payne	Newark & Sherwood District Council, Planning Committee Chair

### INTERESTED PERSONS:

Cllr Shilling	Ollerton and Boughton Town Council
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## **DOCUMENTS**

- 1 Core Strategy Spatial Policy 3, submitted by Council
- 2 Extracts from GTAA, submitted by Council
- 3 Weekly list of planning applications, submitted by Council
- 4 Appeal decision (APP/B3030/A/11/2160752), submitted by Council
- 5 List of gypsy sites in Ollerton and Boughton, submitted by Town Council