



Appeal Decision

Hearing held on 20 June 2012

Site visit made on 20 June 2012

by Paul Dignan MSc PhD

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

Decision date: 30 August 2012

Appeal Ref: APP/W0530/A/12/2170121

Pine Lane, Smithy Fen, Cottenham, Cambridge, CB24 8PT.

- 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 Thomas Wall against the decision of South Cambridgeshire District Council.
 - The application Ref. S/0010/11, dated 3 January 2011, was refused by notice dated 10 August 2011.
 - The development proposed is: Siting of 2 static caravans, 2 touring caravans, 2 utility blocks, one temporary portaloo and parking for 4 vehicles.
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Decision

1. The appeal is allowed and planning permission is granted for Siting of 2 static caravans, 2 touring caravans, 2 utility blocks, one temporary portaloo and parking for 4 vehicles at Pine Lane, Smithy Fen, Cottenham, Cambridge, CB24 8PT in accordance with the terms of the application, Ref. S/0010/11, dated 3 January 2011, subject to the following conditions:
 - 1) 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.
 - 2) 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) shall be stationed on the site at any time.
 - 3) 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 the requirements set out in (i) to (iv) below:
 - i) Notwithstanding the details submitted with the application, within 3 months of the date of this decision a site development scheme shall have been submitted for the written approval of the local planning authority. The scheme shall include: the internal layout of the site, including the position of the caravans, the extent of hardstanding, parking and amenity areas; proposed and existing external lighting on the boundary of and within the site; the means of foul water drainage of the site; the positions, design, materials and type of boundary treatment; tree, hedge and shrub planting including details of species, plant sizes and proposed numbers and densities; a timetable for implementation of the scheme.
 - 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.
- 4) No commercial activities shall take place on the land, including the storage of materials.
 - 5) No vehicle over 3.5 tonnes shall be stationed, parked or stored on this site.
 - 6) The temporary portaloo hereby permitted shall be removed from the site within 28 days of either of the approved utility blocks being first brought into use.
 - 7) The underside of the caravans and the ground floors of the utility blocks hereby permitted shall be a minimum of 300mm above the surrounding ground level.

Application for costs

- 2. At the Hearing an application for costs was made by Mr Wall against South Cambridgeshire District Council. This application is the subject of a separate Decision.

Main Issues

- 3. The main issues are:
 - i) the effect of the proposal on the character and appearance of the countryside;
 - ii) the effect on the living conditions of the occupiers of Plots 1, 2, 3 and 6 in terms of amenity space;
 - iii) whether the proposal, in combination with the existing pitches in the locality, would respect the scale of, and not dominate, the nearest settled community and avoid placing undue pressure on local infrastructure; and
 - iv) whether any harm arising from the proposal would be outweighed by other considerations.

Reasons

Background

- 4. Smithy Fen is an area of open agricultural fenland to the north and north-east of the village of Cottenham. The appeal site is located within a roughly 7ha rectangular block of land about 0.8km from the built up edge of Cottenham. The block contains some 49-50 authorised gypsy and traveller pitches, arranged in two L-shaped blocks separated by open land. The overall site has a long planning history, much of which involved unauthorised development on what is now the open land between the two blocks of pitches. All of the remaining open

land between the blocks is covered by injunctions against unauthorised occupation. The appeal site does not encroach on this area.

5. The site is within an area granted planning permission on appeal in 2003.¹ The appeal was against an enforcement notice relating to unauthorised use of the land, referred to as plots 1-6 Pine Lane, as a residential caravan site, with associated ancillary development. Four plots, plots 1-3 and plot 6, were occupied by caravans, and a further plot of double width (now referred to as plots 4 and 5) was recorded in the decision letter as "intended to be laid out as an amenity and play area." An earlier application² for retention of the caravan site was accompanied by a site plan showing the double width plot as "parking/amenity". It is this double width plot, or plots 4-5, that comprises the appeal site.
6. The grant of planning permission on the application deemed to have made in the 2003 appeal was subject to 6 conditions. These include conditions restricting occupation of the land to persons defined as gypsies and to named persons and their dependants. In their reasons for refusal the Council has indicated that it considers that this stretch of travellers' pitches does not have permanent planning permission, but there is no time limit. A condition restricting the number of caravans stationed on the site (no more than 12, of which no more than 4 should be static) was imposed in order to allow for adequate landscaping, parking and turning. Condition 5 required the submission, within three months, of a scheme for the layout of the site, to include parking and turning areas and landscaping. Condition 6 required the parking and turning areas approved under condition 5 to be retained and kept available for such purposes, and for the approved landscaping to be retained as set out in the approved scheme. No scheme of works required by condition 5 has been submitted. The Council has issued an Enforcement Notice³ alleging non-compliance with conditions 5 and 6, albeit seeking to cease the residential use of plots 4 and 5 only. The notice came into effect on 28 March 2012. It is accepted by the Council that if the appeal succeeds, the grant of planning permission will effectively regularise the alleged breach.

The effect on the character and appearance of the countryside

7. Although the final layout of plots 1-6 Pine Lane has not been categorically established as required by condition 5 of the 2003 planning permission, plots 1-3 and 6 appear to be developed as described, notwithstanding that there are currently no touring caravans present and the plots appeared to be vacant. In the context of the existing development, the appeal proposal involves the loss of a gap between developed plots. However, there would be no encroachment on the open countryside since the appeal site is within an area of authorised development.
8. In terms of the visual impact of the proposal, the location of the site along the south-western side of the Smithy Fen traveller site means that it is difficult to see from the open flat landscape to the east and north. From Setchel Drove to the north and the public footpath alongside Cottenham Lode to the south east it is effectively screened from public view by the development on the existing authorised pitches. In the 2003 appeal the Inspector noted that while clear

¹ Ref. App/W0530/C/03/1113679

² Ref. S/0958/03/F

³ Ref. PLAENF.4728

views of the overall site were limited, it was directly visible through a gap in the hedge at a gate on Lockspit Hall Drove, to the south-west, and obliquely so from the open south-west section of Setchel Drove. However, a recently erected close boarded fence running the length of Pine Lane and Park Lane now effectively screens the site from these viewpoints.

9. At most what would be visible from outside the Smithy Fen traveller site would be the tops of the caravans or mobile homes. These would be seen in the context of the surrounding authorised development and their visual impact would not be materially harmful. The proposal would add to the extent of development within the overall traveller site, but as effectively an in-fill plot this impact would be minor and negligible in terms of the overall character and appearance of the area. Furthermore, the appellant has evidently made significant improvements to what was evidently an untidy and neglected part of the overall traveller site, and securing a similar level of improvement through the 2003 permission appears unlikely at this stage.
10. Overall I am satisfied that the appeal proposal would not materially harm the character and appearance of the surrounding countryside. I consider that it would accord with Policies DP/2 and DP/3 of the South Cambridgeshire LDF Development Control Policies 2007 (LDF) which expect development to preserve and enhance the character of the local area, including countryside and landscape characteristics.

The effect on the living conditions of existing occupiers

11. At the time of the 2003 appeal Pine Lane was a cul-de-sac and plots 1-6 were accessed via a narrow poorly surfaced lane. In this context the appeal site was seen as being capable of providing a turning area for large vehicles such as emergency vehicles. Pine Lane and Park Lane further north are now linked, providing a through route past the site and the adjoining plots. There is therefore no longer any need for a turning or manoeuvring area. Plots 1-3 and 6 are good sized plots which appear to have ample scope for on-site parking of occupiers vehicles, as is the norm on the other sites in the vicinity, so that there would appear to be no obvious need to retain the appeal site for car parking purposes.
12. The appeal site could usefully be developed as an amenity/play area for the four authorised plots, but, while local residents have attested to seeing children playing there, there does not appear to have been any attempt to lay it out or maintain it as envisaged in the 2003 permission. I see no reason to doubt the appellant's evidence that the condition of the site when he purchased it made it a far from suitable area for children's play.
13. As noted above, plots 1-3 and 6 are good-sized plots and I consider that they are capable of providing adequate amenity space for their occupiers without recourse to the appeal site. I have not been provided with any evidence to the contrary. In view of this I conclude that the appeal proposal would not harm the living conditions of the occupiers of plots 1-3 and 6. In this respect I find that the proposal would not conflict with LDF Policy DP/3.

The impact on the nearest settled community

14. The Smithy Fen traveller site is just outside of the village of Cottenham which has a good range of facilities, including shops, junior and secondary schools and GP surgeries. The primary school, which has some 50 traveller children

registered, was described at the hearing as bursting at the seams, but there is an Education liaison officer to manage school enrolments, and the Council's Gypsy Liaison Officer's view was that there were no real concerns with regard to overloading the village's infrastructure.

15. A good deal of concern was expressed at the hearing by the settled residents of Smithy Fen, which is essentially a dispersed rural community rather than an identifiable settlement. Although Smithy Fen has been a gypsy site for many years, the number of authorised pitches on the site has apparently doubled in recent years, and the history of unauthorised development, mainly in the gap between the existing blocks, has evidently created significant tensions with the local settled residents. However, the appeal development would not add to the extent of the existing authorised site, in terms of area, and the additional occupiers on the appeal site would not, in my view, increase the population of the overall traveller site to the extent that it would have a noticeable impact on the settled community of Smithy Fen or the wider area. In relation to this I note that recommendations within the draft local Gypsy and Traveller DPD suggest a proposed limit of 10 gypsy/traveller pitches per 3000 bricks and mortar properties, whereas there are presently some 48 lawful pitches compared to some 2300 dwellings in Cottenham. However, I am not aware of the evidential basis for this recommendation, and in view of its draft stage I cannot accord it any significant weight.
16. The recent history of unauthorised development is also reflected in the concern expressed by local residents and the Council that the success of this appeal would set a significant precedent for the future development of the Smithy Fen site. However, in contrast to the appeal proposal, all of the appeal decisions I have been referred to which have related to the vacant land at the Smithy Fen travellers site have found unacceptable harm to the countryside and the character and appearance of the area. I am not aware of any other potential new site at Smithy Fen which would not involve encroachment on the countryside at the very least, and I am satisfied that the circumstances of this appeal proposal are sufficiently unique that they would be distinguishable from other proposals that might come forward, such that its success would not lead to irresistible pressure on the Council to approve further development at Smithy Fen.

Conclusions on the main issues

17. My conclusion on the main issues is that the proposal would not have a harmful impact on the character and appearance of the countryside, on the living conditions of the occupiers of neighbouring pitches, or on the nearest settled community. I consider that the proposal is acceptable on its merits, by reference to the relevant LDF policies and the national planning policy on traveller sites. It follows that it is not necessary to establish whether there are other material considerations to justify the proposal.

Conditions

18. I have considered the conditions put forward by the Council in the light of the advice in Circular 11/95: The Use of Conditions in Planning Permissions. Where necessary I have reworded or amalgamated the suggested conditions. Given the nature of the development it is necessary to limit occupation of the site to gypsies and travellers. The site is currently being used for residential purposes, but without the proposed associated formal layout and ancillary buildings. In

view of this, and notwithstanding the layout plans submitted with the application, in the interests of the character and appearance of the site and surrounding area, and to safeguard residential and visual amenity, I shall impose a condition requiring the submission of a site development scheme, covering the internal layout of the site, including the position of the caravans, the extent of hardstanding, parking and amenity areas, external lighting, foul water drainage, landscaping and boundary treatment. For the same reasons I shall limit the number of caravans using the site, preclude commercial activity and the parking of larger commercial vehicles and require that the temporary portaloo be removed on the bringing into use of the utility blocks. In view of the location of the site in a high risk flood zone, I shall also impose the suggested condition relating to minimum height of the underside of the caravans.

19. The Council has also requested the imposition of a condition requiring the submission and approval of a scheme for the provision of community services infrastructure and recreational infrastructure to meet the needs of the development. The requirements arise from LDF Policies DP/4 and SF/10 and are supported by identified shortfalls of both community services⁴ and recreation⁵ infrastructure in Cottenham. In effect, as the Council accepted at the hearing, the condition requires financial contributions, based on calculations set in the Council's Supplementary Planning Document *Open Space in New Developments*, adopted in 2009, and its *Community Facilities Audit*, approved as Council policy in 2009. These contributions would be secured ultimately by way of a section 106 agreement or undertaking, as envisaged by the LDF policies.
20. It would have been open to the Council to have negotiated a section 106 agreement at the planning application stage, and correspondence between the parties prior to the refusal of planning permission refers to the need for the contributions. This matter appears to have been left to be resolved by way of condition, and it was not a reason given for refusal of planning permission. However, paragraph 83 of Circular 11/95 indicates that no payment of money or other consideration can be required when granting a permission or any other kind of consent required by a statute, except where there is specific statutory authority, which does not apply in this case. Circular 11/95 advises that conditions requiring developers to contribute money towards the provision of public facilities should accordingly not be attached to planning permissions. The suggested condition is clearly contrary to this advice, and I consider therefore that its imposition would not be reasonable.

Overall Conclusion

21. Having considered all other matters raised, I conclude that the appeal should be allowed.

Paul Dignan

INSPECTOR

⁴ Community Facilities Audit Final Report 2009

⁵ South Cambridgeshire District Council Recreation Study June 2005 (Annex 1 Village Results)

APPEARANCES

FOR THE APPELLANT:

Michael Hargreaves BA BTP MRTPI Thomas Wall	Michael Hargreaves Planning The appellant
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FOR THE LOCAL PLANNING AUTHORITY:

Emily Temple BSc (Hons) MSP MRTPI Kate Wood Jo Mill	Pegasus Planning Group Ltd South Cambridgeshire District Council (SCDC) South Cambridgeshire District Council
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INTERESTED PERSONS:

Cllr Tim Wotherspoon	Ward Councillor, SCDC
Cllr Lisa Harford	Ward Councillor, SCDC
Cllr Simon Edwards	Ward Councillor, SCDC
David Mudd	Chair, Cottenham Parish Council
Jan Brightman	Traveller Support
Jessica Wheeler	Traveller Support
Debbie Barrett	South Cambridgeshire Gypsy Liaison Officer
Rosemary Jones	Local resident
Rick Bristow	Smithy Fen Residents' Association
Sharon Bristow	Smithy Fen Residents' Association
Ken Kelso	Local resident
Mrs J Smith	Local resident
Ron Morton	Local resident
John Wall	Pine Lane resident

DOCUMENTS SUBMITTED AT THE HEARING

- 1 Gypsy and Traveller Accommodation Assessment Internal Review
- 2 Site Plan, planning permission Ref. S/0958/03
- 3 Appeal decision letter APP/W0530/A/07/2049741