



Appeal Decision

Hearing Held on 9 October 2019

Site visit made on 9 October 2019

by **David Murray** BA (Hons) DMS MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5th November 2019

Appeal Ref: APP/Y1138/W/3222285

The Paddocks, Old Village Road, Willand, Cullompton, Devon, EX15 2RD.

- 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 A Hughes against the decision of Mid Devon District Council.
- The application Ref. 17/02053/FUL, dated 1 December 2017, was refused by notice dated 10 August 2018.
- The development proposed is the removal of conditions 3 and 4 of planning appeal permission APP/Y1138/A/14/2216218 to allow for permanent use.

Decision

1. The appeal is allowed and planning permission is granted for the use of land to use as a gypsy and traveller caravan site consisting of a single pitch, at the Paddocks, Willard, Collompton, Devon, EX15 1RD, in accordance with the application Ref. 17/02053/FUL made on the 1 December 2017 without complying with conditions No's 3 and 4 set out in planning permission Ref. APP/Y1138/A/14/22216218 granted on the 22 July 2014 on appeal, but otherwise subject to the new conditions set out in the attached Schedule.

Preliminary matters

2. The application was submitted as one for the variation or removal of conditions imposed on the previous grant of permission on appeal, but notwithstanding the current appeal, the previous permission lapsed on the 14 August 2019 (see paragraph 6 below). I will therefore treat the current application as one made under section 73A of the Act.
3. For clarification, the appeal is made by Mr Alan Hughes (Jnr) who wishes to have a permanent use for a residential caravan on site. He also wishes to provide accommodation on site with a mobile home for his parents Mr Alan Hughes (Snr) and Mrs Eliza Hughes. Mr Alan (Jnr) would occupy a touring caravan which he also uses to travel away for work and to visit fairs. They all identify themselves as Romany Gypsies and the Council accepts that they meet the definition of gypsies and travellers as set out in Annex 1 of the Planning policy for traveller sites (PPTS). A neighbour queried the length of time that Mr Hughes said he had lived on the site but Mr Hughes explained that he travelled away for tree work for between 3-6 months of the year as well as visiting traditional gypsy horse fairs and I have no reason to doubt that the appeal site has been the appellant's residential base for the term of the planning permission.



Main issues

4. The main issues are:

- Whether the site continues to be at risk of flooding with danger to life and property;
- The need for and provision of gypsy and traveller sites in the area; and the availability of alternative sites; and
- Whether any identified harm is outweighed by other material considerations including the appellant and family's personal circumstances.

Reasons

Background

5. The appeal site comprises a small triangular area of field which lies to the west of the village of Willand in open countryside but with occasional other houses. Generally, the land lies in the valley of the River Culm which runs to the east of Willand. A leat to the main river (a man-made channel historically supplying water to a mill) lies alongside the northern boundary of the site. Access to the site is obtained from Old Village Road close to where it goes over a bridge over the leat and then turns sharp east. The site has some high conifer trees along the roadside boundary, other than the gap formed by the access and there is mixed vegetation along the other two sides. At the time of my visit there was a static caravan on the site.
6. The planning history of the site is relevant to this appeal. An appeal was dismissed in 2012 for the use of the site for two traveller pitches under ref. APP/Y1138/A/11/2164222 (now referred to as the 2012 appeal). Planning permission was granted on appeal in July 2014 under ref. APP/Y1138/A/14/22216218 for use as a single pitch gypsy and traveller site (the 2014 appeal). The permission was subject to 15 conditions of which No.3 limits the permitted use to a period not exceeding five years; and No. 4 which limits occupation of the caravan to Mr Alan Hughes Jnr only.

Policy context

7. The development plan includes the Council's Core Strategy (Local Plan Part 1) (CS), the Mid Devon Allocation and Infrastructure Development Plan Document (Local Plan Part 2) (AIDPD) together with the Mid Devon Local Plan Part 3 (Development Management Policies). The Council is also preparing a new Local Plan Review. This was submitted to the Secretary of State and has been at Examination. The Examining Inspector issued a Post Hearings Examination Note in May 2019 and following clarification of various issues the Inspector has requested that the Council carry out formal consultation on Main Modifications which the Council expects to undertake soon. Although the emerging plan is well advanced in the formal process its provisions and policies can only be given limited weight at this stage pending the publication and consultation on the Main Modifications.
8. In terms of specific policies for gypsies and traveller sites Policy AL/DE/7 is relevant and this indicates that planning permission will be granted for new sites in the countryside provided three criteria are met. The Council accept that the appeal site accords with part (b) regarding the locational criteria specified and

part (c) for occupiers who meet the definition set out in national policy. Part (a) relates to where need is not being met on consented or allocated sites and I will consider this aspect in the planning balance.

Risk of flooding

9. The main parties agree that the appeal site lies within Flood Zone 3 of the River Culm and as a 'highly vulnerable' use is involved with the permanent residential use as a caravan site, such development should not normally be permitted as set out in paragraph 067 of the Planning Practice Guidance (PPG). This on-going state of flood risk is reflected in the findings of the Inspectors in the 2012 and 2014 decisions.
10. The parties disagree on whether the site should be regarded as being within Flood Zone 3a, with a 1 in a 100 year or 'High Probability' of flooding, or Flood Zone 3b, 'Functional Floodplain'. This appears to depend on an assessment of the way that the river functions. The parties agree that in terms of the flood mechanism affecting the site, the lower part of the site is at higher risk of flooding arising from the natural course of the River Culm; but it is disputed that during larger flood events whether there is a real risk of water overtopping the leat. The evidence provided shows that all of the site flooded in 2008 but it is agreed that it did not overtop the leat during the more severe flood event in 2012.
11. On the evidence put forward it is difficult to distinguish between the two flood zones. At the site visit I noted that the bridge of Old Village Road over the leat appeared to be in a critical place down-stream of the appeal site. Although the bridge spans the whole width of the river, I tend towards the Environment Agency's (EA) view that a blockage here could result in the leat overtopping the site. Further, I noticed that a large tree had fallen above the adjacent weir in the leat and this indicated to me that rivers are dynamic and the circumstances of a flood event may change drastically depending on the nature of a blockage. Mrs Thornton-Wood pointed out the level of floor water near the top of the bridge that she said she had seen, although this would have resulted in probably a metre depth of water on the appeal site which Mr Hughes (Jnr) said he has never experienced.
12. Notwithstanding the issue of the subdivision of the Flood Zone 3, the appellant's team believe that the risk associated with the site can be properly mitigated by conditions as accepted by the 2014 Inspector. A timber walkway to the higher part of the Old Village Road exists and Mr Hughes (Snr) demonstrated (without being asked) that he can use this to vacate the site to high ground. Nevertheless, the extent of the walkway falls short of the proposed position of the static caravan. The appellant also tabled a copy of the detailed Flood Emergency Plan previously agreed for the site under the 2014 permission and this sets out the process of receiving flood alert/warning information from the EA and an evacuation procedure. I noted that the static caravan was tethered to a concrete base by steel straps to prevent it from being carried away in a flood.
13. Overall and relating the proposal to the relevant Policy COR 11 of the Local Plan, I find that the proposal conflicts with criterion (a) and part of (b) of the policy as the site is at risk of flooding with consequential risk to life and property. Neither, has it been demonstrated at this stage that there are no sequentially better sites available for this vulnerable use with less risk of flooding. Notwithstanding this principle against the development, the actual risk could be managed by the

requirements of conditions and I am satisfied that the proposal is unlikely to increase the risk of flooding elsewhere and meets criterion (c). Moreover, I will consider the balance with the benefits as also set out in criterion (b) in the main planning balance.

The need for and provision of gypsy/traveller sites

14. Policy B of the PPTS indicates that Councils through their local plans should be able to identify and update annually a supply of specific deliverable sites sufficient to provide 5 years' worth of sites for gypsies and travellers set against local targets and broad locations for future growth.
15. The Devon Partnership Gypsy and Traveller Accommodation Assessment 2015 (GTAA) indicates that for Mid-Devon there was a need for 15 additional pitches in the period 2014-2019 and a further 6 pitches in the period 2019-2024. At the time of the consideration of the planning application the Council accepted that it could not demonstrate a five year supply of new pitches. The Council's statement for the appeal suggested that it *appeared* that a five year supply could be shown (my italics). Nevertheless, at the Hearing the Council tabled evidence to show that while it was agreed that in the 2014-2019 period that there was a shortfall of 10 pitches, provision was being made in the current period of 2019-2024 for 20 pitches and thereby exceeding the current target of 6 and the previous deficiency of 10 pitches.
16. Dr Murdoch for the appellant takes issue with many aspects of the identified need and provision of new sites. He considers the GTAA to be out of date but I am satisfied that it is reasonably up to date and there is not clear doubt over the level of need identified. However, I do have concerns about the supply side. Leaving aside the difference of view about the provision arising from relatively small sites, I have concerns about the allowance made for 'Windfall' sites and the provision of pitches within urban extensions.
17. The PPTS says in the footnote 4 to Policy B that to be considered deliverable, sites should have a reasonable prospect of being delivered within 5 years. There is little evidence put forward to justify the extent of windfall provision and I have doubt that 5 sites would be likely to be achieved within this period. This was also the conclusion of the Examining Inspector who said in his Post Hearings Advice Note about windfall sites that the emerging policy S14 'would appear to rule them out, in the countryside at least'.
18. In respect of the urban extensions, again I have doubt that these will be delivered in the next five years. Dr Murdoch for the appellant tabled correspondence put to the Examining Inspector from the development industry which expressed strong concern about the deliverability of these gypsy and traveller site in conjunction of new housing development and where the viability of these major sites was said to be threatened. The Examining Inspector advised that the Council allocate sufficient specific sites for gypsies and travellers and 'decouple' allocated G&T sites from general housing allocations. At the time of the hearing the Council had not published nor consulted on the Main Modification to the Local Plan Review therefore this position raises considerable doubt in my mind about the actual delivery of the sites allocated in the urban extensions.
19. With the degree of doubt present over the delivery of sites put forward for the windfall allowance and within the urban extensions, I find that the table of pitch supply presented at the hearing does not reasonably demonstrate that the

Council can show a five year supply at the moment bearing in mind the shortfall of sites carried over from the previous period. I conclude that there is an unmet need for gypsy and traveller sites in the district at the moment. This finding is a significant factor in favour of the appellant's case.

Availability of alternative sites

20. In terms of the availability of alternative sites, neither the Council or the appellant are able to identify any alternative site available at the moment that the appellant could turn to for residential accommodation. This appears to reflect a lack of available private sites in the district over some time as the previous Inspectors reached similar conclusion in 2012 and 2014. Moreover, the Council accepts that there is no public site for gypsies and travellers in Mid Devon. There is therefore little other scope available to the appellant to meet his accommodation needs. This is a factor to which I attach significant weight.

Personal circumstances

21. I have also had regard to the letter from the Traveller Site Officer of Elim Housing Association who sets out the appellant's parents' circumstances regarding their occupation of a site in Broadclyst. The potential for them to live on the same site as their son under the present appeal scheme would help maintain the gypsy and traveller tradition of families living together to support each other.
22. In the 2012 appeal the Inspector made reference to the parent's health and frailty and raised doubt that they would be able to vacate the appeal site in response to a flood alert. I am advised that the medical evidence from the GP to Mr Hughes (Snr) and Mrs Hughes is that currently 'they would currently be able to evacuate the site in a matter of minutes' and Mr Hughes (Snr) demonstrated his use of the raised walkway at the site visit.

Other material considerations

23. At the hearing, objection was raised by an immediate neighbour who was concerned that the occupiers of the residential caravan at the moment overlook her property at West Lodge. However, I observed at my visit that there was a reasonable distance between this property and the area where the static caravan is/would be sited and there is vegetation and trees along the banks of the river/leat which lies in between. I am satisfied that the distance apart, the level of screening, together with the difference in ground level, mean that the continued residential use of the appeal site would not give rise to harm to living conditions through overlooking and loss of privacy.

Planning balance

24. I have found that the site lies in Floodzone 3 and is at risk of flooding with a high risk to life and property and as such there is a clear conflict with part of the relevant local Policy COR11 as well as the national guidance in the NPPF and the PPG. Significant weight has to be given to this adverse effect.
25. However, I have also found that it is unlikely that the Council can demonstrate an adequate supply of new sites for gypsies and travellers at the moment and there is an unmet need for such sites within the district now. Neither can any party show that there is any alternative public or private site available for the appellant to turn to. To my mind it is significant that in the 2012 appeal decision

the Inspector concluded that it was likely that alternative sites would come forward within the next five years in the urban extensions. However, I have set out in paragraph 18 above there is still considerable doubt over this delivery despite this current appeal being five years later. Accordingly, I find that as the need cannot be met on another site with consent or is so allocated, the proposal accords with criterion (a) of Policy AL/DE/7.

26. Although there is a clear risk to the occupiers of the site from a flood event, the evidence submitted and my observations at the site visit indicate that the actual risk can be managed to a large degree through steps and actions required by conditions. There is not clear evidence before me to show that the appellant and his parents would not be able to meet these requirements, including the evacuation of the site, now or in the medium term.
27. On balance, I find that the weight attached to the flood risk does not override the current unmet need and long standing lack of alternatives site for the appellant to relocate to. On this basis, although no alternative sites have been put forward that are sequentially better on flood risk, I find that that the planning benefits of the proposal outweigh the risk of flooding as recognised in part (a) of Policy COR11.
28. I will therefore allow the appeal and delete conditions 3 and 4 to allow for permanent occupation by the appellant and Mr Alan Hughes (Snr) and Mrs Hughes. However, as I am dealing with the development afresh I can also impose new conditions.

Conditions

29. The Council recommend eight which I will consider under the same numbering. A condition limiting the occupation of the site to gypsies and travellers is reasonable and necessary as the case put forward is related to their specific needs and the provisions of relevant policy. The permission shall accord with the approved plans but this needs to be updated to reflect the plan subsequently agreed with the Council. I will also impose a condition limiting the number of caravans to one touring caravan (for the appellant) and one static caravan (for the parents) as at the Hearing that appellant confirmed that is the proposal. I will also impose conditions 5 and 6 to regulate the development in the interests of maintaining the appearance of the area but I will not impose No'4 as that is unnecessary and incorrect in law. In terms of managing the flood risk I will incorporate the purpose of conditions 7 and 8 into a new condition which refers to compliance with the Flood Emergency Plan as previously agreed with the Council. Finally, I find that a condition limiting the period of the permission is not justified on the circumstances of the case but I will limit the occupation of the site to the appellant and his parents to reflect the personal and special case put forward.

Conclusion

30. For the reasons given above I conclude that the appeal should succeed. I will vary the planning permission by deleting the disputed conditions and substituting others.

David Murray

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Dr A Murdoch BA PhD MA MTRPI,	Murdoch Planning
Mr I Walton BSc (Hons) MSc DIC MICE CEng	Technical Director, SLR Consulting
Mr A Hughes (Jnr)	Appellant
Mr A Hughes (Snr)	Appellant's father
Mrs J Orchard	Appellant family friend

FOR THE LOCAL PLANNING AUTHORITY:

Ms A Fish BA (Hons) Dip TP MRTPI	Area Planning Officer, Mid Devon District Council
Mr M Salmon BEng (Hons) IEng MICE	Development and Flood Risk Engineer, Environment Agency
Mr T Peat	Planning Policy Manager, Mid Devon District Council

INTERESTED PERSONS:

Mrs A Thornton-Wood	Neighbour
Ms S Emerson McVitee	Trowers & Hamlins LLP
Ms C Brasher	Trowers & Hamlins LLP

DOCUMENTS SUBMITTED AT THE HEARING

- 1 Flood Risk Statement of Common Ground.
- 2 Copy of Flood Emergency Plan and details of Elevated Walkway submitted to discharge conditions on previous permission.
- 3 Revised Appendix 1 Schedule of 5 Year Supply from the Council.
- 4 Bundle of documents from Dr Murdoch – contained email exchange dated 7 October 2019 Statements regarding Mid Devon Local Plan Review; and copies of planning permission 18/00133/MARM.
- 5 Copies of planning decisions: 11/00515/FULL; 14/02055/FUL; and officers report re 11/00515- from the Council.

Schedule of conditions

1. The site shall not be occupied by any persons other than gypsies and travellers as defined in Annex 1: Glossary of Planning Policy for Traveller Sites (or its equivalent in replacement national policy).
2. The development hereby permitted shall be carried out in accordance with the following approved plan: 1022/5 as received by the Council on the 8 October 2014.
3. No more than 2 caravan(s), as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 as amended (of which no more than one shall be a static caravan, shall be stationed on the site at any time.
4. No vehicle over 3.5 tonnes shall be stationed, parked or stored on this site.
5. No commercial activities shall take place on the land, including the storage of materials.
6. The occupation of the site hereby permitted shall be carried on only by the following and their resident dependants: Mr Alan Hughes (Jnr); Mr Alan Hughes (Snr) and Mrs Eliza Hughes.
7. For as long as any residential use continues, the residential occupation of the site shall be undertaken in accordance with the Flood Emergency Plan as agreed with the Council under Condition 10 previously applying together with any further amendments/updates agreed with the Council on the advice of the Environment Agency/statutory body on flood risk.
8. When on site any caravan shall be tethered to the ground to prevent it being washed away in a flood and the void below the caravans and the amenity block shall not be used for storage purposes.
9. Within six months of the date of this decision the elevated walkway shall be extended so that it reaches between the actual site of the static caravan and Old Village Road. Subsequently, the walkway shall be retained and maintained in this manner for so long as a residential use remains on site.