

## Appeal Decision

Hearing held on 19 January & 4 October 2016

Site visit made on 7 March 2016

**by C J Anstey BA (Hons) DipTP DipLA MRTPI**

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

**Decision date: 22 November 2016**

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**Appeal Ref: APP/F4410/W/15/3133490**

**Former Nursery, Waterside, Doncaster, DN8 4JG.**

- 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 P Cunningham against the decision of Doncaster Metropolitan Borough Council.
  - The application Ref 14/02958/FUL, dated 17 December 2014, was refused by notice dated 2 March 2015.
  - The development proposed is the use of land for the stationing of caravans for residential purposes for 1no gypsy pitch together with the formation of a utility/dayroom and hard-standing ancillary to that use.
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### Decision

1. The appeal is dismissed.

### Preliminary Matters

2. I held a Hearing related to this case on 19 January 2016 and conducted the site visit on 7 March 2016. After the site visit the Council submitted its 2016 Gypsy and Traveller Accommodation Need Assessment (GTANA) to the Planning Inspectorate. I considered this needed to be taken into account in my determination of the appeal. As a result the parties were given the opportunity of commenting on the new GTANA and the Hearing was re-opened on 4 October when the new GTANA was discussed.
3. After that part of the Hearing held on 19 January 2016 I informed the parties that I did not require additional information on housing land supply.
4. In the light of additional material submitted the Council accepts that the appeal proposal would have no likely significant effect on protected species. Consequently the Council has withdrawn refusal reason no. 2 which related to this matter. On the basis of the information submitted I have no grounds to disagree with the Council's approach in this regard.

### Main Issues

5. There are two main issues in this case. The first is the impact on the character and appearance of the countryside. The second is whether there are other material considerations that weigh in favour of the scheme.
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## Reasons

### *Description*

6. The appeal site lies on the edge of the small settlement of Waterside, which comprises a cluster of some 21 dwellings and a public house. Waterside is located in the countryside and is separated from the town of Thorne to the east by the M18 motorway.
7. The appeal site, which is about 0.08ha in area, is the eastern part of a field in the appellant's ownership. It lies between Waterside Road and the garden boundaries of dwellings fronting Quay Road. Vehicular access to the site would be provided from Waterside Road across the field. The proposed pitch, where the hardstanding, mobile home, utility/day room and parking areas would be located, would be situated behind the rear garden of 4 Quay Road, a detached house.
8. The site would be occupied by the appellant, his wife and their young children. The appellant and his family have lived in a house in Worksop since 2007 and now wish to move to a site where they can pursue a gypsy way of life in accordance with their culture and tradition.
9. An application for one detached dwelling and garage involving part of the appeal site was refused in 2007 and subsequently dismissed at appeal. In 2012 an application submitted by the appellant for the formation of a market garden business on the appeal site, including a farm shop building, was also refused.

### *Gypsy status*

10. From the information submitted it is evident that the appellant travels to find work which involves trading in horses and second hand caravans and undertaking landscaping and ground-works. Consequently I accept that the appellant is a person of a nomadic habit of life and consequently has gypsy status for the purposes of planning policy.

### *Development plan*

11. *Section 38(6) of the Planning and Compulsory Purchase Act 2004* requires that any application for planning permission must be determined in accordance with the Development Plan unless material considerations indicate otherwise.
12. The development plan for the area consists of the saved policies of the *Doncaster Unitary Development Plan (UDP)*, adopted in 1998, and the *Doncaster Council Core Strategy 2011-2028 (CS)*, adopted in 2012.
13. The appeal site is defined as being within an area of countryside on the Proposals Map of the *UDP*. *Policy CS3* of the *CS* seeks to safeguard the area of countryside within which the appeal site lies from most forms of development in order to protect its intrinsic character and beauty. *Policy CS13* indicates that within this defined area of countryside planning permission will not normally be given for gypsy sites unless there is a clearly demonstrated need and the site meets various criteria. These criteria make it clear that the site should be located close to (and/or has good public transport access to) a good range of services including schools and medical facilities, should accommodate at least 10 pitches and should be capable of being successfully integrated into the

landscape. The policy also makes it clear that there should be no significant harm to natural heritage.

*Issue 1: Character & appearance*

14. The appeal site, and the associated larger field, is clearly part of the undeveloped countryside around Waterside. In its present state it makes an important contribution to the predominantly rural character of the local area and the pleasant countryside setting of the settlement.
15. The appeal proposal would introduce an upgraded access drive, sizeable areas of hardstanding, a mobile home, and a utility/day room. These elements would be prominent in views from Waterside Road which is at a higher level and, in my judgement, would appear incongruous and out of keeping with the surroundings. I do not believe that the existing planting, even if supplemented with additional native landscaping, would mitigate the intrusive effect of the scheme on this area of countryside, particularly during the winter months. Although the proposed site would be located near to existing dwellings and other structures it would still be evident in the local scene. Consequently in my opinion the scheme could not be successfully integrated into the landscape.
16. Whilst the site is not within an area subject to any particular landscape designation, one of the core planning principles set out in the *National Planning Policy Framework (the Framework)* includes recognition of the intrinsic character and beauty of the countryside. For the reasons set out above, the proposal would fail to respect this intrinsic character and beauty.
17. I conclude, therefore, that the proposal would cause significant harm to the character and appearance of the countryside and could not be successfully integrated into the landscape. This brings the scheme into conflict with *Policy CS3* and that part of *Policy CS13* relating to the need to successfully integrate sites into the landscape.

*Issue 2: Other material considerations*

18. I consider that there are several other material considerations that are relevant to the determination of the appeal.

Need for accommodation for gypsies in the area

19. Estimating how many gypsy pitches are likely to be needed in the Borough over the coming years and how many are likely to be delivered is extremely difficult. Inherent to any assessment are various estimates and assumptions relating to future need that may or may not prove to be accurate.
20. The Council's Gypsy and Traveller Accommodation Need Assessment (GTANA) is dated March 2016 and is therefore of recent origin. This document assesses the number of gypsy and traveller households currently needing pitches in the District and then estimates future requirements, including for the 5 year period to 2021. The assessment then considers how this need is to be met on the ground. The main conclusion of the Council's assessment is that there will be a net surplus of 16 pitches over the period to 2021. The figure is strongly contested by the appellant's agent who argues that there has been a significant underestimation of need and that there will be a substantial shortfall of pitches over the coming years. In the light of this I examine the Council's approach in

establishing need and determining supply with a view to deciding whether it is reasonably based.

*Need for pitches*

21. A fundamental element of the Council's assessment is information obtained from visiting the various Council and private sites in the Borough on an annual basis and speaking to site owners, operators and residents. This has been supplemented by information obtained from questionnaires sent to each of the families on the sites. From this work it is evident the Council has a good understanding of what is happening on sites, including the numbers of households and occupied pitches (225 households/occupied pitches) and the requirements of the various families. In the light of this detailed local knowledge I believe that the Council's finding that there are no concealed households or doubled up households is well-founded.
22. I agree with the Council that those households living on pitches that are unauthorised (72), with temporary permission (1) or the subject of a current planning application (1) should be taken into account in the assessment of need. I also agree with the Council that the waiting list for gypsy pitches, which has recently been refreshed and amounts to 7 households, is an indicator of need and should be taken into account. The waiting list figure includes 4 gypsy households currently living in dwellings that wish to move to a site. There is no local evidence to indicate that the number of such households is higher than this or that movement of households from pitches to dwellings will not occur. Consequently the Council estimation that the number of gypsy households moving from dwellings to pitches will broadly match those moving the other way is not unreasonable. Similarly there is little local information to indicate that there is likely to be a net in-migration of gypsy households into the Borough over the coming years. Taking account of these factors I accept the Council's figure that at the base date there are about 305 gypsy households requiring pitches.
23. In assessing need account also needs to be taken of likely household growth over the coming years. In determining an annual household growth rate the Council relies on the work of Opinions Research Services (ORS), part of Swansea University. ORS's research considers migration, population profiles, births & fertility rates, death rates, household size data and household dissolution rates to determine average household growth rates for gypsies and travellers. The findings indicate that the average annual growth rate is in the order of 1.5% but that a 2.5% figure could be used if local data suggest a relatively youthful population. As the Council has found a strong correlation between Doncaster's gypsy and traveller population age profile and the national picture, a 1.5% annual household growth rate has been used in its 2016 GTANA. Given the rigour of ORS's research and the Council's application of its findings to the local area I accept that a 1.5% figure is justified in the case of Doncaster. This gives a need for 24 additional pitches, and a total of 329 pitches by 2021.
24. Although I have taken account of the view put forward for the appellant that a higher household growth rate should be used I consider that the main elements that are relied upon to justify this higher rate are already taken into account in ORS's research and the Council's application of this work to the local area. Notwithstanding this if it is found during the course of the next few years that growth rates are not as expected provision can be adjusted accordingly.

*Supply of pitches*

25. As noted above there are 225 authorised pitches that are occupied. As a result of the Council's visits to sites and discussions with site owners, operators and residents 68 vacant authorised pitches have also been identified (64 on private sites and 4 on Council sites). Given the thoroughness of the Council's on-site survey work I am satisfied that the vacant pitches identified are indeed vacant and not simply empty as a result of families travelling. The Council has supplied detailed information about the location of these vacancies, which are distributed across various sites, and explained why the 31 vacant pitches at The Hacienda site are available for sale or rent. As a result of this information I am satisfied that there are some 68 pitches that are currently vacant and available. In addition I note that that an additional 5 pitches at Sprotborough and Wheatley are due for completion in the near future, again contributing to the supply of pitches.
26. The Council makes it clear that of the 72 unauthorised pitches 43 of them are likely to gain planning permission in the near future. The details provided by the Council relating to these various sites persuades me that there is a reasonable prospect that these pitches will contribute to the supply of sites. I also note that a further 5 of the 72 unauthorised pitches are immune from enforcement action. Taking account of these sources I consider that the supply of pitches amounts to some 346 over the next 5 years. This exceeds the anticipated need for 329 pitches by 16 and consequently indicates a surplus of supply. Supply would be broadly in line with the number of pitches required even if the higher household growth rate put forward for the appellant is used.
27. In summary I believe that the Council's approach to establishing need and determining supply is reasonably based. I note that the approach inherent in the 2016 GTANA and its findings have also been independently reviewed and endorsed.
28. Consequently I find that the Council has demonstrated that there is likely to be a 5 year supply of deliverable gypsy sites in the Borough to meet anticipated needs. As a result the failure of policy in the past to provide sufficient sites is being addressed. In view of this the Council is paying due regard to its duty under the *Equality Act 2010*. None of the other criticisms raised for the appellant as to the Council's 5 year supply of gypsy sites lead me to a different conclusion.

*Alternative accommodation*

29. It is evident that there are available gypsy pitches in the area. It may be the case that none of these pitches are acceptable to the appellant and his family. However the appellant and his family currently live in a house in Worksop and no evidence has been submitted to demonstrate that this would cease as a result of the dismissal of the appeal. Consequently in the event of dismissal the appellant and his family would still have accommodation available to them and would not have to resort to living by the roadside. Furthermore choice would be increased as more gypsy sites are delivered over the coming years.

Personal circumstances

30. Many gypsy families often find it difficult to have ready access to health care and schooling because of a lack of a settled base. This is not an issue here as the appellant and his family are registered with a doctor in Worksop whilst the children of school age attend school there. No material has been submitted to suggest that this would cease as a result of the dismissal of the appeal.
31. In the event that the appeal is allowed, however, the appellant and his family would be able to occupy the appeal site and live a lifestyle in accordance with their culture and tradition. It would also alleviate any stress and worry that the family currently experience as a result of living in a house within a built-up area. Furthermore the appellant would be able to return to the area where he grew up and for him and his family to be close to a number of relatives who live nearby.

Summary

32. I conclude, therefore, on the second main issue that there are certain personal circumstances of the appellant and his family that weigh in favour of the scheme.

*Other matters*

33. Local people have raised a number of concerns including the impact on highway safety, residential amenity, sewerage, drainage and flooding. However, having considered all the material before me, including the comments of statutory authorities and the various reports submitted, none of these matters individually or cumulatively would be likely to cause overriding harm, and they are not, therefore grounds for dismissing the appeal.
34. I have been provided with various appeal decisions by the two main parties, including the recent Stockbridge Lane, Bentley case. I do not find any of these cases directly comparable to the appeal before me. Consequently I have determined this appeal on the basis of the evidence relating to this particular proposal, including the 2016 GTANA and the detailed discussion of the 5 year supply of sites at the Hearing.

*Balance of considerations*

35. *Paragraph 12 of the Framework* makes it clear that proposed development that conflicts with an up-to-date Local Plan should be refused unless other material considerations indicate otherwise.
36. I consider that *Policies CS3: Countryside and CS13: Gypsies and Travellers* of the CS are broadly in line with national policy and guidance as expressed in the *Framework*, the *Planning Practice Guidance (the Guidance)* and the *Planning policy for traveller sites (PPTS)* as they seek to provide for the needs of gypsies in sustainable locations whilst having regard to environmental considerations. The criterion in *Policy CS13* that specifies that the site will accommodate 10 or more pitches is designed to minimise environmental harm by preventing a proliferation of small sites in the countryside. As such it performs a legitimate local planning objective and there are no statements in national policy or guidance that excludes such an approach. It has also been demonstrated that it is likely that there is a 5 year supply of gypsy sites. As the relevant policies

are not out of date and are consistent with national guidance they should be accorded full weight in the determination of this appeal.

37. The appeal proposal accords with *Policy CS13: Gypsies and Travellers* of the CS in so far as the site is reasonably well located for access to the wide range of existing and planned facilities available in the nearby town of Thorne and for bus services to elsewhere. However the appeal proposal is at odds with other elements of the policy. In particular, given that it is likely that there is a 5 year supply of sites, it has not been demonstrated that there is an unmet need. Furthermore the provision of only one pitch as proposed is far below the threshold of 10 pitches set out in the policy which is designed to avoid the proliferation of small sites in the countryside. It is evident from my reasoning that the development could not be successfully integrated into the landscape. In view of these conflicts I consider the appeal proposal is contrary to *Policy CS13*. As the scheme would cause significant harm to the character and appearance of the countryside it is also at odds with *Policy CS3: Countryside* of the CS. Consequently the appeal proposal does not accord with the up-to-date local plan. These findings must be given very considerable weight in the determination of the appeal.
38. I have found that there are other material considerations that weigh in favour of the scheme, namely certain personal circumstances of the appellant and his family. I consider that these considerations must be given some weight. However, in my judgement, the material considerations in favour of the scheme do not outweigh the significant harm to the countryside that would be caused by the development and the fundamental conflict with the Council's approach relating to gypsy sites within the countryside. Given this, and weighing it against the economic and social benefits of the scheme, I do not consider that the proposal constitutes sustainable development in terms of the *Framework* and the *PPTS*. Consequently a permanent permission is not justified.
39. I have considered whether a temporary planning permission should be granted. The *PPTS* advises that if the local planning authority cannot demonstrate an up-to-date five year supply of deliverable gypsy sites this should be a significant material consideration when considering applications for the grant of a temporary planning permission. This does not apply in this case. In my view the other material considerations in favour of the scheme do not justify temporary permission being granted. In reaching this view I am mindful that during the temporary period there would still be significant harm to the countryside and the Council's approach to locating gypsy sites within the countryside would be undermined.
40. I have paid regard to *Article 8* of the *European Convention on Human Rights*. I recognise that dismissal of the appeal would prevent the appellant and his family moving to a site where they would be able to pursue a lifestyle in accordance with their culture and traditions. However this must be weighed against the wider public interest. I have found that the proposal would cause significant harm to the countryside and fundamentally conflict with the Council's approach to locating gypsy sites within the countryside. I am satisfied that these legitimate concerns can only be adequately addressed by the dismissal of the appeal. The protection of the public interest cannot be achieved by means which are less interfering of the appellant's rights or those of his family. They are proportionate and necessary in the circumstances and

hence would not result in a violation of the appellant's rights or those of his family under *Article 8* of the *European Convention on Human Rights*. I have also had regard to the duty in the *Equality Act 2010* in reaching my decision.

*Overall conclusion*

41. My overall conclusion, therefore, is that there are compelling grounds for dismissing the appeal. None of the other matters raised outweigh the considerations that have led to my decision.

*Christopher Anstey*

Inspector



## **APPEARANCES**

### **FOR THE APPELLANT:**

Matthew Green	Green Planning Studio Limited
Eleanor Overton	Green Planning Studio Limited
Philip Cunningham	Appellant

### **FOR THE LOCAL PLANNING AUTHORITY:**

Ned Westaway	Barrister
Garry Hildersley	Principal Planning Officer
Andy Brown	
Richard McKone	Principal Planning Officer (Local Plans)

### **INTERESTED PERSONS:**

Jen Hadland	Savills ( representing Waterside Community Group)
Geoff Boulter	Local resident

## **DOCUMENTS HANDED IN DURING THE HEARING**

1. Council's letter of notification & list of persons notified
2. Attendance list
3. Appellant's witness statement.
4. Land registry extract.
5. Ref. no. 07/03465/FUL – Application & refusal notice (house).
6. Ref. no. 11/03196/FUL - Application & refusal notice (market garden).
7. Documents relating to the Wenman Judgement and the Technical Adjustment.
8. Council tables detailing 5 year supply of gypsy sites.
9. Mr Green's note and calculations relating to annual household growth rates.