
Appeal Decision

Hearing held on 11 July 2012

Site visit made on 11 July 2012

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

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

Decision date: 17 October 2012

Appeal Ref: APP/N1350/A/12/2171070

Land off Snipe Lane, Darlington DL2 1QB

- 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 Foster Lee against the decision of Darlington Borough Council.
 - The application Ref 11/00755/FUL, dated 9 November 2011, was refused by notice dated 30 January 2012.
 - The development proposed is the change of use to residential purposes, involving the siting of 4no. mobile homes and 8no. touring caravans and erection of 4no. amenity buildings, hard standing and internal access road.
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Decision

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

Application for costs

2. At the Hearing an application for costs was made by Mr Lee against the Highways Agency. This application is the subject of a separate Decision.

Preliminary Matters

3. The application form contained a different description of the development than that outlined in the bullet points above. At the Hearing the appellant confirmed that the original description had been an error and a change to the description of the development had been notified to the Council at an early stage in the application process. The description used above was agreed by the Council and reflects the development as shown on the submitted plans.
4. An appeal by Mr Robert Smith (APP/N1350/A/12/2173539), for 2 pitches on land to the north of Mr Lee's site, is currently before me. I heard evidence in relation to Mr Smith's appeal at a Hearing on 18 July 2012. The reason for refusal is the same in both appeals. Mr Smith appointed a highway consultant (Mr Speed) to give evidence on his behalf. Mr Lee submitted some of that evidence in written form to support his appeal. Mr Speed raised matters at the Hearing into Mr Smith's appeal which are also relevant to, and support, Mr Lee's appeal. All parties have been given the opportunity to provide further comments on these matters in relation to Mr Lee's appeal. Both the Council and the Highways Agency have confirmed that their views are the same in relation to both appeals.

5. There are two previous appeal decisions for gypsy sites on Snipe Lane which are also relevant to the appeal before me. APP/N1350/A/02/1098092 for pitches for four families (6 caravans and utility buildings) was dismissed in 2003. APP/N1350/A/10/2121393 for 1 pitch, also for Mr Robert Smith, was allowed in 2010.
6. Planning permission is sought for the use of the site for 4 gypsy pitches for the appellant and his extended family. The Council do not dispute the family's gypsy status. I also heard from the UK Association of Gypsy Women in support of the appeal. From what I heard at the Hearing I have no reason to dispute the gypsy status of the appellant and his family.

Main Issues

7. The main issues in this case are as follows:
 - i. the impact of the development on highway safety;
 - ii. whether any harm is outweighed by other considerations such as the need for gypsy sites, the availability of alternative sites and the personal circumstances of the appellant and family.

Policy Context

8. Government policy is set out in *Planning policy for traveller sites*. Amongst other things, this seeks to ensure that locally assessed need is met through the identification of sufficient land to provide sites.
9. The development plan currently includes The North East of England Plan Regional Spatial Strategy to 2021 (the RSS).¹ RSS Policy 30 requires the provision of sites for gypsies and travellers. An assessment of the need for pitches was carried out in the Tees Valley Gypsy and Traveller Accommodation Needs Assessment 2009. This identified a need for 61 additional residential pitches in Darlington between 2007 and 2012 and a total of 98 additional pitches up to 2021. It also identified a need for 78 pitches in the sub-region as a whole to 2012 (which includes the 61 required in Darlington to that date) and a total of 142 in the sub-region to 2021.
10. The Council have recently consulted on potential sites for gypsies and travellers and are currently considering the provision of an additional 35 pitches at three existing sites to meet the need identified in the consultation document. I note, from the Council's Cabinet Report of 10 July 2012 (erroneously dated 2010), that a number of adjoining local authorities raise concern regarding the number of pitches now proposed. This ongoing work will feed into the Making Places and Accommodating Growth Development Plan Document (DPD). No firm date has been set for adoption of that DPD and whilst I note that the Council's officer considers a date of early to mid 2014 may be possible, it was agreed that there has already been a lot of slippage in the preparation of this document. Accordingly, only limited weight can be given to the assessment of need in these documents given the early stage that the emerging DPD has reached. In any case, the Council do not dispute that there is currently a substantial unmet need for pitches in the Borough. It is clear that the need will not be met through the development plan process, at least in the short term.

¹ Although the Government has announced its intention to revoke Regional Strategies through the Localism Act they remain in force as part of the development plan for the time being.

11. Core Strategy Policy CS13 sets a number of criteria for the assessment of gypsy sites which come forward as windfall sites. The Council acknowledge that the proposed development would meet all of the criteria in Policy CS13, apart from (a), that relating to the provision of an appropriate access. The Council's reason for refusal also referred to Core Strategy policy CS2, but the Council do not raise concern in relation to any of the matters covered by that policy. I consider policy CS13 to be the more relevant policy in this instance.

Reasons

Highway safety

12. Snipe Lane joins the A66 at a crossroads to the north of the site. This is a trunk road, with a single lane carriageway in the vicinity of the site, for which the Highways Agency (HA) has responsibility. The HA directed that planning permission for the development should not be granted due to their concerns that the intensification of use of the junction would harm highway safety on the A66. That road carries substantial volumes of traffic, with Annual Average Daily Traffic flows in the order of 20,500 vehicles.
13. The HA point to the primary purpose of the trunk road network, set out in the *Design Manual for Roads and Bridges* (DMRB), TD 41/95, to 'provide for the safe and expeditious movement of long distance through traffic'. The number of direct accesses should be limited and the full implications for traffic and road safety must be taken into account when proposing increased use of an existing access.
14. The parties agree that at the junction Snipe Lane has adequate visibility of 4.5 metres by 215 metres in both directions. The main area of dispute between the parties relates to the forward visibility for vehicles travelling eastbound on the A66. The HA state that, in accordance with DMRB TD 9/93, a stopping site distance (SSD) of 215 metres is required in order to allow vehicles to stop if a vehicle ahead is waiting to turn right into Snipe Lane. Due to a bend in the road to the west of Snipe Lane, the forward visibility in an eastbound direction is 195 metres. This measurement is not disputed by the appellants. Thus, it is clear that the SSD would fall below that recommended in TD 9/93.
15. However, TD 9/93 relates to the design of new roads and the alteration of existing roads. The required SSDs are related to the design speed of that road. The SSD of 215 metres is the Desirable Minimum standard and correlates to a road with a design speed of 100kph (just over 62mph). I go on to consider whether the measured 85th percentile speed should be used to dictate the required SSD rather than the design speed and if so, whether extrapolating between the SSDs for various design speeds (in Table 3, TD 9/93) would be appropriate in this case. This would give a required SSD of 190.6 metres in an eastbound direction, which is achievable in this case.
16. The parties agree that the measured 85th percentile speed on the road is 59mph westbound and 58mph eastbound. The HA accept that road design would normally be based on the 85th percentile speed where that has been measured, rather than being designed to cater for the 15% of drivers travelling at higher speeds. However, in their view, where the 85th percentile speed is 58mph the visibility should conform to a road speed of 60mph (which would

correlate to the design speed of 100kph in Table 3 of TD 9/93). Furthermore, the HA do not agree with the extrapolation of the figures in Table 3 of TD 9/93.

17. It seems to me that regard should be had to the speed survey, which in this case was undertaken by the HA, as this provides a representation of actual speeds on the road. It indicates that the vast majority of eastbound vehicles were travelling at speeds below 60mph. The highest recorded eastbound movement was 75mph and I note that one vehicle was travelling at 90mph, although this vehicle was travelling in the opposite direction (westbound). Clearly such excessive speeds are dangerous in themselves and development proposals cannot be expected to be designed to accommodate poor and dangerous drivers.
18. Whilst I note the HA's view in relation to the extrapolation of the SSDs between the figures set out in Table 3 of TD 9/93 I was not taken to any part of DMRB, or any other evidence, which indicates that this cannot be done and I see no reason why a common sense approach should not be taken. SSDs are calculated on the basis of speed of the vehicle, driver perception-reaction times and braking distance, which takes account of the rate of deceleration. These are longer at higher speeds. Thus, it stands to reason that drivers travelling above 85kph (almost 53mph) but less than 100kph (62mph) would be able to stop in distances between 160 metres and 215 metres (figures identified in Table 3, TD 9/93 as correlating to those speeds). The majority of vehicles surveyed were travelling at speeds below 62mph. Consequently, in practice and having regard to the measured 85th percentile speed on the road, there would be sufficient forward visibility available to enable the majority of eastbound vehicles to stop in time should it be necessary.
19. In addition, TD 9/93 advises that the various parameters quoted in the document are not to be regarded as sacrosanct in all circumstances. It sets out figures below the Desirable Minimum SSD which can be adopted if necessary. For a design speed of 100kph, it sets an SSD (described as One Step below Desirable Minimum) of 160 metres. I note that TD 41/95 states that relaxations in the SSD are not permitted on the approaches to junctions. Accordingly, the One Step below Desirable Minimum should not be applied in this case. Nevertheless, in considering the practical implications to highway safety of the reduced SSD which is achievable in this case, this aspect of TD 9/93 lends weight to my view that vehicles would be able to stop within the reduced distance of 195 metres.
20. Furthermore, the A66 has a 1 metre wide central hatched area in which vehicles are able to wait before turning right into Snipe Lane. There is also a carriageway width of 4.5 metres and a 1 metre wide hard strip at the edge of the carriageway. Consequently, there is sufficient width for eastbound vehicles to pass a vehicle waiting to turn right. This accords with my experience of turning right at the junction; vehicles behind tended to slow down and pass on the left hand side. Accordingly, it would not normally be necessary for an eastbound vehicle to stop behind a vehicle turning right. The HA consider that such 'undertaking' movements are inherently dangerous. The evidence demonstrates that it is legitimate for vehicles to straddle the hatched area in order to turn right. Passing a right turning vehicle on the left is a standard manoeuvre and, having regard to the above assessment, I see no reason why it should not be permissible in this situation.

21. The HA point to the fact that Snipe Lane forms a crossroads with the A66. There is therefore a northern arm of Snipe Lane which joins the A66 at the point where right turn manoeuvres would be undertaken. Whilst this is so, this part of the lane serves only a very small number of properties and vehicular movements onto the A66 are therefore unlikely to be significant. The situation where a vehicle emerges from the north at the same time as a vehicle is stationary within the hatched area would be unlikely to occur often. I also noted that the give way line at the junction is set back behind the 1 metre hard edge of the carriageway. Therefore, any vehicle emerging from the north should not encroach onto the carriageway whilst waiting for oncoming vehicles.
22. At the Hearing the HA significantly altered their original assessment of the number of trips likely to be generated by the appeal development. They now accept that the traffic generation for 1 gypsy pitch would be equivalent to that for 1 settled household which they estimate to be around 10 trips per day. They therefore consider that the proposed development of 4 pitches would be likely to generate some 40 two-way vehicular movements per day (20 movements in and 20 movements out). The HA's assessment of trips is based on TRICS data for two gypsy sites elsewhere which showed a generation of around 9 movements per pitch, although it is accepted that the results of one of those sites may have been skewed by the existence of a church at the site.
23. I accept that the appeal site is located in an area where most of the day to day trips to work, shopping, school and so on would be undertaken by car. However, groups of gypsy pitches tend to function in a different way to groups of dwellings in the settled population. The families are often inter-related and trips to school, shopping or other social activities tend to be shared between the families. In addition, there are parts of the year when the pitches will not be occupied as the families will be away travelling. I therefore consider it unlikely that four pitches would generate as much as 40 vehicular movements per day on average.
24. The HA agree that traffic surveys for Snipe Lane show that there are currently around 91 or 92 two-way vehicle movements during a 16 hour period on the lane. This equates to around 6 two-way movements per hour. Even taking the HA higher figure of 40 additional movements, this would equate to fewer than an additional 3 two-way movements per hour (over a similar 16 hour period). I do not consider this to be a significant number and in practice, it is likely to be less than this.
25. I accept that the cumulative impact of committed developments and the development proposed in Mr Smith's appeal (APP/N1350/A/12/2173539) must also be taken into account. However, even these would only add a further 5 pitches to those approved on the lane (3 pitches were approved by the Council under Application no. 11/00333/FUL which was extant at the time the traffic surveys were undertaken; 2 pitches are proposed in Mr Smith's appeal). On the basis of the above, this would be likely to add between 30 and 50 two-way vehicle movements per day to the lane, probably nearer the lower figure having regard to my comments above. I note that a further application (12/00010/FUL) was still before the Council at the time of the Hearing and that this was also subject to a 'holding' objection from the HA. I am unable to take this into account in the assessment of the current appeal as it has not yet been determined.

26. I note that the surveys of movements on Snipe Lane recorded that only 12 out of 45 movements (in the 2010 survey) and only 8 out of 40 movements (in the 2012 survey) involved a right turn from the west. Furthermore, the peak hour for traffic movements on the lane was not seen to correlate with the peak hour for movements on the A66. Thus, whilst successive planning permissions will undoubtedly increase the number of movements on the lane, only a proportion of these would undertake the right turn manoeuvre into the lane and many of those are likely to be undertaken outside the peak hour flows on the A66.
27. The parties agree that the geometry of the Snipe Lane junction falls below the standard required by DMRB. However, it is agreed that two cars would be able to pass at the junction and the HA confirmed that their only concern relates to the impact of the geometry on the right turn manoeuvre for large vehicles. Swept path analysis submitted by the HA indicates that it would not be possible for a large vehicle to enter Snipe Lane whilst a vehicle was waiting to exit from the junction. They argue that this would cause large vehicles to stop for longer on the A66. I note that the swept path evidence relates to a three-axle vehicle such as a refuse collection vehicle and that there is no evidence that such vehicles use the lane. The 2012 survey noted 7 two-axle vehicles using the lane, but the HA agree that these are more manoeuvrable. I also note that there are no refuse collections on the lane. Whilst there would be an increase in use by cars towing caravans as a result of this development, the HA agree that these are articulated and again they are more manoeuvrable.
28. From my site visits it was evident that a car exiting Snipe Lane would be able to see at least the front of a vehicle waiting to turn off the A66 for some distance back from the junction. It would therefore be possible for the exiting vehicle to wait within Snipe Lane until the longer vehicle had turned into the lane. In practice, having regard to the evidence relating to traffic movements, I consider that the number of times that this potential conflict would occur would not be great. In addition, given my assessment relating to the forward visibility and the space within the A66 to pass a stationary vehicle, any vehicles which were required to wait within the A66 could do so without causing a significant highway safety hazard.
29. I note that there has only been one slight accident at this junction in 15 years. A further accident to the east of the junction was related to the use of a lay-by and I note that the Council's highway engineer considers that it had nothing to do with Snipe Lane. Although the HA consider that the lay-by is a feature which further increases risk, no evidence was presented on this matter. The lay-by is located some distance to the east of the Snipe Lane junction and from my observations, and having used that lay-by during my site visits, there does not appear to be any conflict with the Snipe Lane junction. I accept that increased traffic movements to and from the lane would increase the risk of accidents occurring at the junction. But, on the basis of the evidence before me, I do not consider that that risk would be unacceptably high.
30. This decision comes to a different conclusion than that drawn by the Inspector in appeal ref: APP/N1350/A/02/1098092 which was dismissed in 2003. However, I do not know what evidence was before that Inspector. Some of the matters referred to in that decision have been challenged by the evidence put forward in the appeal before me and I have reached my conclusions based on the evidence in this case.

31. The HA and the Council requested that I give an indication as to the likely number of pitches which would be acceptable on Snipe Lane, should I be minded to allow the current appeal. However, I have not heard any evidence in relation to the capacity of the surrounding roads and it is only possible for me to determine the current appeal before me on the basis of the evidence I have heard in this case. I note that the Council consider Snipe Lane may be an ideal location for other gypsy sites, which could assist in meeting the outstanding need for pitches. I also note that the HA consider that there may be ways in which their concerns could be overcome. However, all of these matters go beyond my remit in the current appeal before me. It is for the Council and the HA to consider these matters at a strategic level, possibly in conjunction with gypsy and traveller representatives, should they decide to consider land at Snipe Lane for gypsy and traveller site allocation.
32. In summary therefore, I acknowledge that the development would increase traffic into and out of Snipe Lane at a point where the forward visibility on the eastbound A66, and the junction geometry, does not meet the standards set out in DMRB. I appreciate that the HA's starting position, in line with the advice in DMRB, is that there should be no increase in the number of turning manoeuvres. In addition, I accept that an increased number of movements would be likely to increase the risk of an accident occurring. However, having regard to the matters set out above in relation to the likely increase in traffic, the measured traffic speeds, the available SSDs and the carriageway width, I do not consider that the increase in traffic on the lane, either from the current appeal or having regard to the cumulative impact of those developments identified above, would be likely to significantly increase the risk or cause significant harm to highway safety. The development would therefore provide appropriate access and would comply with Core Strategy policy CS13 (a).

Other matters

33. The four pitches in this appeal are required for Mr Lee, his wife and three of their children, one of which is of school age; Mr Lee's daughter, Sophie, her husband and baby; and two of Mr Lee's nieces: Nancy and her husband and three children (aged 4, 7 and 9); and Katherine, her husband and two children (aged 5 and 3). At the time of the Hearing Nancy was also expecting another child which was due in September.
34. None of the families have settled bases on which to stay. All of the families travel for work and double up on family plots or stay with relatives who have houses when not travelling. The Council accept that there are no alternative sites on which the appellant and family could settle if this appeal were to be dismissed. Some of the children go to school while they are travelling, but their schooling appears to be intermittent and of a nomadic nature. The families would clearly benefit from a settled site in which to access schooling on a more permanent basis. It would also enable them to gain access to healthcare which would be of particular benefit to the young children and babies and to Nancy.

Overall conclusion

35. I acknowledge that the development would involve the use of a junction which falls below the standards set out in DMRB. I have also had regard to the guiding principles of trunk roads, set out above. However, I have concluded that the development would not cause significant harm to highway safety and

that it would therefore comply with Core Strategy policy CS13. I have also had regard to the unmet need for gypsy sites, the families' need for a site, the failure of the development plan process to meet that need to date, the lack of available alternative sites to accommodate the families and their health and educational requirements. These matters all weigh in favour of the appeal.

36. Dismissal of the appeal would result in the families continuing their itinerant lifestyle with no authorised sites to resort to when not travelling. This would represent an interference with their home and family life which, in my view, outweighs any harm which would be caused by the proposal. 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.
37. Having regard to my conclusion that the development would not cause significant road safety harm, the matters in favour of the appeal outweigh the considerations in relation to DMRB and the purposes of the trunk road network. Accordingly, for the reasons given above I conclude that the appeal should be allowed.

Conditions

38. For the avoidance of doubt and in the interests of proper planning a condition specifying the approved plans is necessary. A condition restricting use of the site to gypsies and travellers is necessary in order to ensure that the site meets the needs of that population. To safeguard the appearance of the rural surroundings conditions are necessary restricting commercial vehicles and activities and to control the number, siting and type of caravans. A condition to ensure landscaping of the site and retention of existing hedges at a height of 2 metres² is also necessary. A condition requiring details of mobile homes is not required as these are generally of a standard design within the definition of a caravan. Details of utility blocks have already been provided with the application and appeal documentation, although agreement is required for the materials, in order to ensure these have a satisfactory appearance.

Formal Decision

39. The appeal is allowed and planning permission is granted for the change of use to residential purposes, involving the siting of 4no. mobile homes and 8no. touring caravans and the erection of 4no. amenity buildings, hard standing and internal access road on land off Snipe Lane, Darlington DL2 1QB in accordance with the terms of the application, Ref 11/00755/FUL, dated 9 November 2011, and the plans submitted with it, subject to the conditions in Annex 1.

Susan Heywood

INSPECTOR

² The Council suggested 1.8 metres, but I consider 2 metres to a more reasonable and enforceable height.

ANNEX 1 CONDITIONS

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: FL-CT2, FL-CT3.
- 3) 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*.
- 4) No more than 12 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 a static caravan) shall be stationed on the site at any time.
- 5) Any caravans positioned on the site shall be capable of being lawfully moved on the public highway, without division into separate parts.
- 6) No vehicle over 3.5 tonnes shall be stationed, parked or stored on this site.
- 7) No commercial activities shall take place on the land, including the storage of materials.
- 8) No development shall take place until a comprehensive landscaping scheme has been submitted to the local planning authority and this shall include a timetable for its implementation. The scheme shall include details of the existing hedges on the site to be retained and these shall be retained at a minimum height of 2 metres. The approved scheme shall be implemented in accordance with the agreed timetable. If within 5 years of the implementation of the landscaping scheme any hedge or plants die they shall be replaced within the next planting season in accordance with the approved scheme.
- 9) No development shall take place until samples of the materials to be used in the construction of the external surfaces of the utility buildings hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.

APPEARANCES

FOR THE APPELLANT:

Mr Hargreaves	Agent for the appellant
Mr Lee	Appellant
Mr Birtle	Nancy and Katherine's father

FOR THE LOCAL PLANNING AUTHORITY:

Mr Hobbs	Planning Officer
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FOR THE HIGHWAYS AGENCY:

Mr McGlashan	Halcrow
Mr Bell	Highways Agency

INTERESTED PERSONS:

Ms Dyer	UK Association of Gypsy Women
Ms Francis	UK Association of Gypsy Women

DOCUMENTS

- 1 Council's letter of notification of hearing and circulation list
- 2 Cabinet Report of 10 July 2012 (erroneously dated 2010)
- 3 Appendix A to Cabinet Report of 10 July 2012
- 4 Map identifying planning applications on Snipe Lane
- 5 List of suggested conditions
- 6 E-mail from Darlington BC Highway Engineer regarding U-turn accident