

Item no. 9(ii)



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## Appeal Decision

Hearing held on 4 June 2013  
Site visit made on 4 June 2013

**by R J Perrins MA MCMi ND Arbor**

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

**Decision date: 9 August 2013**

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**Appeal Ref: APP/N1350/A/13/2193221**

**The Stables, Middleton Road, Sadberge, Darlington DL2 1RP.**

- 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 Patrick Connors against the decision of Darlington Borough Council.
  - The application Ref 12/00758/FUL, dated 23 November 2012, was refused by notice dated 29 January 2013.
  - The development proposed is the change of use of land to a mixed use for the keeping of horses and as a residential caravan site for one gypsy family with two caravans, including laying of hardstanding and erection of utility building.
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### Decision

1. The appeal is allowed and planning permission is granted for the change of use of land to a mixed use for the keeping of horses and as a residential caravan site for one gypsy family with two caravans, including laying of hardstanding and erection of utility building at The Stables, Middleton Road, Sadberge, Darlington DL2 1RP in accordance with the terms of the application, Ref 12/00758/FUL, dated 23 November 2012, and the plans submitted with it, subject to the conditions in the attached schedule.

### Application for costs

2. At the Inquiry an application for costs was made by Mr Patrick Connors against Darlington Borough Council. This application is the subject of a separate Decision.

### Main Issues

3. I consider the main issues in this case to be:
  - o Whether the site is in a sustainable location;
  - o Whether there are any material considerations that weigh in favour of the development;
  - o Whether the material considerations weighing in favour of the development outweigh any harm thereby justifying the proposal permanently or for a temporary period.

## Reasons

### *Background*

4. The appeal site is in an open countryside location beyond the built up confines of Sadberge. It is approximately 0.19 hectare of land to the east of Middleton Road to the south of the village of Sadberge. The site is enclosed by hedgerows and fencing and the raised embankment of the A66 to the south. Opposite the site and to the north and east is open countryside. At the time of my inspection the site had a hardstanding and stables upon it and I was informed that the appellant and his family, whilst at the Hearing, were currently working away and not living on the site at that time. However the Council did not dispute that the appellant and his family had been living there and intended to return. I have determined the appeal on that basis.
5. The site has a planning history which includes two previous appeal decisions in April 2005 (refs: APP/N1350/C/04/1149080<sup>1</sup> and APP/N1350/A/04/1149102<sup>2</sup>). The appeals were heard together and the first, against an enforcement notice, was successful on ground (g) with the time for compliance extended. The second was dismissed with the Inspector finding that the personal circumstances did not outweigh the material harm to the character and appearance of the area. I have taken into account the previous Inspector's findings, however, circumstances including planning policy may have changed over that period.
6. I am aware the parties agree on the gypsy status of the appellant and from the evidence before me I see no reason to disagree with the view that the appellant is a gypsy as defined in *Planning Policy for Traveller Sites* (PPTS)<sup>3</sup>. As a consequence the policy regime applying to gypsies and travellers is engaged and is a material consideration.
7. Policy CS13 of the Darlington Local Development Framework Core Strategy (CS) aims to encourage the provision of sites for travelling groups in locations that have appropriate access to local facilities and services. PPTS sets out the government's aims in respect of traveller sites and at the heart of the National Planning Policy Framework (the Framework) is a presumption in favour of sustainable development.

### *Sustainability*

8. The Council consider the site would be in an unsustainable location and as such would be at conflict with criterion (a)<sup>4</sup> of Policy CS13. I accept that the village of Sadberge has limited facilities; two pubs (one closed), a village hall and a bus service which has recently had funds allocated to it but is not yet in place and would run 3 times on 3 days a week. I was informed at the Hearing that funding is available for the bus service for 2 to 3 years and there was no dispute that the nearest school is some 2 miles away and there is no doctor in the village.

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<sup>1</sup> For (a) the change of use of the land from use as vacant or agricultural land to land used for residential purposes by the siting on the land of a residential caravan; (b) the siting on the land of dog kennels and compounds.

<sup>2</sup> For 1 Static Caravan.

<sup>3</sup> "Persons of nomadic habit of life whatever their race or origin, including such persons who on grounds only of their own or their family's or dependants' educational or health needs or old age have ceased to travel temporarily or permanently.."

<sup>4</sup> a) have appropriate access, and are in a sustainable location for schools, shops, employment opportunities and other local facilities and services;

9. Taking those facilities into account I have some sympathy with the view that the site is in an unsustainable location. However, whilst the site is beyond the village envelope it is on the edge of the existing settlement and facilities elsewhere, such as a large superstore, are approximately 2.5 miles away. The site is also very close to the access onto the A66 which gives direct access to Darlington town some 5 miles away. It seems to me that the site is not so isolated from the community, or services, such that the issue of sustainability is a significant factor weighing against the development.
10. I say that given that Policy CS13 does not set out a definition of a 'sustainable location'. In addition it would simply be impracticable to expect all sites to be within a distance to services such that there would be no reliance upon the car. A recent planning permission for the erection of a new single dwelling within Sadberge itself bears that out. Whilst that would have been considered under a different planning policy context it shows that the locality is not so unsustainable as to warrant no further development in the locality.
11. Moreover, sustainability is not only about access to services as set out in the PPTS<sup>5</sup>. To that end I heard at the Hearing that the appellant has lived in the locality for many years, has extended family nearby, and went to school in the area. Two of his children have been enrolled in a Darlington school. Thus there is a social aspect to sustainability in this case that needs to be considered. Despite having to rely on predominantly private transport, services are not a considerable distance away and, given its location on the edge of the settlement, it would be likely to facilitate peaceful integration into the local community and social cohesion.
12. In addition weight should be given, in accordance with the PPTS, to a number of matters that would be met by the development; the use of a previously developed site<sup>6</sup>; ensuring adequate landscaping and play areas for children; and not enclosing a site with hard landscaping and high walls or fences, such that the impression is given that the site and its occupants are deliberately isolated from the rest of the community.
13. For these reason I find this is a sufficiently sustainable site for a gypsy caravan site and there would be no conflict with Policy CS13 of the CS, paragraph 7 of the Framework which sets out three dimensions to sustainability, or paragraph 11 of the PPTS.

*Material considerations in favour*

Need for accommodation

14. The Council acknowledges there is a need for more pitches in the District. That is borne out by the Tees Valley Gypsy & Traveller Accommodation Needs Assessment (GTAA) which indicates that 76 additional residential pitches are needed in Darlington up to 2016. The Council point to 13 sites that have come forward since the GTAA and another 14 being considered, although, it is not clear when these sites would come forward or whether those being considered would be approved.

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<sup>5</sup> Paragraph 11. Local planning authorities should ensure that traveller sites are sustainable economically, socially and environmentally.

<sup>6</sup> There was no dispute that part of the land was previously developed.

15. Even if all those sites were to come forward that would still leave a requirement of 49 pitches to satisfy the GTAA. Thus there is a continuing need and the role of private site provision will remain important in meeting the need. These considerations support the development.

Alternative sites

16. The Council point to the 13 windfall sites closer to Darlington in Snipe Lane which include sites granted on appeal. I accept the locality is in a more sustainable position. However, there is no clarity as to when the sites would become available or if they will be affordable. Moreover, it was accepted at the Hearing that the appellant is an Irish Traveller and the settlement at Snipe Lane is an English one; there is no provision for the Irish travelling community. I am aware of tensions between the two communities which raises doubts about the suitability of the sites in question. It would be unlikely that the appellant would be able to settle amongst an English travelling community in any event.
17. Consequently there is no clarity regarding when additional gypsy and traveller sites would be provided that would be available to the appellant. In the face of that is the fact that the appeal site is in gypsy ownership and is being occupied. Therefore it would contribute to meeting the considerable unmet need for sites within the District.

Personal circumstances

18. There is no dispute that the appellant travels regularly for work and is seeking a settled base in which to allow his children to receive a proper education. Furthermore the Council did not dispute that if this appeal failed it would be likely that enforcement action would be taken which would leave the appellant and his family without a base and back on the road. The site previously used by them in Stockton, and owned by a friend, has been sold and is no longer available.
19. The evidence before me shows that presently there is not an available alternative site for the family in the area and there can be no reliance upon sites being delivered through the development plan process in the immediate future. In these circumstances the children's education and their family life would be likely to suffer.
20. Case law has established that the best interests of children of the occupiers of the site are a primary consideration in deciding whether planning permission ought to be granted. There is nothing before me by way of evidence, or from that which I sought at the Hearing, to suggest the situation regarding personal circumstances pertaining to these appeals are comparable to that found in the recent authority of *AZ v SSCLG & South Gloucestershire DC* [2012] EWHC 3660 (Admin). Nevertheless, the need for a family pitch and the best interest of the children is an argument in favour of the grant of planning permission and should be given significant weight.

*Other considerations*

21. Third parties have raised concerns regarding a number of matters including the character and appearance of the locality, flooding, living conditions and health and safety concerns regarding the utility infrastructure near to the site. I note that the relevant statutory bodies have been consulted and raise no particular

concerns. I could also see that safety measures were in place around the electricity poles and the land was higher than the road under the nearby bridge that I heard was susceptible to flooding.

22. In addition there are a number of single storey buildings within view of the site including a small pump house and a number of sheds and stables in adjoining fields and gardens, such that the proposed caravans would not be an incongruous addition to a landscape that is not free from low level structures.
23. Furthermore, the eye is drawn to the road bridge over which the A66 passes and, as set out above, whilst the site has some screening the government's aim is for gypsy sites not to appear deliberately isolated. The limited views of the site from surrounding places meet that aim and I see no reason to disagree with the Council that the development has not led to unacceptable harm to the character and appearance of the countryside location. Further planting would also help the site blend in with its surroundings.

### **Conclusions**

24. The site is very close to and easily accessible from a main traffic route, within reasonable distance of a settlement, and is of a size to enable assimilation within the local community. The development complies with Policy CS13 the development plan policy on gypsy sites. This justifies permitting the development adjacent to an existing settlement.
25. Whilst I have not found the development would lead to unacceptable harm to the character and appearance of the locality, new planting would add to the existing landscape structure and help blend the caravan site into its surroundings. Other considerations lend further support for the development. The general need for gypsy and traveller sites has not been resolved. The development fulfils the appellant's need for a permanent site to ensure his children are able to have the opportunity of a stable education.
26. I have also considered the matter of a temporary planning permission which may be acceptable where there is an unmet need, no alternative provision, and a reasonable expectation that new sites are likely to become available at the end of the temporary period. However, there remains considerable doubt as to when additional sites will be identified and made available. Given the lack of a clear timetable or reasonable expectation of a change in circumstances within a definite and foreseeable period, a temporary permission would not be justified in this case.
27. Finally, I have come to my decision based on the very particular circumstances of this case, the appellant and his family, the site, its relationship to the surroundings and current levels of provision. Each site must be considered upon its own merits, so arguments that have been advanced regarding the development setting a precedent are without foundation.
28. Thus, having considered all matters raised, my conclusion is that the overall balance weighs significantly in favour of the development. A residential gypsy caravan site is acceptable in this location and the appeal should be allowed.

### Human Rights

29. The rights of the appellant under Article 8 (the right to respect for private and family life) of the European Convention on Human Rights have been taken into

account and it is accepted that refusal of the appeal would constitute an interference with the appellant's rights under Article 8(1) and any decision should take into account the effects of that upon the appellant. However, as I intend to allow the appeal, there would be no interference with the statutory rights.

### **Planning Conditions**

30. The need for conditions, and their wording, has been considered in the light of the advice contained in Circular 11/95 and the discussion during the Hearing. I will impose a time limit on commencement of development but given the need for the site is urgent I see no need to extend that to three years, a condition requiring the development to be carried out in accordance with approved plans is necessary for the avoidance of doubt and in the interests of proper planning. There is no need for a condition requiring further details of proposed caravans and utility block; these are shown in sufficient detail on the submitted drawings. Any caravan moved onto site would have to meet the lawful definition of a caravan as defined in section 29(1) of the Caravan Sites and Control of Development Act 1960<sup>7</sup>.
31. This permission is for a private gypsy caravan site and is granted on the basis that there is a need for additional gypsy sites in the District. Therefore occupation needs to be restricted to gypsies and travellers. Numbers of caravans should be controlled, along with a ban on commercial activities, to protect the countryside and the living conditions of residential neighbours. To ensure the development is acceptable in terms of appearance further landscaping details should be submitted. I will impose conditions to address these matters.

*Richard Perrins*

Inspector

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<sup>7</sup> any structure designed or adapted for human habitation which is capable of being moved from one place to another (whether by being towed, or by being transported on a motor vehicle or trailer) and any motor vehicle so designed or adopted

### **SCHEDULE OF CONDITIONS**

- 1) The development hereby permitted shall begin not later than one year from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 'The Stables' Site Plan; Site layout Plan; Proposed Utility/Day Room.
- 3) 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* March 2012.
- 4) No more than two caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 (of which no more than one shall be a static caravan) shall be stationed on the site at any time. The site shall be for a single individual pitch.
- 5) The site shall be used for residential purposes only. No commercial activities shall take place on the land, including the storage of materials, disused vehicles, scrap and building materials. No commercial vehicles over 3.5 tonnes shall be parked on the site without the prior written permission of the local planning authority.
- 6) 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) within 3 months of the date of this decision a landscaping scheme including; details of tree, hedge and shrub planting including details of species, plant sizes and proposed numbers and densities; details of existing hedges on the site to be retained and thereafter maintained at a minimum height of 1.8m; shall have been submitted for the written approval of the local planning authority and the said scheme shall include a timetable for its implementation.
  - ii) within 11 months of the date of this decision the 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.
- 7) Any planting comprised in the approved details of landscaping which within a period of 5 years from the date of this permission die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the local planning authority gives written approval to any variation.

## **APPEARANCES**

### FOR THE APPELLANT:

Mr P Brown BA (Hons) MRTPI	Planning Consultant
Mr P Connors	Appellant

### FOR THE LOCAL PLANNING AUTHORITY:

Mr A Hobbs	Planning Officer
Mrs E Wilson	Planning Policy Officer

### INTERESTED PARTIES:

Mr B Jones	Local Councillor
Mr A Mackenzie	Sadberge Parish Council
Mr G Johnstone	Local Resident

## **DOCUMENTS**

- 1 Drawing showing Sadberge Limits to Development
- 2 Drawing identifying Snipe Lane
- 3 Drawing identifying windfall sites at Snipe Lane
- 4 Suggested Conditions





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## Costs Decision

Hearing held on 4 June 2013

Site visit made on 4 June 2013

**by R J Perrins MA MCMi ND Arbor**

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

**Decision date: 9 August 2013**

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### **Costs application in relation to Appeal Ref: APP/N1350/A/13/2193221 The Stables, Middleton Road, Sadberge, Darlington DL2 1RP.**

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
  - The application is made by Mr Patrick Connors for a full award of costs against Darlington Borough Council.
  - The hearing was in connection with an appeal against the refusal of planning permission for the change of use of land to a mixed use for the keeping of horses and as a residential caravan site for one gypsy family with two caravans, including laying of hardstanding and erection of utility building.
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### **Decision**

1. The application for an award of costs is refused.

### **The submissions for Mr Patrick Connors**

2. Submissions were made in writing. In brief, it is undisputed that there is an unmet need for gypsy sites in the District and no proposals to bring anything forward until Spring 2015. The Council should have considered whether the harm could be overcome through the use of conditions, one of which could have limited any permission to a temporary period. The Council have not carried out the very different balancing exercise that is required in such circumstances and that was unreasonable.

### **The response by Darlington Borough Council**

3. The response was made verbally. In brief, the Council say the officer's report did not specifically refer to a temporary permission as that was not what was applied for. The Council have granted such temporary permissions over the years and then found it difficult to resist subsequent applications for full permission. Thus Officers considered that whilst a temporary permission may have benefitted the appellant it would have been contrary to planning policy.

### **Reasons**

4. Circular 03/2009 advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused another party to incur or waste expense unnecessarily.
5. Para B15 of the Circular sets out that planning authorities are at a risk of an award of costs against them if they prevent or delay development which should clearly be permitted having regard to the development plan, national policy

statements and any other material considerations. I accept that the officer report does not set out that a temporary permission was considered. Nevertheless I see no reason why that would not have formed part of the officers' deliberations as suggested. Whilst I have found sustainability not to be a significant factor that is a matter of judgement and the Council was quite reasonable in forming the view that it was in an unsustainable location. They produced sufficient evidence to substantiate this point of view.

6. Furthermore, it was apparent that the issue of the ethnicity of the appellant and his family had not been considered. They were unaware that the windfall sites to which they referred would be unavailable to Irish Travellers. Whilst I have some sympathy with the appellant that this issue had not been considered, it was not a matter referred to by the appellant in his application or appeal statement and thus was not part of the Council Officers' considerations.
7. It was also apparent at the Hearing that Council Officers were unaware that such a situation could arise. Whilst that may be come as a surprise to the appellant and his representative it is not incumbent upon Council Officers to have knowledge of all matters regarding their casework. That knowledge may have tipped the balance with regards to the appellant's application, in that the Council may have found the windfall sites were not available to him, I do not see such lack of knowledge as unreasonable behaviour.
8. In addition, it is also clear that the personal circumstances of the appellant were considered. Thus the Council's stance, that alternative sites in a more sustainable location could be available, was not unreasonable and the non-consideration of a temporary permission in those circumstances was not fatal to the Council's balancing exercise.
9. For these reasons, I consider that unreasonable behaviour resulting in unnecessary expense, as described in Circular 03/2009, has not been demonstrated and I therefore conclude that an award of costs is not justified.

*Richard Perrins*

Inspector