

THE QUEEN
ON THE APPLICATION OF MARDEN PARISH COUNCIL

CLAIMANT

AND
HEREFORDSHIRE COUNCIL

DEFENDANT

AND
MR HARRY SMITH

INTERESTED PARTY

WITNESS STATEMENT
OF ALISON SUTTON, CLERK TO MARDEN PARISH COUNCIL

Introduction

1. I, Alison Sutton, make this statement in support of the claim by Marden Parish Council for a Judicial Review of Herefordshire Council's decision of 17th January 2018 to grant planning permission for two additional mobile homes, two touring caravans, day room, hard standing, new access track and drainage at Ashgrove Croft, Marden, Herefordshire HR1 3HA.
2. I was present at the planning committee meeting at which the planning application was approved and made a speech in objection on behalf of Marden Parish Council.
3. Marden Parish Council had received numerous representations about this planning application, in particular from residents of The Vault, a small settlement near to the application site.

Previous Permissions

4. Personal planning permission for the use of the site by Mr Harry Smith and Mrs Shirley Smith was granted in 2006, at which time it was acknowledged by the Council in the decision notice that the development was only acceptable in this location due to the applicant's special circumstances.
5. A personal permission had been granted the previous year to a Mr and Mrs Jones, also citing their exceptional circumstances, and Mr and Mrs Jones then sold the site to Mr and Mrs Smith. The benefit of the permission was transferred to Mr and Mrs Smith by a planning permission allowing

a variation of the condition giving the names of the people to whom the benefit of the permission enures.

6. The planning condition states: *“This permission shall enure for the benefit of Mr. Harry Smith and Mrs. Shirley Smith only and not for the benefit of the land or any other person interested in the land.”*
7. The reason for this condition is given as: *“The nature of the development is such that it is only considered acceptable in this location having regard to the applicant’s special circumstances.”*
8. The applicants’ circumstances were not defined in the decision notices. However, parish councillors recalled when discussing this recent application that when permission was granted to Mr and Mrs Smith a principle consideration had been that the applicant’s children were of school age and needed a stable base from which to attend school.

The 2017 Application

9. Residents of the parish were concerned that allowing an expansion of the site would have a further detrimental impact on the landscape and that the potentially large population on site would dominate the nearby settlement of The Vault, which is comprised of about ten houses.
10. Concerns were also raised about highway impacts, the unsustainable location of the site and about the proposed arrangements for foul drainage.
11. The Parish Council submitted two objections to the application raising these concerns and pointing out that the proposals were in conflict with policies in the Marden Neighbourhood Development Plan (NDP), adopted in 2016, and the Planning Policy for Traveller Sites, which advises that new traveller site development should be strictly limited in open countryside - as this site clearly is - away from settlement boundaries or outside areas allocated in a development plan.
12. The Marden NDP defines the settlement boundary of The Vault some half a mile away from the application site and resists residential development outside of settlement boundaries. It does not include any allocations for gypsy or traveller sites.

13. The planning case officer appears to have sought to overcome any conflict with the NDP, the PPTS and Herefordshire Council's Core Strategy by arguing that the site already has a lawful use as a one family gypsy site and that the principle of the development is thus already established.
14. This is clearly what some members of the planning committee understood. I have refreshed my memory by listening to an audio recording of the planning committee meeting made by a member of the public and can confirm that the comments quoted here are a precise record.

Committee Meeting and Debate 17th January 2018

15. The motion to approve the application was proposed by Councillor Felicity Norman. In explaining why she supported the application, Cllr Norman said:

"From what I understand, this is a lawful site. This is what I have understood. What we are looking at is some development of the site, some expansion of the site, not whether the site should be there or not. A lot of the argument against seems to be specifically about whether it should be there or not."

16. During the debate, Councillor Elissa Swinglehurst asked for an interpretation of the 2005 and 2006 personal permissions and whether these had indeed created a lawful use as a private gypsy site. Cllr Swinglehurst said:

"What I am trying to get clear in my head is what seems to me to be crucial to this decision is the status of the land. It is very very clear that the permission was granted to the individual and not granted on the land and so how did it become the land that is the beneficiary?"

17. The Planning case officer responded to this question at the end of the debate and before the vote was taken. She advised:

"With regards to the original planning permission which feeds into questions about the status of the site, in 2005 the proposed description which planning permission was granted for change of use from agriculture to a one family gypsy caravan site. What is established is that the proposal description confirms the development that has been granted and the extent of that, how that is then exercised is then limited by any conditions that are attached to the planning permission. So officers would advise the legal status of the site is a one family gypsy site subject to conditions

regarding occupation and the number of caravans. The committee report and the delegated report for the two previous decisions do refer to the applicants' gypsy status. The committee report in 2005 and the delegated report in 2006 identify those as the exceptional circumstances that enabled both permissions to be granted."

18. The officer then confirmed that she believed that this had addressed Ms Swinglehurst's question, saying:

"With regards to Councillor Swinglehurst's question with regards to the status of the land we have already covered that with regard to the 2005 and 2006 permissions."

19. It was clear during the debate that some committee members felt they did not have enough information to make their decision and this was reflected in both the close final vote and a number of comments made.

20. Several members commented on the lack of clarity in the application documents and the committee report. Councillor David Greenow, who seconded the motion for approval, himself commented: *"I'm just slightly confused who is going to live in what and where, but they'll sort that out between themselves no doubt."*

21. Councillor Greenow said his reason for seconding the motion to approve was because he felt the Council should be supporting families that wished to look after their own relatives given the pressures on the social care system. He acknowledged that this was not a planning ground for granting permission.

22. Councillor P.J. Edwards said that he was a member of the committee that approved the retrospective application for the personal permission granted to Mr and Mrs Jones in 2005, when he said *"the emphasis (was) on the particular need of the applicants."*

23. He felt the evidence of the applicants in this case was unclear and he said: *"I speak the truth because I do not know which way to vote because of the conflicting advice in the officer report."*

24. Councillor Anthony Powers spoke in detail about his uncertainty saying: *"Clearly this is a complex tangle of issues. There is complexity in the back history and the rightness or wrongness of the permissions already given. The implication of things that might not have been seen at the time."*

There is the complexity of the balance we are being asked to make between our own development plan document for traveller sites, which has yet to be formally adopted but can be given a certain degree of weight given the stage that it has got to.

25. *“There is complexity about the relationship of that weight to weight that could or should be given to NPPF and Core Strategy policies that fill the vacuum the DPD, we hope, will fill once it has been adopted.*
26. *“And yet I don’t think there are any grounds for us as a committee claiming a decision on the basis that this application was premature because I don’t think it fits into that sort of category so it has to be determined today.*
27. *“I would like answers to Councillor Swinglehurst’s questions many of which were on my own list...*
28. *“To my mind this tangle of complex circumstances is making it very, very difficult. There is also the weight to be determined between pieces of case law which have been cited in defence of both sides of the arguments. None of us are lawyers and personally I haven’t had time to look into that those particular cases and...(how) the excerpts cited should be adjudged. Whether our legal advisers can give us any help on that I don’t know.”*
29. Although the Council’s planning solicitor Dawn Evans was present at the committee meeting, she did not speak. The only verbal advice on the legal status of the site was provided by the case officer as cited at paragraph 17 above.
30. The vote was five in favour of the motion and five against, with three abstentions and the motion to approve was passed by the casting vote of the chairman.

The Date of the Decision

31. As Clerk to the Parish Council, I am automatically notified when a decision on a planning application to which the Parish Council has made representations is issued. I received notification of the issue of this decision notice by email on 25th January 2018.
32. However, the decision notice was dated 17th January 2017, the date of the committee meeting, which took place during the afternoon on that day.

33. I have seen an email exchange between Helen Hamilton of Marches Planning & Property Consultancy and the case officer Charlotte Atkins (Exhibit 1). Ms Atkins advises in the email exchange that the decision notice was approved by senior officers and sent to the applicant on 24th January, although Ms Hamilton had not seen the notice posted on the Council website until 26th January.

34. The decision has not been published in any of the Council's weekly lists of planning decisions.

STATEMENT OF TRUTH

I make this Statement in the knowledge that it will be placed before the Court and confirm that the contents are true to the best of my knowledge and belief.

Alison Sutton

DATE: