

Appeal Decision

Hearing and site visit held on 28 June 2016

by A U Ghafoor Bsc (Hons) MA MRTPI

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

Decision date: 05 December 2016

Appeal Ref: APP/H1515/W/16/3142748

Wenlocks Meadow, Wenlocks Lane, Blackmore, Essex CM4 0JS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 as amended against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 as amended for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Ms Bookerstein against the decision of Brentwood Borough Council.
 - The application Ref 15/01357/FUL, dated 15 June 2015, was refused by notice dated 23 December 2015.
 - The application sought planning permission for change of use from agriculture to residential, stationing of one mobile home for a gypsy without complying with a condition attached to planning permission Ref BRW/867/2000, dated 14 February 2003 by Appeal Ref: APP/H1515/A/01/1056266.
 - The condition in dispute is No 2), which states that: *The use of the land and occupation of the mobile home hereby permitted shall enure for the sole benefit of Ms N Bookerstein and her dependent children.*
 - The reason given for the condition is the personal circumstances of Ms N Bookerstein.
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Decision

1. The appeal is dismissed.

Procedural matters

2. At the Hearing an application for costs was made by the Appellant against the Council and vice-versa. These applications are the subject of separate Decisions.
3. The appeal parties were requested to clarify certain matters relating to points made at the Hearing and submit additional comments. I am grateful for these comments and will take all of them into account.
4. Planning permission was granted on appeal¹ for the change of use from agriculture to residential, stationing of one mobile home for a gypsy on 14 February 2003 subject to eight conditions (the 2003 permission). Condition 1) limits occupancy to those conforming to gypsy definition given in the Caravan Sites and Control of Development Act 1960. Condition 2) is set out in fifth bullet-point of my header above. Conditions 3) – 5), respectively, relate to siting of a mobile home, a lighting scheme and a restriction on commercial activity. Condition 6) limits the number of caravans and numbers 7) – 8) relate to landscaping matters.
5. There is one mobile home used for human habitation as well as a touring caravan pursuant to condition 6). The Appellant and her children; Tommy Moore (aged 18)

¹ Appeal ref: APP/H1515/A/01/1056266 and Council ref: BRW/867/2000.

and Emily Moore (20)², and partner, Keith Moore, occupy the mobile home. The Appellant acknowledged that the latter are not dependant on her. There is no evidence to suggest that the current occupiers satisfy the terms of the disputed condition. It is apparent to me the current occupation and residential use of the caravan site is, as a matter of fact, in breach of condition 2) before the application was made. Notwithstanding the reference to section 73 of the Act in the above header, I find that the planning application now the subject of this appeal should be evaluated as having been made under s. 73A. This is a technical matter and does not prejudice in any way the parties to these proceedings as their respective cases have been made on this basis; I shall proceed.

Main issue

6. The site is located within the designated Green Belt. I concur with the appeal parties that the residential caravan use of the site amounts to inappropriate development inside the Green Belt. Against that background, the main issue is whether it is necessary and reasonable to retain the personal occupancy condition, as opposed to imposing a general gypsy occupancy condition, in the light of the harm to the Green Belt and the need to show that very special circumstances exist to justify the grant of planning permission.

Planning policy

7. The 2003 Inspector assessed the planning merits in the light of local and national planning policy then in force. There has been a change in the planning policy landscape, however, the emphasis in controlling inappropriate development within the designated Green Belt remains firmly in place.
8. Paragraph 215 of the National Planning Policy Framework (NPPF) records that due weight should be given to relevant policies in existing plans according to their degree of consistency with the NPPF. The policies relevant to the determination of this appeal are found in the Brentwood Replacement Local Plan 2005 (LP), saved by Direction of the Secretary of State. Policy CP1 is a general development criteria policy, CP2 seeks to ensure sustainable transport choices, and policies GB1 and GB2 relate to proposals inside the Green Belt. I find no significant conflict with these local policies and the NPPF as they are broadly consistent with the latter.
9. The Brentwood Draft Local Plan 2013-2033 (January 2016)³ includes a policy on gypsy and traveller development and site provision. It is intended to submit the emerging plan to the Secretary of State for examination in early 2017. Having regard to paragraph 216 of the NPPF, I attach it limited weight in the context of this appeal. This is because the draft plan might change in the future.

Reasons

10. A fresh permanent planning permission is sought for the residential caravan site subject to a general gypsy occupancy condition specifying the need to conform with the planning policy definition given in Annex 1 to *Planning policy for traveller site* 2015 (PPTS). The Appellant further confirms an alternative condition restricting occupancy to named individuals is unacceptable to her.

² At the time of the Hearing.

³ This emerging plan replaces the Local Development Framework Gypsies and Travellers Development Plan Document, pre-submission draft plan, December 2009.

11. Briefly, the Appellant argues that her personal circumstances have changed. The particular considerations that led the 2003 Inspector to grant planning permission for inappropriate development in the Green Belt, and restrict the use to Ms N Bookerstein and her dependant children, namely, the educational requirements are no longer relevant. The extant permission is not time-limited so as to coincide with the period of education. She wishes to ensure that her children and partner, who has a medical condition, can reside at the site without the fear of enforcement action. The claim is condition 2) is too onerous, unreasonable and unnecessary.
12. The previous Inspector found sufficient justification for granting a personal planning permission. This is because other material considerations existed that clearly outweighed the harm by reason of inappropriateness, and any other harm, such that very special circumstances existed to justify the development. The reason for the imposition of condition 2) is the personal circumstances of Ms Bookerstein were thought to be *pivotal* to the other considerations that amounted to very special circumstances [my emphasis].
13. In this rural location, there is a precise land use policy justification for a personal planning permission. Although there is an existing stable block, the site is mainly undeveloped and is part of a swathe of agricultural land. It is located in the countryside outside the confines of any settlement defined by the Development Plan and within the designated Green Belt. It is situated in an area which contains sporadic development including dwellings and farmsteads. It is positioned on a junction and the mobile home, together with domestic paraphernalia, is visible from public vantage points irrespective of existing boundary treatments.
14. The introduction of a static caravan and all of the trappings associated with residential living has, evidently, changed the physical appearance of the site. Together with domestic paraphernalia on display, the mobile home and all attendant features encroach on the openness of the Green Belt. Thus, the residential use has an urbanising effect that is materially harmful to openness. The development has a visual effect on this part of the Green Belt given the nature of its use as a residential caravan site.
15. The claim is that general gypsy occupancy would have no implications on sustainability compared to the site's lawful use. There may well be social and economic benefits arising from settled base. However, access to the nearby village is along an unlit rural road and there is no footway. It is highly unlikely occupiers would walk or cycle to the village. Like other residents in this rural location, I am told Ms Bookerstein relies almost entirely upon a private mode of transportation to meet her day-to-day needs. The distance to services is not great but the site is remote and away from any settlement with meaningful facilities. In my opinion, general gypsy occupancy on a permanent basis would not sit well with the aims of LP policies CP1 and CP2, because the site's isolated and rural location would potentially encourage unsustainable patterns of travel.
16. To my mind, condition 2) is unambiguous as it renders the use of this caravan site personal to the Appellant. In practice, therefore, compliance in accordance with the terms of the 2003 permission means occupation would now be limited only to Ms Bookerstein. This is because her children have reached adulthood and are no longer considered as being dependant. By its very nature a personal planning permission, due to eventual death, is temporary or time-limited. The 2003 permission is not time-barred it is, in effect, tied to the Appellant's lifespan and, potentially, provided for her to remain on the site for decades to come albeit without a specific end-date.

In contrast, the planning permission now sought is for a permanent residential caravan site subject to general gypsy occupancy. Thus, the scheme would prolong the life of the site's residential use for an indefinite period of time.

17. While I appreciate personal circumstances have changed, to my mind the disputed condition is reasonable and relates to the permitted development as the site is unsuitable for general gypsy occupation. It is necessary because it seeks to limit the identified harm to the Green Belt. The harm caused to the Green Belt is likely to cease at some point in time, though I acknowledge that might be a very long time. In contrast the proposal before me would prolong the life of this residential caravan site. It would maintain the harm at a level unlikely to occur if the site is used fully in accordance with the terms of the 2003 permission; it would render it permanent. In this rural location, I find this potential outcome is at odds with purposes of Green Belt protection policy found in policies GB1 and GB2, paragraph 79 and 80 to the NPPF.
18. The following arguments are advanced in support. The Essex Gypsy and Traveller and Travelling Showpeople Accommodation Assessment 2014 (GTAA)⁴, while being refreshed in the light of the revised PPTS, is the best available evidence demonstrating the level of need for additional pitches at the present time. It identifies total current need for 28 pitches; total future need is 59. For the period 2013-2033 there is a gross requirement of 87 pitches reduced to 84 because three pitches from the supply have been taken into account. The five year requirement being 59 for 2013-2018; eight for 2018-2023; eight for 2023-2028 and nine during 2028-2033. Since 2013 planning permission has been granted for 17 pitches on appeal or by the Council. That reduces the 2013-2018 to 42. I have not lost sight of the fact that the previous Inspector recorded there was a persistent and long-term need for between 3 and 4 gypsy sites in 2003. Evidently, the need for additional pitches has manifestly increased. There is an unmet need for additional pitches, which weighs in favour.
19. The claim is that there is a lack of alternative sites, though the Appellant already benefits from the 2003 permission. To be a realistic alternative accommodation should be suitable, affordable, available and acceptable and there are no alternative sites. The appeal parties agree there is no available alternative site for gypsies and travellers right now. For example, there is still no public site available in the Borough. However, it is apparent to me that the Council is taking steps to address this shortcoming very soon via the plan-making process. The draft Local Plan includes a policy on gypsy and traveller development and site provision. It is intended to submit it for public examination in early 2017. It is likely that sites would be forthcoming in the near future. Given the progress with site allocation thus far, I attach some weight to this factor.
20. The claim is the Development Plan has failed to meet the needs of gypsies and travellers. There is no specific LP policy in place or sites allocated in order to meet the need of gypsies and travellers at least in the short to medium term. The Council acknowledge the absence of local policy but turn to the NPPF and PPTS. Pitches have been granted permission where relevant national policy can be met, and the broad design criteria in LP policy are satisfied. It accepts that time is needed for the local plan process to take its course and the adoption of the new Local Plan would provide more certainty as to the availability of suitable and sustainable sites, which might come forward and be realised in the near future.

⁴ Document 4 - pages 83, 100 and 112 handed in at the Hearing.

21. It seems to me there have been times when the Council has not fully responded to the requirements of Government policy and guidance in relation to the provision of gypsy and traveller sites. Attempts are being made to meet need by granting planning permission for pitches on an ad hoc basis instead of a coordinated and planned programme via local planning process. That said, even if the Council reacted slowly to the accommodation needs before; it is now proactively addressing shortcomings. The draft Local Plan is programmed to be submitted by early 2017. I attach moderate weight to this line of argument.
22. About 89% of the Borough is within Green Belt and the remainder is urban. I note the argument designated land would be required to meet local need for future gypsy and traveller sites. The contention is that, given the scale of unmet need for additional pitches, sites would be provided within these locations as a result of the plan-making process. The Council is considering making sites with temporary planning permission permanent in the Green Belt via the emerging Local Plan.
23. The PPTS, paragraph 17, states that Green Belt boundaries should be altered only in exceptional circumstances via a plan-led approach. Any boundary alteration to Green Belt should be carried out as part of plan-making with all available sites being considered; not in response to a planning application. While this individual application does not seek alteration of any boundary, I consider that the effect of a permanent permission would be similar. Some weight is attributed to this matter.
24. The Council concede there is no five year supply of gypsy and traveller sites. It is submitted that relevant Development Plan policies are not up to date as a consequence. However, those persons who fall within the definition of 'traveller' under the PPTS cannot rely on the lack of a five-year supply of deliverable housing sites under the NPPF to show that relevant policies for the supply of housing are not up to date⁵. I attach limited weight to this argument.
25. Much is made of the exhortation to identify and update annually a supply of specific deliverable sites sufficient to provide five years' worth of sites against locally set targets. If a local planning authority cannot demonstrate an up-to-date five year supply of deliverable sites, this should be a significant material consideration in any subsequent planning decision when considering applications for the grant of temporary planning permission. This line of argument overlooks paragraph 27 to the PPTS. It clearly points out the exception is where the proposal is on land designated as Green Belt, such as this site.
26. I have been made aware of a caravan site near the appeal site. Planning permission for that development has been granted on 22 October 1991. The available evidence indicates that a s.174(2)(a) appeal⁶ was allowed for the use of Meadow View for the stationing of residential caravans and hard standing. Condition 1) restricts the use to named individuals whereas I have been specifically asked not to consider varying condition 2) imposed on the 2003 permission by naming certain individuals. I do not consider that particular development is a strong precedent to allow this particular scheme. I attach little weight to this argument.
27. The claim is that another Inspector decided to grant a fresh planning permission in the terms sought at Hale Brinks North, North Circular Road Woodford Green⁷ and that sets a precedent. I disagree for the following reasons. That appeal relates to a

⁵ Written Ministerial Statement, July 2015.

⁶ Appeal ref: APP/C/90/H1515/24-25/P6.

⁷ Appeal ref: APP/U5930/A/11/2165445, allowed 15 May 2012.

planning permission subject to a condition limiting occupancy to certain individuals on a site in the Green Belt. A new planning permission was granted on appeal without making it personal to named individuals. The Inspector found very special circumstances which led to a grant of planning permission for inappropriate development and restrict the use to Mr O'Connor and his dependants. These include factors like educational needs of a new generation of children, the potential longevity of the existing permission and the prolonged period for which the site had already been used in breach of planning controls without enforcement action. None of these matters are relevant in the appeal before me. I do not consider that the two cases are directly analogous and they can be distinguished on the facts.

28. The Appellant and occupiers' rights, under Article 8 of the European Convention on Human Rights⁸ must be taken into consideration. A private and family life encompasses the need for Romany Gypsies to live in caravans in accordance with their culture and traditions. The Appellant has settled on the site with her core family as their home. This being so, dismissing the appeal would interfere with their Human Rights. This interference must be balanced against the wider public interest in pursuing the legitimate aims stated in Article 8.
29. There is lack of alternative sites though the Council aim to allocate land for travellers via the plan-making process soon. In any event, the Appellant has planning permission to reside at the site and her Human Rights are unaffected. Regarding her partner and adult children, no specific detail or circumstances has been presented explaining the need for a caravan site for these individuals. I have been asked not to evaluate the merits of varying condition 2) of the 2003 permission so as to name these individuals which, potentially, could address their immediate need for accommodation.
30. The Appellant is a Romany Gypsy and a person who has protected characteristic for the purposes of the Equality Act 2010. I have borne in mind the need to eliminate discrimination; advance equality or opportunity between persons who share a relevant protected characteristic and persons who do not share it and foster good relations between persons who share a relevant protected characteristic and persons who do not share it. I shall consider whether dismissal of the appeal would be proportionate in the light of any potential equality impacts in my overall conclusions.
31. Turning to the planning balance, having regard to all of the evidence presented, the granting of a new permanent planning permission for general gypsy occupancy would be harmful to the Green Belt by reason of inappropriateness. I attach substantial weight to this factor. The proposal would result in material loss of openness and conflict with at least one of the purposes served by the Green Belt, which is a serious planning objection. To this finding I attach substantial weight. I also attach considerable weight to my finding that the site's isolated and rural location is unsuitable for such a use in terms of access to local amenities and services.
32. On the other side of the scales, personal circumstances of the Appellant have changed but no specific circumstances of the other occupiers have been forthcoming. In any event, the Appellant has firmly asked me not to consider varying condition 2) by naming her adult children and partner as beneficiaries of a personal planning permission as she is contemplating general planning permission for gypsy occupancy.

⁸ The ECHR protections have been codified into UK law by the Human Rights Act 1998.

33. The various other matters advanced in support are in the process of being addressed via local plan-making. The possibility or even likelihood of Green Belt land release in future is a matter for that process. It is not a reason in the particular circumstances of this case to grant a permanent permission for general gypsy occupancy.
34. Any uncertainty about the level of need and figures for future plots will be scrutinised by the GTAA refresh and examined by the local plan Inspector. There is lack of alternative sites and demonstrable five-year supply of traveller sites and the scale of unmet need for additional pitches is significant.
35. The PPTS states that, subject to the best interests of the child, personal circumstances and unmet need are unlikely to clearly outweigh harm to the Green Belt and any other harm so as to establish very special circumstances. There are no children involved in this case.
36. Interference with the occupiers' Human Rights must be balanced against the public interest in upholding planning policy to protect the environment. The overall environmental harm to the Green Belt represents a serious planning objection to the nature of the proposal. There is a need for restrictive policies to be applied to such designated areas and this restriction is an appropriate proportional response to that need. I am therefore satisfied that this legitimate aim can only be safeguarded by dismissing this appeal and refusing planning permission. Dismissal of the appeal would be a proportionate response and would not lead to an unacceptable violation of the Appellant or occupiers' Human Rights, which thus carry only limited weight in support of planning permission.

Conclusion

37. In my planning judgement, the considerations put forward by the Appellant do not, individually or collectively, clearly outweigh the harm identified, in relation to the establishment of a permanent use of the land without complying with condition 2) of the 2003 permission. As a result, very special circumstances have not been shown to exist in this case. The appeal scheme therefore conflicts with LP policies GB1, GB2, CP1 and CP2, and national planning policy found in paragraphs 79 and 80 of the NPPF.
38. Having regard to all other matters, the appeal should not succeed.

A U Ghafoor

Inspector

APPEARANCES

FOR THE APPELLANT:

Brian Woods BA (TP) MRTPI WS Planning & Architecture

Ms N Bookerstein Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Mike Ovenden, MRTPI Consultant Principal Planning Officer, Brentwood
Borough Council (BBC)

Camilla James Senior Policy Officer, BBC

Jonathan Binks Graduate Planner Development Management,
BBC

DOCUMENTS HANDED IN AT THE HEARING

1. Letter of notification and those consulted by BBC.
2. Appeal ref: APP/U5930/A/11/2165445 by the Appellant.
3. Extract copy from BBC draft Local Plan 2013-2033 by the Appellant.
4. Extract copy from Essex Gypsy and Traveller Accommodation Assessment by BBC.
5. Deal Tree Health Centre/appointment letters by the Appellant.
6. Extract copy from BBC Local Development Framework.