
Appeal Decision

Hearing held on 11 October and 5 December 2016

Site visit made on 5 December 2016

by Louise Phillips MA (Cantab) MSc MRTPI

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

Decision date: 10 January 2017

Appeal Ref: APP/B1930/W/16/3150443

**Tullochside, Hemel Hempstead Road, Redbourn, St Albans,
Hertfordshire AL3 7AJ**

- 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 Cougar Construction Limited against the decision of St Albans City & District Council.
 - The application Ref 5/15/1529, dated 15 May 2015, was refused by notice dated 17 November 2015.
 - The development proposed is the change of use of the land to use as a seasonal caravan site (1 April - 31 October) for up to 13 gypsy families, with up to 26 touring caravans.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The Hearing opened on 11 October 2016, but was adjourned when it came to light that neither the Council nor interested parties had seen certain key documents. The hearing resumed on 5 December 2016 following a period of consultation. However, no additional comments were received.
3. The Council has submitted its St Albans City and District Strategic Local Plan 2011-2031 to the Secretary of State for independent examination. However, I have no information about the nature of any representations which might have been made in relation to this plan. Moreover, the Inspector appointed to examine the plan has advised the Council that it has not met the Duty to Cooperate (letter dated 28 November 2016). For these reasons, I give the emerging plan very little weight in my decision but I have regard to relevant policies insofar as they show the Council's preferred approach to gypsy and traveller site provision in the future.

Main Issues

4. The parties agree that the proposed development would constitute inappropriate development in the Green Belt for the purposes of the National Planning Policy Framework (the Framework) and the Planning Policy for Traveller Sites, August 2015 (PPTS). They further agree that by virtue of being inappropriate, the development would cause harm to the Green Belt which

should carry substantial weight in my decision. Thus the main issues for me to consider are:

- whether the proposed development would be used by gypsies and travellers as defined in Annex 1 of the PPTS;
- its effect upon the openness of the Green Belt and the character and appearance of the area; and
- whether the harm to the Green Belt by reason of inappropriate development, and any other harm, is clearly outweighed by other considerations, so as to amount to the very special circumstances necessary to justify the proposal.

Reasons

Introduction to the Proposal

5. Tullochside Farm is a large landholding comprising a dwellinghouse; a gypsy and traveller site with permanent planning permission for up to 20 caravans; some barns, storage areas and small buildings; and a couple of fenced grassed paddocks. The proposal subject to appeal would provide a seasonal caravan site for use by gypsies and travellers on the paddock to the immediate south of the permanent residential site. It would operate for seven months each year, from 1 April to 31 October. The parties referred to the proposal both as a 'seasonal' site and a 'transit' site and I have used the terms interchangeably in my decision.
6. The rationale for the proposal, as explained by the appellant, is that St Albans and nearby Hemel Hempstead are attractive places for gypsies and travellers to find employment during the summer months. They come from all over the country to seek mainly outdoor work, such as landscaping, gardening, property maintenance and tree cutting.
7. Each year, the appellant has people calling at his door wanting somewhere to stay and, when he has let them stay in the recent past, the Council has taken enforcement action. There are no other transit sites in St Albans District, and only one in Hertfordshire, at South Mimms in Hertsmere District, and this is said to often be full. The proposal would enable gypsies and travellers, including whole families, to travel to and stop in St Albans without recourse to unauthorised camping or overcrowding authorised sites. The visitors to the appeal site would most likely be friends or relatives of the appellant or other families on the permanent site, or be otherwise known to the appellant.

Whether the Proposed Development would be used by Gypsies & Travellers as defined in Annex 1 of the PPTS.

8. The definition of gypsies and travellers in the PPTS requires that a person must have, or at least have had, a nomadic habit of life. No detailed evidence is provided to demonstrate that the people who would use the appeal site would comply with this requirement, but the proposal is for a transit site and so the specific occupants are not yet known. It would therefore be very difficult to provide such evidence at the planning application stage.
9. Acknowledging this to be true, the parties agreed that the imposition of a suitable planning condition could provide the Council with a reasonable basis

for taking enforcement action should issues of non-conformity with the PPTS arise. Such a condition might require the keeping of a log of visitors to the site, indicating where they came from and why they were travelling etc. This information could be submitted to the Council at regular intervals, or be made available upon request. Whilst this process would not be failsafe, it would provide a pragmatic solution to a problem which would be common to many transit sites.

10. I therefore conclude that the use of conditions could ensure that the proposed development would not conflict with the PPTS in respect of who would occupy the site.

The effect of the Development upon the Openness of the Green Belt and the Character & Appearance of the Area

11. Tullochside Farm is on the B487 Hemel Hempstead Road, in the countryside between the built up areas of Redbourn and Hemel Hempstead. It is in the Green Belt, bordered to the north, south and west by open farmland. There is a hotel nearby to the east, and there are several other buildings in the vicinity, but these do not detract from the generally open and rural character of the area. Likewise, at Tullochside Farm, the majority of the existing development is away from the road and relatively well screened.
12. The appeal site itself has its southern boundary with the road. Mature trees, other vegetation and fencing screen it in longer views from both directions, but it can be clearly seen through the main site access. The paddock is marked by white post and rail fencing which does not lend it a particularly natural appearance, but together with the adjacent paddock to the east, it does contribute to the open character of the wider area.
13. The appeal scheme proposes thirteen gypsy and traveller pitches, which could accommodate a total of 26 touring caravans. The pitches would be arranged along three boundaries of the site, with additional tree/hedgerow planting envisaged along the driveway and in the centre of the paddock. No hard standing nor ancillary buildings or structures are proposed, but the caravans and associated/additional vehicles would themselves significantly diminish the openness of the site. I reach this view having observed the large number of vehicles present on the adjacent permanent site which is of a comparable scale.
14. Paragraph 79 of the Framework confirms that openness is one of the essential characteristics of Green Belts and so the loss of openness which would result from the proposed development would cause harm to the Green Belt. The harm would be fundamental, due to the physical presence of the development; and visual, in that the developed site would detract from, rather than contribute to, the characteristic openness of the surrounding environment¹. More generally, the 'domesticated' appearance of the development would contrast unfavourably with the rural character and appearance of the area.
15. Balanced against the above, the site would be closed for five months of the year and, in the absence of permanent buildings etc., it is reasonable to expect that it would return to an open state relatively easily at the end of each season. The physical effects of the development upon the openness of the Green Belt

¹ The Court of appeal in *John Turner v SSCLG and East Dorset Council* [2016] EWCA Civ 466 found that the concept of openness of the Green Belt could have a visual dimension (paragraph 16).

would thus be transitory, and this would moderate them to some extent. I share the Council's concerns that further development such as communal rooms and particularly hard standing might be requested in the future, but the appellant was confident that this should not be necessary. There is a surplus stable within the site which could be converted to toilets and showers; and the site would be closed should the weather render the field unsuitable for heavy vehicles. Thus there are reasonable alternatives to permanent development, and this would be a relevant factor in any future application for planning permission.

16. The visual effect of the development, in respect of openness and the broader rural character of the area, would be apparent to people using the Hemel Hempstead Road when the site was open. However, the harm would be limited to near views and, once established, the new trees and hedges proposed would limit these views further. In the medium term, therefore, the development would be relatively well screened from public vantage points.
17. Overall, I conclude that the proposed development would be harmful to the openness of the Green Belt and to the character and appearance of the area. Thus it would conflict with Policy 1 of the Local Plan, which requires new development in the Green Belt to integrate with the existing landscape; and with the principles in the Framework concerning the intrinsic character and beauty of the countryside (paragraph 17). However, in light of the mitigating factors I have described, neither of these harms adds significantly to that which arises from the inappropriate nature of the development in the Green Belt.

Whether the harm to the Green Belt by reason of inappropriate development, and any other harm, is clearly outweighed by other considerations, so as to amount to the very special circumstances necessary to justify the proposal.

18. Paragraphs 87 and 88 of the Framework state that inappropriate development is, by definition, harmful to the Green belt and should not be approved except in very special circumstances. Substantial weight should be given to any harm to the Green Belt, and very special circumstances will not exist unless the harm to the Green Belt, by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations.
19. The proposed development would be inappropriate development in the Green Belt and I have found that some additional harm to the Green Belt would result from a loss of openness. I have also found that some other harm would be caused to the character and appearance of the area. Against these factors, the appellant has advanced other considerations which potentially weigh in favour of the development. In summary, these are that there is an unmet need for the type of development proposed; there are no alternative sites; the Council has failed to address the problem through the development plan process; and that all of this leads to unauthorised camping and its associated social and environmental consequences. I address these matters below.
20. The Council's Gypsy, Traveller & Travelling Showpeople Accommodation Needs Assessment, August 2015 (GTANA) has identified a need for 79 additional permanent residential pitches to be provided in St Albans by 2031. 47 of these should be provided by 2019. There is no dispute between the parties that there is a need for permanent residential accommodation. Similarly there is no dispute that very limited progress has been made towards meeting this need;

or that the current development plan does not include specific policies to tackle the issue.

21. However, the proposal before me is for a transit site, and not a permanent residential site. It might provide some relief for people seeking permanent accommodation until alternative sites can be found, but it would not be a satisfactory substitute. Indeed the site would be closed during the winter months when families might most expect a settled home as they are more likely to be travelling in the summer. Consequently, this consideration carries little weight in my decision.
22. The GTANA has not identified a need for transit sites to be provided in St Albans (paragraph 8.80), a position which is disputed by the appellant. It reaches this conclusion on the basis that since 2012, the trend for unauthorised camping in the District has been very low (paragraph 8.78). The appellant informed me at the Hearing that unauthorised camping is a good indicator of a need for transit sites, particularly if there is a spike over the summer months.
23. The GTANA drew upon data from the DCLG Biannual Caravan Count as a source of evidence relating to unauthorised encampments. The appellant has also drawn my attention to the caravan count data for Welwyn Hatfield Borough, the adjoining authority to the east, to support his case that there is a local need for transit sites. On the day of the count in January 2014, on unauthorised (but tolerated) sites owned by gypsies and travellers, there were 9 caravans, and in July 2014, the number had risen to 22. The pattern was repeated in 2015, with the count recording 16 and 39 in January and July respectively (Appellant's Statement, Appendix 5).
24. These figures might suggest that gypsies and travellers wish to come to Welwyn Hatfield, particularly in the summer, but they do not demonstrate conclusively that there is a need for a transit site in St Albans. At the hearing, my attention was drawn to the same caravan count data for St Albans. On unauthorised (tolerated) traveller owned sites, there were no caravans in January 2014; 8 in July 2014; 9 in January 2015; and 7 in July 2015. These figures do not show a consistent summer peak and might well be indicative of the identified need for permanent accommodation in the District. I was also taken to the count data for Hertsmere and Dacorum districts, which border St Albans to the south-east and west. Hertsmere recorded 3 caravans on similar sites in January 2014 and 2015, but none in July, while Dacorum recorded none at any time.
25. The totality of the caravan count data presented to me does not demonstrate that there is a pressing need for a transit site in St. Albans. I further note that in all the districts to which I have referred, the incidence of unauthorised encampments on "not tolerated" sites owned by gypsies and travellers; and on land not owned by gypsies and travellers, whether tolerated or not, is much lower than the figures I have reported - most commonly zero.
26. I am mindful of the point that the caravan count can only provide a snapshot in time. However the GTANA states that the stakeholder engagement did not suggest that St Albans or nearby local authority areas have large numbers of unauthorised encampments (paragraph 8.78). This lends support to the view that the count data is broadly representative, and demonstrates that the GTANA is not wholly dependent on a single source of evidence. It does not identify whether there are gypsies and travellers in more distant parts of the

country wishing to visit St Albans, but it is difficult to see how such information could be collected and no specific alternative methodology was suggested. On balance, while the GTANA might have limitations, I do not consider that its conclusions in respect of transit provision are fundamentally flawed.

27. Notwithstanding the above, I have had regard to other evidence advanced by the appellant in support of a need for the appeal proposal. The Local Authority Gypsy/Traveller Sites in England Report published in July 2003 estimated that 2,000 - 2,500 transit sites or stopping places were required at that time to accommodate mobility (page 219, Document 1). Mobility remains a central tenet of national policy for gypsies and travellers as demonstrated by the PPTS requirement for nomadism (see first main issue above). However, the 2003 Report described the national situation some time ago; and the PPTS also applies nationally. Neither piece of evidence demonstrates that there is a need for a transit site in St Albans now.
28. In respect of more local evidence, I have an extract from the sub-regional South and West Hertfordshire GTANA 2005, which recommended the provision of 3 additional 10 plot transit sites to accommodate unauthorised encampments at that time. 25% of the unauthorised encampments recorded in the study area during the period 1998 – 2004 were in St Albans. I understand that the additional transit sites recommended in that report have not been developed, because the site at South Mimms in Hertsmere is the only one in the County. I give some weight to this evidence, not least because the latest St Albans GTAA continues to identify Hertfordshire as an attractive area for gypsies and travellers to find work (paragraph 6.31). However, it provides no compelling justification for a new transit site to be developed in St Albans now. I am not persuaded that this GTANA from 2005 should carry more weight than the Council's most recent one from 2015.
29. In respect of the news articles with which I have been provided concerning unauthorised camping in Dunstable (Document 3), I note that Dunstable is in Bedfordshire rather than Hertfordshire. I have no other information about the accommodation needs or travelling patterns of gypsies and travellers in Bedfordshire; or about whether additional accommodation is planned in the future. With the limited evidence I have, I cannot conclude that the appeal proposal is either necessary to, or would be successful in, addressing the particular problem identified in the news.
30. The appellant has presented his own account of people wishing to stop at the appeal site as evidence of a need for the proposed development. This, along with the planning and enforcement history of the site, does indicate that the development would serve a useful purpose for some gypsies and travellers. I give some weight to this in my decision. However, I have no detailed information about the people who have sought accommodation at the site; their reason for visiting Tullochside Farm; or the necessity for them to stop there. On this basis, I cannot give more weight to the appellant's individual experience than to the Council's objectively prepared study.
31. For the reasons above, the evidence before me does not establish that there is a need for the proposed development to alleviate existing inadequacies in provision. Consequently, the fact that the Council has not provided transit sites through the development plan process is not a relevant factor in my decision. Similarly, while the only alternative transit site in Hertfordshire is at

South Mimms some distance away, there is no significant evidence to suggest that this provision is inadequate or giving rise to problematic levels of unauthorised camping.

32. The appellant explained that the people wishing to stop at Tullochside Farm might travel with children and potentially seek to put them into local schools for the summer term. I am mindful of the need to consider the best interests of the child in any relevant planning decision. However, I cannot judge the best interests of any individual child because no specific details are in evidence. Moreover, there is nothing before me to suggest that any child who might stop at the appeal site has not travelled from an authorised site, even a permanent home; or that they have not left alternative schooling. Providing such information is understandably difficult in the context of an application for a transit site but, in its absence, this matter must be a generic consideration in the overall planning balance. I turn to this directly.
33. The proposed development would be inappropriate development in the Green Belt and it would compromise the openness of this part of the Green Belt for part of the year. As instructed by paragraph 88 of the Framework, I give the harm to the Green Belt substantial weight in my decision. The development would also cause some harm to the character and appearance of the area, and I give this some limited additional weight.
34. Balanced against these issues are the other considerations put forward by the appellant. I do not doubt that the proposed development would be useful to gypsies and travellers, particularly given that alternative formal transit provision in the locality is limited. In view of the Government's aim to facilitate their traditional and nomadic way of life (PPTS paragraph 3), I afford this some weight. Fundamentally however, I am not persuaded that the development is necessary to address or avoid any particular problem with unauthorised camping. These factors therefore carry very little weight in my decision and so, the other considerations to which I have had regard do not clearly outweigh the substantial harm which would be caused.
35. As explained above, I have considered matters relating to the best interests of the child; and, more broadly, I have reflected upon the rights conferred by the Human Rights Act. In the particular circumstances of this case, which dictate that the effects of my decision upon any individual can only be generically assessed, I am satisfied that a decision to dismiss the appeal would not be disproportionate. Similarly, having regard to the Public Sector Equality Duty, I am satisfied that such a decision would not breach the relevant requirements of the Equality Act 2010.
36. I therefore conclude that there are no very special circumstances that would justify the proposed development. It would thus conflict with Policy 1 of the Local Plan and with paragraphs 87-88 of the Framework.
37. The possibility of granting planning permission for a temporary period was discussed at the hearing. However, while the harm to the Green Belt and to the character and appearance of the area would be short-lived, the overall balance of harms against other considerations would not change. On the basis of the evidence before me, and the conclusions I have reached, the considerations in favour of the development would be insufficient to outweigh the harm even for a temporary period.

Other Matters

38. In reaching my decision, I have had regard to the other concerns raised by the Council in respect of the location of the site relative to local services and facilities; and that the proposal is for more caravans to be stationed on the site than is recommended in emerging guidance. However, given my findings in relation to the main issues of the appeal, my decision does not turn on these matters.

Conclusion

39. For the reasons above, the proposal would not accord with the development plan and there are no other considerations to indicate that a contrary decision should be taken. I therefore conclude that the appeal should be dismissed.

Louise Phillips

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr P Brown	Agent, Philip Brown Associates Limited
Mr N Stanley	Appellant
Mr M Willers	Of Queen's Counsel, Garden Court Chambers

FOR THE LOCAL PLANNING AUTHORITY:

Mr N Ozier	Representing St Albans City & District Council, Aitchison Raffety
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DOCUMENTS

- 1.** Local Authority Gypsy/Traveller Sites in England (Extract), ODPM, July 2003.
- 2.** An Assessment of the Accommodation Needs of Gypsies and Travellers in South and West Hertfordshire (Executive Summary), April 2005.
- 3.** News Pages showing Unauthorised Encampments in Dunstable.
- 4.** Letter and map from N Ozier clarifying transit provision, 31 October 2016.
- 5.** Services for the Gypsy and Local Communities, Hertfordshire County Council, April 2009.