
Appeal Decision

Site visit made on 26 April 2016

by Jonathon Parsons MSc BSc (Hons) DipTP Cert(Urb) MRTPI

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

Decision date: 23 May 2017

Appeal Ref: APP/K0425/W/15/3141439

Land adjacent to Nash Lee Road, Nash Lee Road, Terrick, Buckinghamshire HP17 0TQ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mr William Stokes & Alwyn Smith against Wycombe District Council.
 - The application Ref 15/06446/FUL, is dated 28 May 2015.
 - The development proposed is "the change of use of land to a residential caravan site, for two Gypsy families. The site is to contain two static caravans, two touring caravans, parking for four vehicles with associated hardstanding and water treatment plant."
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Decision

1. The appeal is dismissed and planning permission is refused.

Procedural Matters

2. The Council has indicated that, had it been in position to do so, it would have refused the application for two reasons. Firstly, the proposed development would be inappropriate in the Green Belt, be detrimental to the openness of the Green Belt and that very special circumstances do not arise to justify this development. Secondly, the removal of hedgerow for access visibility would have a significant adverse impact on the visual amenities of this rural area and the surrounding landscape and as such would have a detrimental impact on the special character, appearance and enjoyment of the Chilterns Area of Outstanding Natural Beauty (AONB).
 3. During the appeal process, parties were given an opportunity to consider whether a hearing would be the best way forward to consider the personal circumstances of the Appellants. Both parties stated their wish to continue with a written representation appeal. Nevertheless, further information was sought on personal circumstances from the Appellants and the comments of the Council on this further information. I shall return later to this in my decision.
 4. The appeal documentation indicates that the Appellants and their families meet the definition of gypsies and travellers in Annex 1 of Planning Policy for Traveller Sites (PPTS) 2015 which the Council has not disputed. I see no reason to disagree and shall proceed on the basis that the Appellants and their families have gypsy status.
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Main Issues

5. The appeal site lies within the Green Belt. The National Planning Policy Framework (the Framework)¹ and Planning Policy for Traveller Sites (PPTS) establish that traveller sites whether permanent or temporary, are inappropriate development in the Green Belt. Therefore, the main issues are the effect of the proposal on:
- the openness of the Green Belt;
 - the character and appearance of the Chilterns AONB; and
 - whether the harm arising from inappropriateness and any other harm, would be clearly outweighed by other considerations, including the general need for, and provision of sites, the availability of alternatives, and the personal circumstances of the Appellants and their families, so as to amount to the very special circumstances necessary to justify it.

Reasons

Openness of the Green Belt

6. Openness is an essential characteristic of the Green Belt. The introduction of static caravans, touring caravans, hardstanding for the parking of vehicles and associated domestic paraphernalia would all serve to reduce the openness of this part of the Green Belt. The loss of this openness would be apparent from public views of the site, particularly from the public footpath to the south.
7. This reduction in openness would be harmful to the Green Belt and would conflict with a Framework aim of keeping land permanently open and an identified purpose of the Green Belt to assist in safeguarding the countryside from encroachment. For all these reasons, the development would also conflict with Policy GB2 of the Wycombe District Local Plan (LP) to 2011 (as altered) 2004 which amongst other matters, states that development must retain the open character of the Green Belt.
8. If planning permission was granted on a temporary basis, it would follow that the harm caused by the proposal would be finite and there would be no threat to the openness of the Green Belt in perpetuity. However there would still be a loss of openness and consequent harm to the Green Belt, albeit for a limited period. I shall return to this aspect of the proposal later in the decision.

Character and appearance

9. The Wycombe District Landscape Character Assessment (LCA) 2011 indicates the appeal site is within an area of Landscape Character Type called "Chalk Foothills, Princes Risborough". The LCA identifies hedgerows with trees as one of the landscape sensitivities of this character type and the landscape guidelines require the conserving and enhancing of the hedgerow network. In the vicinity of the appeal site, hedgerows are a feature of the area and there is a substantial hedgerow alongside the road boundary of the appeal site.
10. The County Council highway authority has advised that a visibility splay of 2.4m deep by 160m wide, in either direction, is required to provide adequate visibility for the type and speed of traffic on the road. No topographical survey

¹ Paragraph 87.

has been submitted to assess the extent of hedgerows and trees. However, as I saw on my site visit, the hedgerow was set back from the edge of the main carriageway especially in the vicinity of the proposed access. Therefore it is likely that the required visibility splay would not necessitate the hedgerow's removal, or any significant cutting back of it. The exception to this was a small tree close to the roadside when looking out from the access point in an easterly direction. However even if this tree was lost, the hedgerow would retain its substantial size and presence.

11. Turning to the visual impact of the proposed development, the existing hedgerow would provide substantial screening to the development from the road. To the rear of the site, there is a public footpath passing across a neighbouring field which is approximately 125m distant from the site at its closest point. The development would be visible due to the openness of the site from the public footpath. Such views would be seen against the backdrop of the roadside hedgerow, overhead electrical pylons crossing the field and the buildings and the dwelling of the neighbouring property at Craycraft.
12. The Framework states that great weight should be given to conserving landscape and scenic beauty in Areas of Outstanding Natural Beauty. Landscaping is proposed along this exposed field boundary of the site and the Council has also indicated that the caravans could be finished in a dark colour to be more visually assimilated in the countryside. On this basis, the Council has not raised any objections.
13. However, even taking into account these factors, the site would be largely open and exposed with the development having an urbanising impact which would appear visually intrusive in this largely rural location. Whilst planting could provide some screening, this would be likely to take some time to be successful given the length of open boundary visible from the public footpath. Even when established successfully, there can be no guarantee that that this vegetation would remain for the lifetime of development. Over time, vegetation need to be removed and replaced for any number of reasons, such as die-back or disease, and replacement planting inevitably takes time to establish.
14. The route of the HS2 high speed rail line and associated works would be located some distance to the east of Craycraft and so would not unduly change the character of this particular part of the AONB and the Green Belt.
15. For these reasons, I conclude that there would be harm to the landscape and scenic beauty of Chilterns Area of Outstanding Natural Beauty, which landscaping would not address. Accordingly, the proposal would conflict with Policy L1 of the LP and Policies CS17 and CS19 of the Wycombe Development Framework Adopted Core Strategy Development Plan Document 2008, which collectively and amongst other matters, sets out that development should be of the highest quality, the Council's duty to conserve and enhance the Chilterns AONB and that quality places, reinforcing locally distinctive qualities, should be created.

Other considerations

16. The most recent Gypsy and Traveller Accommodation Assessment (GTAA) 2014 is an update of an initial study carried out in 2013. The GTAA sets out a net requirement of 21 pitches for 2013-2028. The Council's Wycombe Monitoring Report December 2015 records the delivery of 13 pitches from 2013-mid 2015

which results in a net requirement of 5 pitches for the period 2015-2020. The Council has four applications being considered for additional pitches. However, even if these schemes were permitted, I have no information before me of their deliverability.

17. On this basis, there is an unmet need and an absence of a five year land supply of gypsy and traveller sites. The present proposal would contribute to unmet need and this would weigh in favour of the proposal. However, the PPTS states that the absence of a five year supply of deliverable sites is not a significant material consideration in appeals in Green Belts locations. I shall now turn to the personal circumstances of the Appellants and the availability of alternatives.
18. The Stokes family are Irish travellers whilst the Smith family are Romani Chai travellers. The families travel for work, to fairs, markets and horse fairs and cultural events throughout the year. They have spent much of their time travelling without the benefit of a secure base, pitching up on land, the roadside and wherever else they can stop. A settled base would allow the Appellants to continue their way of work and cultural way of life.
19. In a response to a request on personal circumstances, it is indicated that the Stokes family have 5 children of school age whilst the Smith family have 3 children of school age, 1 child at pre-school and another child due. The children are not currently at school and the County Council no longer provides bespoke education services for gypsies and travellers. The families do not have a settled base and consequently, they are not in a position from which to register for schools. In this regard, a permanent High Court injunction has been granted on the site preventing the development of the land for residential purposes.
20. The Appellants have indicated that gypsy and travellers have a lower life expectancy than those in the settled community, a contributory factor being a lack of continuity of health care. In so far as has been referred to in the Appellant's statements, the submitted documents² confirm problems of poor educational attainment, health problems and disadvantage associated with the gypsy and traveller community. The Oxfordshire and Buckinghamshire Gypsy and Traveller Service has confirmed, as of 22 March 2016, that there are no vacant pitches on any public sites. The Council has also confirmed that it is unaware of any vacant pitches on existing sites at present, although further work as part of a new Local Plan is to be undertaken on this. Both the Appellants and their families are homeless and consequently, there is a lack of alternatives for them.
21. I acknowledge that the families do not have any connection to the area and there is no evidence of the Appellants actively considering nearby schooling. The children do not have any special education needs and despite a request, it is unclear how their education is being provided at present. Nevertheless, achieving a safe and secure home base would provide the opportunity for the families to enjoy continuity in schooling and healthcare. A settled base would

² a) England's most disadvantaged groups: Gypsies, Travellers and Roma, An Is England fairer ? review spotlight report (1 of 4) Equality and Human rights Commission 2016, b) Human Rights Comment, Travellers – Time to counter deep-rooted hostility 04/02/2016, Commissioner for Human rights, Council for Europe, c) Mission Report to Greater London, UK, 21-24 April 2009, Advisory Group on Forced Evictions, d) General Recommendation No 27: Discrimination against Roma 08/16/200, The Committee on the Elimination of Racial Discrimination, Gen. Rec. no. 27., Office of United Nations High Commissioner for Human Rights, Geneva, Switzerland.

also be in the best interests of the children in terms of their general welfare and life chances. On the basis of the information submitted, I attach significant weight to the personal circumstances for the Appellants.

22. Additionally, dismissing the appeal would result in the loss of a potential opportunity to provide a site that could be used as a home. Given the absence of alternative accommodation, there would be a serious interference with the occupiers' rights to respect for private and family life, and home under Article 8 of the Human Rights Act. The families are also persons with a protected characteristic under the Public Sector Equality Duty (PSED) and dismissal of the appeal would limit their opportunities for a home and thus have a negative impact on equality. Such considerations carry significant weight.
23. Turning to the failure of policy, there are no allocations within any policy documents before me to meet the identified need for traveller pitches but the Council has made efforts to address need through the granting of planning permissions as identified in its Monitoring report. On this basis, I attach only limited weight to this consideration.
24. My attention has been drawn to an appeal decision³ in Sittingbourne in Kent and a proposal at Sanfoin Farm, Gatemoor Lane near High Wycombe. Although both sites were located in the AONB, the proposal before me is additionally sited in a Green Belt and so can be distinguished from these proposals. In any case, every proposal has to be considered on its own planning merits. HS2 is proposed to be routed through the Green Belt but there has been no changes to its status, including changes to its boundaries. Therefore local and national policy on Green Belts and the weight to be attached to Green Belt harm is still relevant.
25. Reference has been made to *Suffolk Coastal District Council v Hopkins Ltd* [2016] EWCA Civ 168 and *Cheshire East BC v SSCLG & Renew Land* [2016] EWDC 592. It is indicated that the Council's policies are not up to date because it does not have a five year housing supply. Although the legal judgements have been superseded by a Supreme Court judgement, the Written Ministerial Statement of 22 July 2015 states that travellers cannot rely on the lack of a five year supply of deliverable housing sites under the Framework to show that relevant policies are not up to date.
26. The basis of the support for the proposal from the residents of Craycraft has not been detailed but the considerations weighing in favour of the proposal, as set out above, have been individually assessed in this decision.

Conclusion

27. The PPTS sets out that inappropriate development is harmful to the Green Belt and should not be approved, except in very special circumstances.
28. The development would result in a loss of openness to the Green Belt and conflict with a Framework purpose of keeping land permanently open. Although the loss of openness would be small, the Framework establishes that substantial weight should be given to any harm to the Green Belt. The development would also result in harm to the landscape and scenic beauty of the Chilterns AONB. The Framework establishes that great weight should be given to conserving landscape and scenic beauty in such areas.

³ APP/V2255/A/14/2222135.

29. Considerations weighing in favour of the proposal are unmet need, the absence of a five year supply of deliverable sites, personal circumstances, including lack of alternatives, and the failure of policy. However the absence of a five year supply carries little weight, whilst the failure of policy carries only limited weight. The PPTS states that subject to the best interests of children, personal circumstances and unmet need are unlikely to clearly outweigh harm and any other harm so as to establish very special circumstances. I accord significant weight to the family requirements in terms of the provision of a settled base which would afford healthcare and educational opportunities, and welfare benefits. Significant weight is also given to the considerations under the Human Rights Act and the negative impact having regard to the PSED as set out above. However, Article 8 of the Human Rights Act is a qualified right and interference may be justified where it is in the public interest; the concept of proportionality is crucial. Furthermore, it does not follow from the PSED that the appeal should succeed.
30. The PPTS states that subject to the best interests of children, personal circumstances and unmet need are unlikely to clearly outweigh harm to the Green Belt and any other harm so as to establish special circumstances.
31. As set out above, substantial weight must be given to the harm to the Green Belt and great weight to the harm to the AONB. Consequently, the other considerations put forward in this case, even when taken together, do not clearly outweigh the harm to the Green Belt by reason of inappropriateness and harm to the AONB I have identified so as to amount to very special circumstances needed to justify the proposal. Therefore, a permanent permission is not justified.
32. I have considered a temporary planning permission as an alternative. The actual consequences of the development would be short term and therefore the identified harm to the Green Belt and the AONB would be temporary in nature due to the time limited duration of the proposal being in place. However, even for a temporary period of time, the considerations of unmet need, absence of the five year supply of deliverable sites, personal circumstances and failure of policy, given local and national policy, along with those of Human Rights and PSED would not be so weighty as to clearly outweigh the harms that I have identified. Therefore, very special circumstances do not exist where a temporary planning permission is considered.
33. As a consequence of dismissing this appeal, both families would be likely to continue their roadside existence. The outcome of this would result in a serious interference with their human rights. However, for the reasons given above, I consider that the legitimate aims of protecting the Green Belt and conserving the landscape and scenic beauty of the AONB can only be safeguarded by restricting the use of the appeal site. The protection of the public interest cannot be achieved by means which are less interfering of the rights of the Appellants and their families and the interference would be proportionate.
34. Conflict with the development plan has been identified and the proposal would not therefore constitute sustainable development.

35. For the reasons given and having regard to all other matters raised, I conclude that the appeal should be dismissed and planning permission is refused.

Jonathon Parsons

INSPECTOR