
Appeal Decision

Hearing Held on 25 April 2018

Site visit made on 25 April 2018

by David Murray BA (Hons) DMS MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23rd May 2018

Appeal Ref: APP/W3710/W/17/3181561

Land to the north of 159 Coventry Road, Bulkington, CV12 9NB.

- 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 Mrs D Dawn Smith against the decision of Nuneaton and Bedworth Council.
 - The application Ref. 034843, dated 9 May 2017, was refused by notice dated 4 July 2017.
 - The development proposed is the continued use of land for the residential purposes of 1 gypsy pitch comprising a dayroom and the siting of caravans, together with the retention of ancillary hardstanding and boundary fences.
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Decision

1. The appeal is allowed and planning permission is granted for a limited period for the continued use of land for the residential purposes of 1 gypsy pitch comprising a dayroom and the siting of caravans, together with the retention of ancillary hardstanding and boundary fences at Land to the north of 159 Coventry Road, Bulkington, CV12 9NB, in accordance with the terms of the application, Ref. 034843, dated 9 May 2017, and the plans submitted with it, subject to the conditions set out in the attached schedule.

Preliminary matters

2. At the start of the Hearing I raised the issue that the planning application forms state that the proposed use as a gypsy pitch would involve the siting of caravans, that is more than one, and it is generally regarded that a gypsy or traveller pitch comprises a static and a touring caravan. However, the note set out on the submitted block plan says 'there is to be no touring caravan stored on the site' as well as indicating the position of the single proposed mobile home. The appellant's agent, Mrs Overton, said this restriction on placing any touring caravan on the site as part of the proposal was formally put forward in order to overcome the expressed concern of the highway authority and I have considered the appeal on this basis.

Main Issues

3. The main issues are:
 - Whether the proposal accords with the development plan and national policy;

- The effect on the openness of the Green Belt and the character and appearance of the area;
- The need for gypsy and traveller sites locally and whether the Council can demonstrate a 5 year supply of deliverable new sites;
- The availability and suitability of alternative sites;
- The intended occupier family's personal circumstances including the best interests of children; and
- Whether the harm caused by being inappropriate development in the Green Belt, together with any other harm, is clearly outweighed by other considerations so as to constitute very special circumstances.

Reasons

Background

4. The appeal site comprises a rectangular plot of land which lies alongside No.159 Coventry road, a semi-detached property which lies on the end of a short ribbon of housing in a generally rural location. The surrounding area of countryside extending to the south-west of the village of Bulkington is designated as Green Belt and the administrative boundary of the borough lies a short distance to the south-west of the appeal site.
5. The appeal site is served off an access to an adjoining field and the access to Coventry Road is said to be long standing. Further, the Council said that the gravel surface recently laid down to part of the access has been accepted as 'permitted development'¹. At the time of my visit there were two caravans on the appeal site. A mobile home in the position shown on the submitted Block Plan at the south-eastern end of the site and a touring caravan said to be occupied by the appellant's parents who were helping the family out during Mrs Smith's pregnancy and the arrival of their second child. There were various forms of children's play equipment and the site is enclosed by a wooden fence of varying heights and the land is surfaced with gravel. I am advised that the foul drainage from the caravans is connected to the main sewer.

Policy context

6. The development plan includes saved policies in the Nuneaton and Bedworth Local Plan 2006 (NBLP). While this plan predates the National Planning Policy Framework (the Framework) relevant policies can be given weight depending on their degree of accord with the Framework. I will consider this as the policy arises with the main issues. The Council is also preparing a new local plan and the Nuneaton and Bedworth Borough Plan (NBBP) Publication version was issued in 2017 following public consultation. The Council expects the NBBP to be submitted for examination later in 2018. The parties agree that only limited weight can be given to the emerging plan at this stage and I concur. The Council is also preparing a Gypsy and Traveller Development Plan Document (GTDPD) to set out proposals for appropriate sites and there has been a recent 'call for sites'. Following the statutory consultation and examination process the Council hopes that the plan will be adopted in 2020.

¹ As set out in the Town and Country Planning (General Permitted Development) (England), Order 2015.

Accord with the development plan and national policy

7. The appellant accepts that the development proposed, which involves both a change of use and operational development with the erection of a permanent building, constitutes 'inappropriate development' which would be harmful to the Green Belt, as set out in paragraphs 87-90 of the Framework and should not be permitted except in very special circumstances. Further, substantial weight must be given to any harm to the Green Belt.
8. In relation to the development plan, the principle of the formation of gypsy/traveller sites in this area of countryside clearly conflicts with saved policy Env1 which states that, normally, development in the Green Belt will be restricted to very limited and specific forms of development, which do not include the appeal proposal. These limitations are broadly consistent with the terms in paragraph 89 of the Framework and so the development plan policy should be afforded significant weight.
9. The specific policy on traveller sites, Policy H13, sets out criteria for acceptable sites and while the Council accepts that parts (a), (d), (e), (f), and (g) of the policy are met, criteria (b) indicates that such sites will not normally be appropriate in the GB. This broadly accords with the Framework and the Planning Policy for Traveller Sites (PPTS). Criteria (c) of the policy relates to the local environmental impact which I will consider under the second issue.
10. In terms of the emerging plan, there is a conflict with DS7 over the location of the development in the Green Belt. Although the Council recognises that some of the wider housing and employment land pressures will have to be resolved by removing some land from the Green Belt, as advanced in policy DS7, this strategy does not include any proposal in the NBBP to remove land from the Green Belt specifically for gypsy and traveller site development. Nevertheless, Green Belt location aside, Mrs Hill for the Council accepted that the proposal as it stands does not conflict with the provisions of emerging policy H3 concerning criteria for considering suitable sites for gypsy and travellers.
11. Overall on this issue, I conclude that the principle of the location of the development proposed does not accord with the development plan or national guidance as it would involve 'inappropriate development' in the Green Belt, but this aspect aside, the general location of the site accords with the criteria in emerging policy on the location of gypsy and traveller sites, subject to the local impact, but only limited weight can be placed on this emerging policy at this stage.

Effect on the openness and character of the Green Belt

12. One of the fundamental purposes of Green Belt designation is to prevent urban sprawl by keeping land permanently open. The courts have held that the concept of openness involves both a spatial and a visual dimension.
13. I understand that the lawful use of the appeal site is as part of an open field used for grazing. While the proposal involves a change of use of land, the presence of a residential caravan and the associated paraphernalia, together with the construction of the dayroom would have a material effect on the openness of the Green Belt. In particular there would be a loss of space in the open gap between the embankment of the railway line that runs to the north-east of the site and the short ribbon of houses that lie adjacent to it. Further, in

visual terms, while the house at No.159 screens views from Coventry Road to the south-west, there are views of the site from the public realm of the road to the east and the presence of the roadside hedge cannot be relied on to screen the proposed development in perpetuity. At my site visit I noted that the boundary fence that has been erected around the site and the mobile home are quite visible from the highway from around the vicinity of the access and this spread of development would also be added to by the erection of the proposed dayroom which would have a roof ridge over 3.5m high.

14. In terms of the general character of the area, the present group of semi-detached properties is a small ribbon of development in the open rural gap between Bulkington and the M6 and the outskirts of Coventry. Although public views of the appeal site are relatively limited as I have described above, the form of the use proposed, with a single storey mobile home and dayroom, would appear visually awkward and out of place when seen against the two storey form and end gable of the adjoining house. Further, the houses have their main building bulk close to and fronting the road with mostly open gardens to the rear with occasional minor outbuildings. Whereas the appeal proposal would be quite different in that the proposal would result in development in depth extending well away from the road and with an extensive site coverage of the dayroom, parking area and mobile home on a mainly gravel surface.
15. Overall I find that the proposal would result in moderate visual and spatial harm to the openness of the Green Belt and moderate harm to the character and appearance of the area. In addition to the conflict with the policies mentioned above, this harm also results in conflict with part (c) of Policy H13 as it would not have an acceptable impact on the environmental quality of the surrounding area.

The need for and supply of gypsy and traveller sites and alternative sites available

16. The Council's Gypsy, Traveller and Travelling Showpeople Accommodation Assessment (GTAA) 2016 appears to show that the Council have a surplus of three pitches in the short term but will require a further 22 pitches for the period 2021-2031. However, as a result of a more recent appeal decision², the Council accepts that this GTAA study is flawed and should not be relied on. The Council accepts that at the moment there is an unmet need for gypsy and traveller sites in the Borough and that at the moment the Council cannot demonstrate a five year supply of sites in accordance with the requirements of the PPTS. Further the Council recognises that it is unlikely to be in a position to allocate land positively for such gypsy and traveller sites to meet the unmet need until the emerging plan/DPD has been adopted, probably in 2020 at the earliest. This policy vacuum amounts to a failure of policy which must be given significant weight.
17. The availability of alternative sites that are available to the appellants was discussed at the hearing. Neither the Council nor other parties present were aware of any alternative authorised sites locally which the appellant and her family could turn to. The Council agreed that the planning permissions that had been granted tended to be for private pitches applied for by the occupiers themselves and it was unlikely that such sites would be available to the appellant or would welcome other occupiers. The appellant said that while she

² APP/W3710/16/3153818)

had other family in the area, their sites were overcrowded and not able to provide the site of accommodation she and her young family needed.

18. On the basis of the evidence given at the Hearing I have no reason to doubt the appellant's assertion that if the appeal is dismissed she and her family would have to live on the roadside as there is no other authorised site available in the wider area at the moment.

Gypsy status and personal circumstances

19. Dealing first with Gypsy status, while the Council accepts the appellant's status as a gypsy, some of the representations made by local people question the family's nomadic habit of life. The appellant said that she and her partner regard themselves as gypsies and have followed a traditional gypsy way of life. In the past she had travelled to fairs to buy and sell goods but she had not travelled much recently because of the health needs of her first child and more recent problems in pregnancy. Nevertheless her partner still travels the country for work. The meaning of 'gypsies and travellers' put forward in Annex 1 to the PPTS includes people who have ceased to travel temporarily because of individual educational and health needs. From the evidence out forward it appears to me that the appellant and family have not ceased to travel on a permanent basis.
20. In terms of the children living on site, the educational needs of the older child were put forward with the planning application. Since then the appellant has experienced health difficulties with pregnancy and childbirth as described in the updated statement from the Mrs Overton. In verification of this I noted the Discharge Summary Note from the George Elliot Hospital in Nuneaton I dated 5 April 2018.
21. On this evidence it is clear to me that it would be in the best interests of the baby and Mrs Smith to have a settled base from where the family can have continuity in treatment and regular and necessary health care, together with stability in education for the older child.

Other considerations

22. Aside from the Council's reason for refusing planning permission, other considerations were raised at the hearing by local people. Photographic evidence of flooding in the vicinity of the appeal site was submitted in representations. The actual land involved appears to be nearer the railway bridge and may have been caused by blocked drains/ditches at the side of the road. Mrs Overton produced an extract from the Environment Agency Flood Map which shows that the actual appeal site is not within a known area at risk of flooding. Nor does any evidence show that the proposal on the appeal site would increase the risk of flooding elsewhere. This aspect is therefore not a material concern.
23. In terms of highway matters, it is agreed between the main parties that the proposal would not materially harm highway safety. I noted at my visit that Coventry Road in the vicinity of the appeal site is relatively straight and there is reasonable visibility in both directions at the existing access. Therefore there is no clear evidence against the proposal on highway grounds.
24. Finally, local people also refer to the number of gypsy and traveller sites in the vicinity of the appeal site including in the neighbouring Rugby Borough Council

area. The Council officers said that not all of the sites are lawful but the Council did not have information on the legal status of the sites in the adjoining borough.

25. The guidance in paragraph 25 of the PPTS indicates that in rural areas, planning authorities should ensure that the scale of gypsy and traveller sites do not dominate the settled community and avoid placing undue pressure on local infrastructure. In this case, at my site visit I noted the presence of what appeared to be gypsy and traveller sites along part of Coventry Road and mostly to the south-west of the appeal site. In the rural area between the railway line and the administrative boundary it did not appear to me that visually the appeal site proposal and any other lawful traveller sites dominate the appearance of the area, nor is there evidence of particular local infrastructure being dominated. Further, the oral evidence given by local people suggested to me anti-social behaviour associated with a very small number of particular individuals rather than being systemic in the gypsy and traveller community. I therefore find that the proposal would not result in a scale of development the cumulative effect of which would dominate the local settled community.

Planning balance and whether very special circumstances apply

26. At the start of considering the key elements in the planning balance I have borne in mind the requirements of the Public Sector Equality Duty and have considered the best interests of the appellant's children as a primary consideration.
27. Bringing together my conclusions on the main issues, I have found that the development proposed would constitute inappropriate development in the Green Belt and such development would conflict with the stated policy in the Framework and the development plan as detailed in saved Policy H13. Although there is less conflict with the provision of the emerging local plan only limited weight can be placed on its provisions at this early stage in the plan making process. I have also found that the proposal would cause moderate harm to the openness of the Green Belt and to the general character and appearance of this area of countryside. Substantial weight has to be given to this harm and by reason of inappropriateness and these aspects are significant factors against the proposal.
28. However, they have to be balanced with the position that the Council accept there is an unmet need for gypsy and traveller sites in this area at the moment and that the Council cannot demonstrate an adequate supply of sites now to meet the requirements of the PPTS. Further, it is unlikely that sites will come forwards through the development plan process until at least 2020 at the earliest.
29. This state contributes to a position where there are no alternative sites available for the appellant and her family to turn to if the appeal is dismissed and she and her family are likely to be faced with having to live on the roadside or the family would be homeless. This is a factor which attracts significant weight.
30. Coupled with these circumstances are the health needs of the appellant herself and her baby. I am satisfied that these needs are best met by having a settled base where they can continue to have appropriate medical care and treatment.

In particular, the best interests of the baby would be served by having continuity of access to medical practitioners and facilities, which would be unlikely to be similarly available to the family if living an itinerate life on the roadside.

31. Overall, the factors against the proposed development indicate that planning permission should not be granted on a permanent basis. However, the factors in favour of the development provide a clear justification for a limited period permission of three years to enable the Council consider how best to make provision for the needs of gypsies and travellers generally in the medium term. Such a temporary permission is also justified on personal grounds and having regard to the best interest of the children.
32. Whilst I have had regard to the national guidance in the PPTS and the Framework, in the final balance I find that the harm to the Green Belt in the short term is clearly outweighed by the other considerations and very exceptional circumstances have been demonstrated. I will therefore allow the appeal in the terms I have set out above.
33. Although the proposal involves the change of use of land, operational development is also proposed with the construction of the dayroom. Such building work is at odds with a temporary permission but it is for the appellant to judge whether such work is worthwhile given the limited period permission. As the mobile home presently on site is said to be connected to mains drainage it may not be necessary in the short term to construct the day room.
34. In relation to Human Rights, although a temporary permission would represent an interference with the rights of the appellant to have a home on this land in the long term, such rights are qualified rights and have to be balanced with other considerations. The conclusion I have reached in favour of a limited period permission strikes a reasonable balance between the aims of national and local policy to protect land identified as having a special open character and purpose, which is desirable to protect in the public interest, and the rights of the appellant and her family, and the decision is therefore proportionate.

Conditions

35. The Council recommends that 8 conditions be imposed if planning permission is to be granted and I will consider these under the same numbering. In the interests of clarity and certainty, the plans that form part of the permission should be specified and the development must be undertaken in accordance with them (No.1). As I have placed significant weight on the personal circumstances involved, the permission should only ensure for the benefit of the appellant and her immediate family and dependents. Therefore, I will impose condition No.2. Further, as only a limited period permission is justified because of the long term harm to the Green Belt, I will impose condition No.3 to ensure that the use ceases and all building and structures are removed from the site at the end of this 3 year period. Condition No.4 is reasonable and necessary as it limits the nature of the development to that put forward by the appellant and an increase in the number of caravans involved would be likely to increase the visual harm to the openness of the Green Belt.
36. Recommended condition No. 5 (as modified at the Hearing) seeks further details and/or a scheme for drainage and landscaping, however, I do not consider that these further details are necessary as I am satisfied that foul

drainage can be disposed off to the mains sewer. Neither is landscaping required as the permitted use and work is only for a short term period. Likewise the maintenance scheme required by condition No.5 is not necessary. I will therefore not impose conditions 5 and 6. Finally, I will impose conditions 7 and 8 as these restrictions are necessary in order to limit the nature of the use and its potential impact on the area.

Conclusions

37. For the reasons given above I conclude that the appeal should be allowed on a limited period basis.

David Murray

INSPECTOR

Schedule of conditions

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans: 1:1250 Location plan; - 1:200 site layout with roof plan and elevations of dayroom - drawing 17-124-01; Supplementary Annotated Site Layout Plan submitted 21 June 2017.
- 2) This permission shall only enure for the benefit of the appellant and her immediate family. The occupation of the site shall be carried on only by the following: Dora Dawn Smith, Jonathon Smith (and their resident dependant children), and shall be for a limited period of three years from the date of this decision, or the period during which the premises are occupied by them, whichever is the shorter.
- 3) When the site ceases to be occupied by those named in condition 2 above, or at the end of three years, whichever shall occur first, the use hereby permitted shall cease and all caravans, buildings (including the dayroom), structures, materials and equipment brought onto the land, or works undertaken on it, shall be removed and the land restored to its original condition before the development took place.
- 4) No more than one static caravan, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 as amended, shall be stationed on the site at any time.
- 5) No vehicle over 3.5 tonnes shall be stationed, parked or stored on this site.
- 6) No commercial activities shall take place on the land, including the storage of materials.

APPEARANCES

FOR THE APPELLANT:

Mrs E Overton, MRTPI Planning Consultant, ReSolve Planning.

Mrs D D Smith Appellant

Mr R Smith Appellant's father

FOR THE LOCAL PLANNING AUTHORITY:

Mrs C Hill, MRTPI Principal Planning Officer, Nuneaton and
Bedworth Borough Council.

Mr P Jeffery Planning Enforcement Officer, Nuneaton and
Bedworth Borough Council.

INTERESTED PERSONS:

Cllr. R Smith	Local councillor
Mr and Mrs Heatley	The following are all local residents
J Mohamed	
J Mohamed	
V Bradley	
V Brindley	
P and K Bates	

DOCUMENTS HANDED IN AT THE HEARING

- 1 Copy/extract of Environment Agency Flood Map - (EO)
- 2 Copy of Nuneaton and Bedworth Green Belt map (EO).
- 3 Extract from O/S plan showing borough boundary and gypsy
 /traveller sites close by as presented to a previous Inquiry (Mr
 Bates).
- 4 Copy of Progress Report on JJ - from Pre-School - Wolvey C of E
 Primary School (EO).