
Appeal Decision

Hearing Held on 22 October 2019

Site visit made on 22 October 2019

by Nicola Davies BA DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15th November 2019

Appeal Ref: APP/X1545/W/18/3215950

Land adjacent to Tanglewood, Scalby Road, Southminster, Essex CM0 7BP

- 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 Mr M Pilkington against the decision of Maldon District Council.
 - The application Ref FUL/MAL/18/00623, dated 22 May 2018, was refused by notice dated 9 November 2018.
 - The development proposed is a material change of use of land for stationing of caravans for residential occupation by one family with associated development (hard standing and utility building).
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Decision

1. The appeal is allowed and planning permission is granted for a material change of use of land for stationing of caravans for residential occupation by one family with associated development (hard standing and utility building) at land adjacent to Tanglewood, Scalby Road, Southminster, Essex CM0 7BP in accordance with the application Ref FUL/MAL/18/00623 dated 22 May 2018, subject to the conditions set out within the attached schedule.

Application for costs

2. An application for costs was made by Mr M Pilkington against Maldon District Council. That application is the subject of a separate Decision.

Main Issues

3. The main issues relating to this appeal are whether the proposal complies with development plan policy with particular regard to whether or not the proposal is an appropriate expansion of an existing site and the location criteria and sustainability issues, specifically character and appearance of the area and accessibility.

Reasons

4. The proposal has been put forward by a gypsy and traveller. There is no dispute between the appellant's agent and the Council that Mr Pilkington is a gypsy or traveller. On the available evidence and what I heard at the hearing it appears to me that the appellant satisfies the gypsy and traveller definition set out within Annex 1 of the Planning Policy for Traveller Sites August 2015 (the PPTS).

5. The site lies outside of any defined settlement boundary and is therefore situated within the countryside. The PPTS advises that new traveller sites should be very strictly limited in open countryside away from existing settlements although the PPTS accepts that traveller sites may be acceptable in rural locations.
6. Policy S8 of the Maldon District Local Development Plan (MDLDP) restricts development outside settlement boundaries, however this policy contains a list of exceptions of permissible uses in the countryside, which includes Travellers and Travelling Showpeople accommodation (Policy S8(i)). Even for such development planning permission will only be granted where the intrinsic character and beauty of the countryside is not adversely impacted upon.
7. Policy H6 of the MDLDP relates specifically to provision for travellers and sets out an assessment criteria for traveller proposals. As such, the proposed development could be considered acceptable in principle subject to compliance with the criteria of this policy. Part 2 of Policy H8 requires proposals for Travellers or Travelling Showpeople to meet at least one of four criteria. I consider criteria 2 b) and d) to be most relevant to this appeal and this is reflected within the submissions of both parties. Part 3 of Policy H8 is also required to be considered and I shall deal with Part 3 further below.
8. The appellant's agent asserts that the proposal would satisfy criterion 2 b) "*the site could provide additional provision through an appropriate expansion*". Some discussion took place at the hearing as to what an 'appropriate expansion' might constitute, with the Council acknowledging that this has not been explicitly defined by the Council.
9. The proposal would be positioned immediately adjacent to the existing gypsy and traveller site at Tanglewood. However, whilst there are family ties to the existing occupiers of Tanglewood, the proposal before me has been put forward as a new independent site. The plans that support the proposal show this to be the case. Furthermore, the pitch at Tanglewood has a personal permission in place that places a time limit upon the occupation of that site. The appeal site could exist and be occupied beyond the timeframe in which the Tanglewood site is occupied. I, therefore, do not agree with the appellant that the proposal complies with this criterion.
10. This leads me to consider the proposal against criterion 2 d) and "*if the site is located elsewhere in the District, whether it would form sustainable development*". Criterion 2 d) requires regard to be given to sustainability/site suitability criteria in the '*Traveller Site Allocations Development Plan Document Draft Background Paper: Methodology and Site Selection*' (August 2016). The Council's concerns centre upon the visual impact of the gypsy site on the character and appearance of the site and streetscene, as well as accessibility to services and facilities.
11. Turning firstly to character and appearance, I consider the criteria of Policy H6 3 a) and f) of this policy to be the most applicable. Criterion a) requires the proposal to be "*appropriate in scale to the nearest settlement or dwelling(s) and do not dominate them, having regard to factors such as the scale and form of existing Travellers' pitches in the locality ... (sic)*" and f) requires the proposal to be "*located, designed and landscaped to avoid unacceptable harm to the character of the local area and the living conditions of local residents*". Policy D1 of the MDLDP also requires development to respect and enhance local

context and character. The Council also refers me to its Maldon District Design Guidance Supplementary Planning Document (SPD) adopted in 2017 that, as explained at the hearing, reflects the aims of Policy D1.

12. The appeal site forms part of an area of plot land to the south west of Southminster that is characterised by scattered developments, predominantly residential that are interspersed by paddocks, garden land, trees, vegetation, outbuildings and stables. This plot land is surrounded by open farmland that separates it from Southminster.
13. The appeal site is mostly laid to grass and is enclosed by fencing and hedging. There are no structures on the land. I have been advised that the site has been used for the grazing of horses. To the north of the appeal site is the established Gypsy site occupied by the parents of Mrs Pilkington. Immediately to the west of the site the land is treed, whilst to the south is a grassed paddock. To the east, at the other side of Scalby Road, the land behind the treed road frontage is laid as grass and possibly used as a paddock. Further along Scalby Road are dwellings, although these are mainly sited toward the top and bottom ends.
14. The proposed caravan, utility block and tourer would be similar in size to those on the gypsy site at adjoining Tanglewood. They would be smaller in size and scale to that of the dwellinghouses in the vicinity. I do not consider that the proposal would dominate the neighbouring dwellinghouses or be visually intrusive given the limited overall size and amount of structures and hardsurfacing proposed. Furthermore, given its location and separation from Southminster, it would not impact upon that settlement.
15. I accept that creating a gypsy and traveller pitch at this site would urbanise this undeveloped site. The Council has raised concerns that the proposal would have a greater visual impact through the greater number of vehicles and domestic paraphernalia than that of the adjacent Tanglewood site and that the touring caravan proposed is also likely to be on site for longer periods than that at Tanglewood. However, in the context of this semi-rural environment that hosts low density residential dwellings and other buildings, the visual harm of the proposal would be very limited. In addition, the existing hedge that surrounds most of the site is proposed to be retained and this would assist in screening the site in views from Scalby Road. Consequently, I do not find that the proposal would materially conflict with Policies H6 Parts 3 a) and f), S8 and D1 of the MDLDP and the adopted SPD.
16. Turning to accessibility, the nearest settlement is Southminster that hosts a reasonable selection of services and facilities, including a school and a GP surgery, which could provide for the general day-to-day needs of future occupiers. Southminster would be a short drive or cycle ride from the appeal site. It would be possible to walk to Southminster along public highways, albeit the rural nature of Old Heath Road without pavements and streetlighting and the busy fast-moving traffic travelling along Burnham Road, along with its narrow pavements, would not encourage occupiers to walk this route, particularly at night.
17. Notwithstanding this, dedicated public footpaths accessible from the northern end of Scalby Road that traverse the fields between Southminster and Scalby Road would offer a more direct route to Southminster than that of the public highways. These dedicated footpaths would also provide an alternative route

to the bus stops at Burnham Road that are located near to Old Heath Road. Accessing these bus stops would enable travel to other settlements further afield. I acknowledge that the unmetalled countryside footpaths would not be practical to walk at night or during inclement weather. Nonetheless, the contours of the land and the pleasantness of the open countryside environment would offer an attractive alternative walking route to Southminster and the nearest bus stops. Furthermore, I do not consider the proximity of the appeal site to Southminster to be so far as to dissuade future occupiers from using these countryside footpaths.

18. Policy H6 3 b) requires traveller sites to be *“well related to the existing built-up area, where relevant; capable of having access to essential services; and allow convenient access, preferably by pedestrian, cycle or public transport, as well as by private car, to key facilities”*. The Council considers, in the context of the matrix criteria for Traveller Sites set out within the Methodology and Site Selection that the site constraints score poorly against the decision-making criteria. I am mindful that the National Planning Policy Framework (the Framework) recognises that opportunities to maximise sustainable transport solutions will vary between urban and rural areas. The vehicle movements generated by the appellant, his wife, and three children would be low. Although I accept that there are some constraints relating to the location of the site and its distance from services and facilities at defined settlements, I consider that the facilities and services at Southminster would be convenient to access by occupiers, either by private vehicle or during the daytime by walking or cycling.
19. I note that some third-party concern has been raised to other proposals for dwellings in this area that have been rejected on the grounds of accessibility. The Council has also directed me to an appeal decision relating to land opposite Rose Villa and Three Wells on Scalby Road (APP/X1545/A/13/2210832) in which the Inspector concluded was isolated in terms of its distance from and the inaccessibility of services and facilities would mean that the occupants of the proposed dwelling would be heavily reliant on car-borne travel. However, the proposal before me is not treated in the same context as conventional housing developments. Policy S8 sets this out. In addition, the sustainability criteria as set out in the Methodology and Site Selection matrix accessibility credentials for Gypsy sites is more relaxed than those of conventional residential development.
20. Policy T2 of the MDLDP referred to by the Council in its decision notice is a generic policy applicable to all residential proposals. It relates to accessibility and aims to reduce car dependency. Part 2 of this policy requires development proposals to *“provide safe and direct walking and cycling routes to nearby services, facilities and public transport”*. The countryside footpaths would prove a safe walking route to nearby services, facilities and public transport that are also a short cycle ride away. This would reduce dependency upon private vehicle.
21. For the above reasons, I consider the proposal would comply with Policies S8, H6 Parts 2 d) and 3 a), b) and f), D1 and T2 of the MDLDP in relation to the location criteria and sustainability issues, specifically character and appearance of the area and accessibility.

22. Both parties have referred me to a 2006 appeal decision relating to the adjoining Tanglewood site (APP/X1545/A/06/1197463). Whilst the Inspector in that case considered the issue of accessibility of that site to facilities and services, that decision was made some time ago when different planning policies were in place. For the purposes of clarity, I have considered the proposal before me on its own merit having regard to the current development plan and Framework that is in place.

Other Matters

23. The Council has raised concerns in its statement with relation to gypsy pitch need and supply, though this matter is not specifically referred to in the Council's reason for refusal.
24. The PPTS requires local planning authorities to set targets for providing Gypsy and Traveller pitches within each authority area and requires an assessment of need to be undertaken annually. The Maldon District Gypsy and Traveller Accommodation Assessment Need Summary Report (MDGTAA) that was published in December 2016 identified a need for 1 pitch for traveller households who meet the 2015 PPTS definition (travelling households) and 10 pitches for households whose status is unknown, but who may meet the 2015 definition.
25. Since the publication of the MDGTAA an appeal has been allowed at Rose Stables, Captains Wood Road, Great Totham (APP/X1545/A/14/2220387). Both pitches have been limited to occupation by those meeting the PPTS definition, with one of those pitches having a named occupier. The Council argues that, as a result of that appeal decision, the pitch requirement for the accommodational need for 1 pitch PPTS definition compliant travelling households has been met and the 10 pitches for households whose status is unknown has reduced to 9.
26. The appellant's agent has been highly critical of the methodology and information gathering behind the Council's MDGTAA. Whilst the MDGTAA was accepted as part of the MDLDP adopted in July 2017, the Council confirmed at the hearing that it has not carried out any subsequent research into pitch need. The Council's report to its Planning Committee recognised that there is a level of uncertainty surrounding how many of the households whose status is unknown would meet the PPTS definition. It was also acknowledged by the Council at the hearing that the MDGTAA figures represent a minimum provision rather than a maximum. As such, it appears to me that increasing the supply of pitches by a single pitch within the authority's administrative area would not conflict with the MDGTAA. Furthermore, I see no reason why the appellant could not avail upon one of the remaining 9 pitch need identified, taking into consideration the appellant's gypsy status is not in question.
27. The Council has directed me to the latest official Government Count of Traveller Caravans (January 2019) that recorded that, for Maldon District, there were no unauthorised sites within the District. That information gathering relates solely to unauthorised sites rather than the housing needs of Gypsy and Travellers within the District.
28. Third party concern is raised to the proposal in regard to Scalby Road being a private highway with limited access. It appears to me on the evidence before me that this road, being a private highway, would not place any limitations on

accessing the appeal site. I consider that the concerns raised in relation to potential flooding and drainage can be adequately dealt with by the imposition of appropriately worded planning conditions. Concern is also expressed to the proposal setting a precedent for similar development to take place in the area. There is no clear indication that this would be the case, and, in any event, each proposal should be considered on its own merits. With regard to property values, this is not a planning consideration.

Planning Balance and Human Rights

29. In exercising my function on behalf of a public authority I am aware of my duties under the Public Sector Equality Duty (PSED) contained in the Equality Act 2010 which sets out the need to eliminate unlawful discrimination, harassment and victimisation, and to advance equality of opportunity and foster good relations between people who share a protected characteristic and people who do not share it. In consciously thinking about the aims of the PSED I have had due regard to the appellant's traditional way of life and the personal circumstances of the wellbeing of Mr Pilkington, his wife and his family. I have also had regard to the best interest of all the appellant's children. The accessible and secure environment that the proposal would provide carries significant weight.
30. I have had regard to the Human Rights Act 1998 and have considered the nature and degree of interference to the appellant's home, private and family life. In this case, I have found the proposed development to be acceptable, therefore there would be no interference with the right afforded under Article 8 to Mr Pilkington and his family.
31. I have found that the change of use of land for stationing of caravans for residential occupation by one family with associated development (hard standing and utility building) and the impact of the development upon this rural location to be acceptable. The development would therefore accord with Policies S8, H6, D1 and T2 of the MDLDP as it would not harm the character and appearance of the area and there would be acceptable accessibility to services and facilities for the occupiers.

Conditions

32. I have considered the planning conditions suggested by the Council in light of paragraph 55 of the Framework and the advice in the Planning Practice Guidance. In addition to the standard time limit condition and in the interests of certainty it is appropriate that there is a condition requiring the development is carried out in accordance with the approved plans.
33. In order that the use of the land accords with Policy H6 of the MDLDP a condition is required which restrict the occupiers to gypsies and travellers as defined in the PPTS. The Council has also suggested that a personal permission be imposed to allow Mr Pilkington, his wife and his children to continue to reside at the site in the event that the family cease to travel for economic purposes at some point in the future and, as such, would no longer meet the PPTS definition. The appellant is a traveller and the development is acceptable without the need to rely on personal circumstances. A personal tie would not be necessary.

34. A condition relating to the number of caravans is necessary in the interests of the character and appearance of the area. I have amended the number of caravans to reflect the development as shown on the submitted plans and as approved under Condition 2. Also, in the interests of the character and appearance of the area are conditions relating to the appearance of the utility block, means of enclosure and refuse storage facilities, hard and soft landscaping, restricting the stationing, parking or storing of vehicles over 3.5 tonnes, restricting commercial activity and storage of materials at the site, to be necessary.
35. It is important that the site is properly drained to avoid flood risk and pollution, therefore surface and foul water drainage conditions are necessary. I have omitted much of the Council's suggested text in relation to the surface water drainage condition as I consider it to be overly onerous given the undeveloped nature of the site and the limited nature of the proposal.
36. The Council has requested a condition (Condition 5) requiring the static caravan to be positioned as marked 'mobile home' on Plan 2. However, by imposing Condition 2 this requires the development to be carried out and maintained in accordance with the approved plan. I consider such a condition would duplicate this and is, therefore, unnecessary.

Conclusion

37. I have found that the proposed development would not have a significant harmful effect on the character and appearance of the area and that the occupiers would have access to services and facilities and that the proposal is acceptable in all other respects. The development is in accordance with the development plan and there are no considerations before me that would lead me to a different decision. Having regard to the above the appeal should be allowed.

Nicola Davies

INSPECTOR

SCHEDULE OF CONDITIONS

1. The development hereby permitted shall begin no later than three years from the date of this decision.
2. The development hereby permitted shall be carried out in accordance with the following approved plans: Plan 1 Location Plan; Plan 2 Proposed site layout plan; Plan 2 Proposed site layout plan annotated with dimensions; and, Plan 3 Proposed utility block elevations and floor plan. The development shall thereafter be maintained as such for the lifetime of the development.
3. The site shall not be occupied by any person other than gypsies and travellers as defined in Annex 1 of the Planning Policy for Traveller Sites 2015 (or the equivalent in replacement national policy).
4. No more than 2 caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 as amended (of which no more than 1 shall be a static caravan) shall be stationed on the site at any time.
5. No works relating to the construction of the utility block, as shown on Plan 3, shall take place until details or samples of the materials to be used in the construction of the external appearance of the utility block have been submitted to and approved in writing by the local planning authority. The utility block shall be carried out only in accordance with the approved details.
6. No works relating to the erection of any means of enclosure and/or refuse storage facilities, along with any associated hard surfacing, shall take place until details of their location and design have been submitted to and approved in writing by the local planning authority. The means of enclosure and refuse storage facilities shall be carried out only in accordance with the approved details.
7. No vehicle over 3.5 tonnes shall be stationed, parked or stored at the site.
8. No commercial activity shall take place on the land, including the storage of materials.
9. No development works above ground level shall take place until details of the surface water drainage scheme have been submitted to and approved in writing by the local planning authority. The surface water drainage scheme shall be carried out only in accordance with the approved details prior to the first occupation of the development.
10. No development works above ground level shall take place until details of the foul water drainage scheme have been submitted to and approved in writing by the local planning authority. The foul water drainage scheme shall be carried out only in accordance with the approved details prior to the first occupation of the development.

11. Prior to the occupation of the development details of both the hard and soft landscaping works shall be submitted to and approved in writing by the local planning authority. These details shall include the layout of the hard landscaped areas with the materials and finishes to be used and details of the soft landscape works, including schedules of shrubs and trees to be planted, noting the species, stock size, proposed number/densities and details of the planting scheme's implementation, after care and maintenance programme. The hard landscape works shall be carried out only in accordance with the approved details prior to the first occupation of the development. The soft landscape works shall be carried out as approved within the first available planting season (October to March inclusive) following the occupation of the development. If within a period of five years from the date of the planting of any tree or plant, or any tree or plant planted in its replacement, is removed, uprooted, destroyed, dies or becomes seriously damaged or defective, another tree or plant of the same species and size as that originally planted shall be planted in the same place.

End of schedule

APPEARANCES

FOR THE APPELLANT:

Mrs Alison Heine, Heine Planning
Mr and Mrs Pilkington, Applicants

FOR THE LOCAL PLANNING AUTHORITY:

Kathryn Mathews, Maldon District Council

DOCUMENTS SUBMITTED AT THE HEARING

1. Record of hearing attendance.
2. Copy of letter confirming date, time and place of hearing, along with list of recipients.
3. Two maps both showing adopted footpaths and one illustrating locations of bus stops.
4. Three medical letters (The Market Cross Surgery dated 25 October 2018, NHS dated 1 November 2018 and NHS dated 2 November 2018).