



Appeal Decision

Hearing Held on 22 October 2019

Site visit made on 22 October 2019

by A Blicq BSc (Hons) MA CMLI

an Inspector appointed by the Secretary of State

Decision date: 15 November 2019

Appeal Ref: APP/B1930/W/18/3212960

Nuckies Farm, Coursers Road, Colney Heath, St Albans, Hertfordshire AL4 0PA

- 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 Peter Robb against the decision of St Albans City & District Council.
 - The application Ref 5/18/0048, dated 5 January 2018, was refused by notice dated 17 July 2018.
 - The development proposed is: Change of use of land to use as a residential gypsy caravan site, including the stationing of 6 caravans, of which no more than 3 would be static caravans/mobile homes, together with the laying of hardstanding.
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Decision

1. The appeal is allowed and planning permission is granted for the change of use of land to use as a residential gypsy caravan site, including the stationing of 6 caravans, of which no more than 3 would be static caravans/mobile homes, together with the laying of hardstanding in accordance with application Ref 5/18/0048, dated 5 January 2018, subject to the conditions set out in the schedule appended to this Decision.

Procedural Matters

2. During the appeal the Environment Agency (EA) received additional information which addressed its concerns. Consequently, the Council withdrew its objection in relation to flood risk. However, there were issues I wished to clarify and accordingly I retained the effect of the development on flood risk as a main issue.
3. Both parties have referred to the emerging Local Plan. However, the examination has yet to commence and those policies may change. Moreover, there are no site allocations proposals before me. Consequently, I see no reason to give particular weight to emerging policies.
4. It is not disputed that the proposal would be inappropriate development in the Green Belt and would fail to meet any of the exceptions set out in Policy 1 of the Local Plan. As such, I have not included this in my main issues.

Main Issues

5. The main issues are:

- The effect of the proposal on the openness of the Green Belt;
- Whether the development would conform with local policies and national guidance with regard to flood risk;
- Whether the Council has made sufficient provision for gypsy and traveller sites in accordance with local policies and national guidance;
- Whether there is overriding need for the development, with regard to personal circumstances, Equality and Race Relations Legislation, the human rights balance and the best interests of children.
- Whether the harm to the Green Belt, by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations. If it is, would this amount to the very special circumstances necessary to justify the proposal.

Reasons

Planning background

6. The site had temporary planning permission¹ for the stationing of no more than three caravans, for occupancy by eight named adult members of the appellant's family and their dependents. This expired in July 2015.
7. The application now before me is for no more than six caravans on an extended area of hardstanding. No more than three caravans would be static.

Gypsy status

8. The gypsy status of the appellant and extended family is not disputed by the Council. The lifestyles of the appellant's extended family were outlined at the appeal and I see no reason to conclude that the adults occupying the site do not meet the definition of gypsy as defined in Annex 1 of Planning Policy for Traveller Sites (PPTS).

Openness of the Green Belt

9. The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. This can have a spatial or visual aspect, as found by the courts².
10. Views into the site are limited by boundary hedging along the road and northern boundary, timber fencing to the south, and trees and shrubs to the east. There are glimpsed views of caravans and hardstanding from Coursers Lane at the formal gated entrance.
11. I appreciate that the touring caravans may not be on site all the time, but two of the static caravans, with brick steps and wing walls to the front doors look quite permanent. There was also extensive hardstanding, several vehicles and the site has a domestic character. Consequently, insofar as openness is

¹ APP/B1930/A/07/2035098

² Turner v SSCLG & East Dorset Council [2016] EWCA Civ 466

generally taken to mean freedom from operational development, there is encroachment into the countryside and a loss of openness. However, notwithstanding the spatial intrusion into the Green Belt, the existing boundary treatments lead me to conclude that the visual impact of the development is limited.

12. As such, although the development does represent harm to the Green Belt in respect of openness, I give this harm moderate weight.

Flood risk

13. The site lies mainly within Flood Zone 2 with one corner, close to the road boundary, in Zone 1. There are two topographic surveys in the appellant's evidence. I appreciate that interested parties have queried their provenance but in the absence of verifiable evidence to the contrary, I conclude that they are a fair representation of the site's topography at the time.
14. The EA has suggested conditions if the appeal is allowed. These set minimum floor levels of 72.6m AOD for the static caravans, and require that touring caravans are tethered and pitched on land above 72.6m AOD. The appellant's Flood Risk Assessment (FRA) also sets out additional mitigation such as non-return valves on foul and water pipes, and raising power sockets in the dayroom.
15. At the visit I satisfied myself that the three static caravans had floor levels higher than 72.6m AOD. Moreover, it was established that there would be space to relocate the touring caravans from their current positions to land above 72.6m AOD. Two would be sited outside the existing dayroom and the third to the left of the site entrance.
16. The Framework sets out the decision-making process when considering development in relation to flood risk. The FRA states that the 1 in 100 year flood level, with 70 per cent allowance for climate change, would be 72m AOD. The surveys demonstrate that the area of the site used for the caravans and most of the hardstanding used for access and parking, would be above 72m AOD. Consequently, I am satisfied that in a 1 in 100 year flood, the occupiers would be able to evacuate to the Flood 1 Zone within the site, and then gain access to Coursers Road.
17. Although it was mentioned at the hearing that site levels have been raised and that this has reduced the volume available for flood retention, this argument was not substantiated. It was also argued by an interested party that the building of walls around the base of two static caravans impedes the movement of flood water. However, the FRA notes that the site is not located on a potential overland flow route and moreover this is not raised as a concern by the EA. Consequently, I am unable to give this argument very much weight.
18. I am satisfied that the development would accord with the provisions of Paragraph 163 of the Framework with regard to flood risk.
19. With regard to the Sequential Test I have dealt more fully with issues around site availability below. There is nothing before me to suggest that there are reasonably available alternative sites for this development.
20. The flood probability, combined with the development's vulnerability require the application of the Exception Test. The appellant argued that the

development would make a small contribution to local housing need and some limited economic benefit. I give these arguments limited weight. However, I give more weight to the social benefits of enabling the family to live together and to provide mutual support, particularly in respect of child and health care.

21. An interested party has submitted photographs of recent flooding in the site's vicinity. However, having identified the photographs' locations, I am satisfied that the three that show flooding are photographs of the existing drainage ditch in Flood Zone 3. The fourth photograph, which appears to be taken from the public footpath running alongside the site boundary, shows localised surface water runoff.
22. I conclude that there is nothing before me to indicate that the land on which the caravans would be sited has a recent history of flooding, or that the flood levels given in the FRA are inaccurate.
23. As such, I conclude that the development would not be contrary to Policy 84 of the Local Plan which is concerned with flooding and river catchment management, or the provisions of Section 14 of the Framework.

Council provision

24. The Council's Local Plan, adopted in 1994, is of some age and is inconsistent with the Framework in that it makes no provision for the needs of groups with specific housing requirements. It is not disputed by the Council that significant areas of land for both housing for the settled community and gypsy sites need to be found for the emerging Local Plan. It is highly likely that Green Belt land will need to be released.
25. Moreover, it is not disputed that the Council is unable to identify any deliverable sites for gypsies, and the officer's report states that there is a significant shortfall in the supply of pitches within the district.
26. It was put to me that there are other established sites in the area, including one owned by Hertfordshire County Council. However, there is a long waiting list for this site and turnover is very low. There is nothing before me to indicate that sites would be available to the appellant in the immediate or short term. Moreover, even on transit sites occupancy periods are being extended, as there are few available sites for occupiers to move to.
27. As such, I conclude that the Council has failed to make sufficient provision for gypsy and traveller sites in accordance with local policies and national guidance. As set out in Paragraph 27 of PPTS, the lack of supply of deliverable sites is a significant material consideration in this appeal.

Overriding need

28. This extended family has lived on the site for a number of years. Two of the children are at London Colney Primary School and have good attendance records. In addition to the two children at school, there are pre-school children and a baby to be born in the next few months.
29. Article 3 of the UNCRC³ requires the best interests of children to be a primary consideration in decision making. It is unclear where this family would go if the appeal was dismissed, and it seems at best it would be this or another

³ United Nations Convention on Human Rights

unauthorised site. In this instance, it appears to me that the best interests of the children on the site would be served by continuity of education for those at school, and a settled and secure home life for all the children.

31. The appellant and his wife have chronic health conditions and need a settled address to receive continuity of health care. Other adult family members living on the site combine child care with the care of the older couple. I conclude that there are clear benefits to the appellant, his family and to the wider community from enabling interfamilial support and the security of a settled home life. If the appeal was dismissed the physical demands of an itinerant life would be likely to cause particular hardship for individuals who are already in poor health, which could also cause additional hardship for their carers, especially if they were not located on the same site. It could also result in additional pressure for non-familial support and care on the local infrastructure.
32. Article 8 of the ECHR⁴ is concerned with the right to respect for private and family life and for the home. There is an expectation that signatories to the ECHR will positively facilitate the gypsy way of life, which is based on familial ties and support. There seems to be a clear need here for some mutual support and the current living arrangements both enable that interdependency and reinforce the gypsy way of the life.
33. The Parish Council argued that allowing the development would place undue pressure on local infrastructure and services. However, the family already uses these services so it is unclear to me how allowing the development would cause additional harm. There is nothing before me to indicate that existing services are under particular pressure as a consequence of their current use by the appellant or his extended family.
34. In the light of the above, I conclude that there is an overriding need for the development in the light of personal circumstances, human rights and the best interests of the children.

Other matters

35. I give limited weight to the argument that the parish has had more than its share of gypsy sites. There is nothing before me to explain the particular harm arising from gypsy sites or why the parish is disadvantaged in this respect. In any case, no-one has provided any substantiated evidence as to why a ceiling on gypsy pitches in the parish should be imposed, even if it was lawful.
36. Interested parties and the parish council raised other objections but none of these were matters that added weight to the case against the appeals or indicated that permission should be refused.

Planning balance

37. Policy E of PPTS sets out that subject to the best interests of the child, personal circumstances and unmet need are unlikely to clearly outweigh the harm to the Green Belt. However, I have concluded that the best interests of the children would be to remain on the site. Moreover, PPTS requires me to give weight to the Council's failure to make provision for gypsies, in addition to the conclusions I have reached with regard to personal circumstances and overriding need.

⁴ European Convention on Human Rights

38. In any case, it appears highly likely that Green Belt land will be needed to fulfil the Council's future obligations with regard to gypsy sites.
39. There is nothing before me to suggest that this site is particularly valued in landscape terms. The road between the site and London Colney is dominated in part by pylons, a landfill site, views of nearby industrial estates and an activity farm, interspersed with open fields and detached dwellings. My impression of the district is that there are areas that are considerably more open and have a more distinctive rural character.
40. I acknowledge that the site's gated entrance is not particularly in keeping with a rural site, but I do not find the site's appearance any more incongruous than the obvious domestication of nearby plots for the settled community. The development would not detract from the character and appearance of the area in anything more than a limited and localised way.
41. At the hearing I queried whether there was a Landscape Character Assessment which might identify particular areas of landscape value in the Green Belt. However, there is nothing before me to suggest that this site would be less suitable than any other in the Green Belt for the allocation of gypsy sites. Moreover, in my experience this is a fairly modest site for the number of residents.
42. Consequently, although the Framework sets out five reasons for the existence and protection of the Green Belt, I conclude that the only reason relevant here is to safeguard the countryside from encroachment. And as noted above, encroachment into the Green Belt is highly likely to be necessary to enable the Council to meet housing needs in the future.
43. I appreciate that the temporary permission, in 2011, was given to give the appellant time to find an alternative site. The Inspector sets out that there is an expectation that the Council would have produced a Site Allocations DPD within the next four years. However, eight years have now elapsed and the Council has not produced the Site Allocations DPD.
44. Moreover, it appears to me that there are no alternative sites, and the Council appears to have made limited progress on the identification of deliverable sites as required by PPTS. If the appeal is dismissed, the family would have the options of remaining on this unauthorised site, without the mitigation for flood risk that a conditional permission would require, or finding an unauthorised pitch elsewhere. The harm to the Green Belt arising from occupation of this site would be likely to be transferred, and possibly to another Green Belt site. There would also be additional harm to the family in respect of education and health care.
45. However, PPTS also requires fair and equal treatment for travellers along with respecting the interests of the settled community. Although I recognise that the Council's future allocation is likely to require use of Green Belt land, it does not follow that this site would necessarily be considered suitable under the emerging Local Plan. To give permanent permission could be viewed as pre-empting the Council's processes in respect of site allocations. However, given that the emerging Local Plan is in its early stages, I concur with the appellant that it would be several years before new sites are identified, gain planning permission and are available for this family to move to. That this process could take several years was not disputed by the Council.

46. I appreciate that allowing this appeal appears to reward the appellant for remaining on the site when the previous temporary permission has expired. Nonetheless, as I have set out above, the harm arising from dismissing the appeal has to be balanced against the harm arising from a further occupancy of this site.
47. Case law has shown that 'very special circumstances' sufficient to outweigh the harm to the Green Belt can be commonplace occurrences. In this case, the best interests of children is a primary consideration. Although this does not outweigh the substantial harm to the Green Belt on its own, in combination the lack of Council provision, overriding need and personal circumstances I conclude that these other considerations do amount to very special circumstances. On that basis, the appeal should be allowed, but with a temporary permission for the reasons set out above.

Conditions

48. Conditions were discussed at the hearing. As this is a retrospective application the standard time condition is not needed. Where necessary I have amended the conditions to comply with current guidance.
49. As I have given weight to personal circumstances I have imposed a personal occupancy condition. I have also concluded that a temporary permission would be appropriate, and that five years should be sufficient for the Council to complete its site allocations. Moreover, with regard to the temporary condition, given that I have given weight to personal circumstances, it is logical that those circumstances be reviewed.
50. There was discussion around the inclusion of a further two adults in a personal occupancy condition. Although they are not mentioned in the appellant's statement they are the fathers of children living on the site. Consequently, it would be appropriate to include them in the personal occupancy condition. However, this is worded to ensure that other dependents of those adults would not be included.
51. To control the use of the site I have also imposed a condition limiting the number of caravans that can be stationed on the site.
52. The site layout plan was inaccurate, and it was agreed at the hearing that a Site Development Scheme (SDS) would be appropriate if the appeal was allowed. This would clarify the position of the existing static caravans and ensure that the touring caravans were located on raised land. It would also set out a timetable for compliance. This is for the avoidance of doubt. As no particular concerns have been raised with regard to screening or boundary treatments I see no need for the SDS to include further information in this regard.
53. I have also imposed a condition in relation to the floor and pitch levels of the caravans, as well as a requirement to tether the mobile caravans. This is largely informed by the appellant's FRA and the EA's response to the application. The previous appeal included a condition requiring the occupiers of the site to sign up to the EA's Flood Warning Direct service. However, I agree with the Council that this would be difficult to enforce and as such would not meet the necessary planning tests in relation to conditions.

54. Given the floor level of the dayroom, I see no reason to require the works to electrical sockets, waterproofing and tiling recommended by the FRA and these are not required by the EA. The FRA also recommends non-return valves on foul and surface water pipes but again, this is not required by the EA and I am not satisfied that this is needed to make the development acceptable in planning terms.
55. With regard to flood plain levels, I have also imposed a condition requiring that the site levels remain unchanged to ensure the ongoing functionality of the flood plain.
56. Finally, I have imposed a condition in respect of external lighting to minimise the impact of the development on the Green Belt.

Conclusion

57. In the light of the above, I conclude that other considerations, specifically the best interests of children and personal circumstances and the lack of alternative sites in the area, clearly outweigh the harm to the Green Belt, therefore justifying the proposal on the basis of very special circumstances. The appeal should be allowed.

A Blicq

INSPECTOR

APPEARANCES

APPELLANT

Peter Robb

Jimmy Robb

Philip Green

Philip Brown Associates Ltd

COUNCIL

Lee Stannard

St Albans City and District Council

INTERESTED PARTIES

C Brazier

M Ketley

Dr Cyril Ogunmakin

ADDITIONAL EVIDENCE

1. Letter from London Colney Primary School
2. Signed Statement of Common Ground
3. Enforcement Notice ENF/2003/00007

SCHEDULE OF CONDITIONS

1. The occupation of the site hereby permitted shall be carried on only by the following and their resident dependants: Peter Robb, Mary Robb, Jimmy Robb, Margaret Robb, Bridget Robb, Ann Robb and their resident dependants, and Tomas Delaney and Michael Connors, and shall be for a limited period, being the period of five years from the date of this decision.
2. No more than 6 caravans shall be stationed on the site at any time, and no more than 3 of those 6 permitted caravans shall be a static caravan. All caravans stationed on the site shall comply with the definition of caravans as set out in Section 29 of the Caravan Sites and Control of Development Act 1960 and Section 13 of the Caravan Sites Act, as amended.
3. The use hereby permitted shall cease and all caravans, structures, equipment and materials brought on to the site for the purposes of such use shall be removed within 28 days of the date of failure to meet any one of the requirements set out in (i) to (iv) below:
 - (i) Within 3 months of the date of this decision a scheme for: the siting and installation of caravans, hereafter referred to as the Site Development Scheme shall have been submitted for the written approval of the local planning authority and the said scheme shall include a timetable for its implementation.
 - (ii) If within 11 months of the date of this decision the Site Development Scheme has not been approved by the local planning authority or, if the local planning authority refuse to approve the scheme, or fail to give a decision within the prescribed period, an appeal shall have been made to, accepted as validly made by , the Secretary of State.
 - (iii) If an appeal is made in pursuance of (ii) above, that appeal shall have been finally determined and the submitted Site Development Scheme shall have been approved by the Secretary of State.
 - (iv) The approved scheme shall have been carried out and completed in accordance with the approved timetable.
4. At the end of five years, or when the land ceases to be occupied by those named in condition No 1 should this occur earlier, the use hereby permitted shall cease and all caravans, structures, materials and equipment brought on to the land in connection with the use, shall be removed. Within 3 months of that time the land shall be restored in accordance with a scheme previously submitted to and approved in writing by the local planning authority.
5. The development hereby permitted shall be carried out in accordance with the submitted Flood Risk Assessment Ref: 70786R1, carried out by GeoSmart Information, dated 31 July 2018, insofar as:
 - (i) Finished floor levels shall be set no lower than 72.6 metres (AOD);
 - (ii) Touring or mobile caravans shall be pitched on land above 72.6 metres (AOD);
 - (iii) Touring or mobile homes are to be anchored/tethered to the ground.

These mitigation measures are to be fully implemented within three months of the date of this decision and subsequently in accordance with the SDS's timetable. The measures detailed above shall be retained and maintained thereafter for the lifetime of the development.

6. The ground levels of the site shall not be altered without the prior written permission of the local planning authority.
7. No external lighting shall be installed without the prior written permission of the local planning authority.