



Appeal Decision

Hearing Held on 12 November 2019

Site visit made on 12 November 2019

by Elaine Worthington BA (Hons) MTP MUED MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19th November 2019

Appeal Ref: APP/R3705/W/19/3220135

Land adjacent to The Lodge, Tamworth Road, Cliff, B78 2DS

- 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 T Doherty against the decision of North Warwickshire Borough Council.
 - The application Ref PAP/2018/0435, dated 11 July 2018, was refused by notice dated 12 December 2018.
 - The development proposed is the change of use of land to equestrian use and use as a gypsy site comprising of 5 pitches with dayrooms including the relocation of access, a stables block, ménage and installation of treatment plant.
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Decision

1. The appeal is dismissed.

Background

2. The appeal site is open grassed land with a road frontage to Tamworth Road and is within the Green Belt. It adjoins the adjacent dwelling and stables at The Lodge to the south. The river Tame and a mature tree belt lie to the west. A caravan park and associated caravan storage area adjoins the rear part of the site to the north and there are open fields on the other side of Tamworth Road to the east with the M42 beyond.
3. The Council accepts that the appellant and her husband meet the definition of gypsies and travellers set out in the Glossary to the Planning Policy for Traveller sites (PPTS) and it was confirmed at the hearing that they are Irish Travellers. I see no reason to come to a different view on this matter.
4. The south east corner of the appeal site has been occupied by the appellant and her family since February 2019 and a static caravan and two touring caravans are sited there. This unauthorised occupation of part the site is the subject of an injunction. A planning application¹ for the change of use to equestrian land and use of the site as a single gypsy pitch was refused on the 4 November 2019. Whilst the red line boundary for that application is the same as that for the appeal proposal, the single pitch proposed in that case only covers that part of the site currently occupied by the appellant (and shown on the appeal plans as a paddock). This being so, the parties are agreed that what is on site is a separate development that does not form part of the scheme before me.

¹ Reference PAP/2019/0427

5. The Council's decision notice includes two reasons for refusal, the second of which relates to highway safety in relation to the proposed access. However, the appellant has provided a Road Safety Stage One Report and amended plans which the Highway Authority confirms address its previous objections. On this basis, despite the continued concerns of local residents, the Council confirmed at the hearing that it did not wish to defend this reason for refusal.
6. This background has led to my identification of the main issues below.

Main Issues

7. The main issues in this case are:
 - Whether the proposal would be inappropriate development in the Green Belt for the purposes of the National Planning Policy Framework (the Framework) (including its effect on openness and the purposes of the Green Belt); and
 - The effect of the proposal on the character and appearance of the surrounding area; and
 - If it is inappropriate development, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations, so as to amount to the very special circumstances necessary to justify the development.

Reasons

Whether inappropriate development?

8. The National Planning Policy Framework (the Framework) is clear that the government attaches great importance to Green Belts and that their essential characteristics are their openness and permanence.
9. The appeal proposal includes two elements, a change of use to a gypsy site and an equestrian use. The submitted plans show five gypsy and traveller pitches to rear of the site and paddocks and stables to the front of the site closest to Tamworth Road. Policy E of the Planning Policy for Travellers Sites (August 2015) (PPTS) specifically defines traveller sites as inappropriate development in the Green Belt (paragraph 16). The appellant argues that the equestrian use proposed would not in itself be inappropriate development in the Green Belt. However, taken as a whole, the appeal proposal concerns the change of use of the land to a mixed gypsy and equestrian use.
10. Paragraph 146 of the Framework establishes that certain forms of development are not inappropriate within the Green Belt provided they preserve its openness and do not conflict with the purposes of including land within it. These include material changes in the use of land (criterion e).
11. Policy NW3 of the North Warwickshire Local Plan Core Strategy (Core Strategy) refers to the Green Belt generally, and the supporting text at paragraph 7.1 states that within Green Belts the primary aim is to maintain the open nature of the area and that there is a general presumption against development that is inappropriate except in very special circumstances.

12. Openness is an essential characteristic of the Green Belt. It has a visual dimension as well as a spatial aspect. The proposal would introduce five residential pitches, each of which would include a static caravan, an amenity block and one touring caravan. A stable building would also be constructed and the development as a whole would be served by a new access. Boundary fences would also be erected and both the residential and equestrian use of the site would introduce associated paraphernalia and activity including the parking of vehicles. In spatial terms it would introduce a good deal of development into what is an open field.
13. The proposed paddocks would be to the front of the site closest to Tamworth Road. The stable building would be set back from the road frontage behind one of the paddocks and the five residential pitches would be beyond this to the rear of the site some 150 metres from the road. The site is adjacent to The Lodge immediately to the south for much of its southern boundary, and the caravan park adjoins the rear part of the site to the north. There is a substantial mature tree belt to the west of the site and a hedgerow to the site's frontage with Tamworth Road.
14. Even so, despite the proposed layout of the site and the existing development nearby, the site is visible in views from Tamworth Road (particularly on approach from the north) and from Cliff Hall Lane. This is so despite the existing hedgerows there, particularly in the winter months when the vegetation is not in leaf. Whilst additional landscaping is proposed, in my view the proposed development, including that towards the rear of the site, would be readily perceived from these viewpoints, as well as through the gap that would be created by the proposed access on Tamworth Road. Thus, the loss of openness resulting from the proposal would be evident.
15. As such, overall the proposal would lead to that part of the Green Belt in which the appeal site is located being much more built up than it is now. This would lead to a loss of openness. Given the currently open nature of the site, the harm caused in this regard would be considerable.
16. The purposes of the Green Belt are set out at paragraph 134 of the Framework and include to assist in safeguarding the countryside from encroachment (criterion c). The proposal would introduce built development to the countryside. In doing so, and impinging on openness as described, the proposal would not be consistent with site's role in safeguarding the countryside from encroachment. It would therefore have an adverse effect on one of the purposes of including land in the Green Belt. Given the size of the site in relation to the wider Green Belt in which it sits and the existing development nearby, the harm caused in this regard would be limited.
17. The appellant refers to the route of the proposed HS2 rail line which I understand would run to the east of the site on the other side of Tamworth Road close to the line of the nearby M42. Whilst I note the appellant's view that this would significantly diminish the status of the Green Belt, the intended route of the rail line is somewhat divorced from the appeal site and does not form part of its immediate context. Whilst the development of HS2 would inevitably alter the nature of the Green Belt in the wider area, I am not persuaded that the possibility of this future development lessens the appeal scheme's impact on the Green Belt, or serves to justify it.

18. Bringing matters together, I consider that the proposal would fail to preserve the openness of the Green Belt and would conflict with one of the purposes of including land within it. Thus, it would not meet the terms of criterion (e) of paragraph 146 of the Framework. I therefore conclude that the proposal would be inappropriate development for the purposes of national Green Belt policy as set out in the Framework. This harm attracts substantial weight as set out at paragraph 144 of the Framework. It would also be contrary to Core Strategy Policy NW3.

Openness and purposes

19. For the reasons set out above, in addition to the harm that would be caused by its inappropriateness, the proposal would also have a detrimental impact on openness and would fail to prevent encroachment and so undermine one of the purposes of the Green Belt. This harm also attracts substantial weight as set out at paragraph 144 of the Framework.

Character and appearance

20. Core Strategy Policy NW12 requires good quality development that positively improves a settlement's character and appearance together with the environmental quality of the area. Core Strategy Policy NW8 is permissive of gypsy and traveller sites outside the Green Belt and advises that such sites will be assessed using a number of criteria. The final criterion requires that the site can be assimilated into the surroundings and landscaped without any significant adverse effect.
21. The appeal site is within the 'Tamworth – Urban Fringe Farmlands' area as identified in the North Warwickshire Landscape Character Assessment 2010 and forms part of a flat agricultural landscape. As set out above, it is adjacent to The Lodge and the caravan park. There are also other examples of scattered development nearby and number of properties on Cliff Hall Lane. Nevertheless, the site adjoins a large field to the north which runs up to Cliff Hall Lane, and there are open fields on the other side of Tamworth Road to the east and beyond The Lodge to the south. As such, the appeal site has an open and undeveloped rural character and appears very much as part of the wider surrounding countryside.
22. As previously described, the residential pitches would be set well back into the site and away from Tamworth Road and would adjoin the tree belt to the west. The stables would not be on the road frontage and would be built of timber and I accept that along with the paddocks they would appear generally sympathetic to their rural surroundings. I also note the appellant's argument that the fencing and hardstanding would not in itself require planning permission. Even so, as considered above, the proposal would be appreciated in views from Tamworth Road and Cliff Hall Lane. This would be so despite the additional planting around the boundaries that is intended.
23. In this context, I consider that the proposal as a whole would be appreciated as an unwelcome pocket of urbanising development in the countryside that would fail to protect and detract from the rural character of its surroundings. Even taking into account the additional landscaping proposed, I am not persuaded that the proposal could be readily assimilated into its surroundings without any significant adverse effect.

24. I therefore conclude on this main issue that the proposal would be harmful to the character and appearance of the surrounding area. This would be contrary to Core Strategy Policies NW8 and NW12. It would also be at odds with paragraph 127 of the Framework which requires development to be sympathetic to local character including landscape setting (c), and paragraph 170 of the Framework which requires planning decisions to contribute to and enhance the natural and local environment.

Other considerations

25. According to paragraph 143 of the Framework inappropriate development is by definition harmful to the Green Belt. Paragraph 144 advises that very special circumstances to justify inappropriate development will not exist unless the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations. The appellant has put forward a number of other considerations in this case.

The need for and supply of gypsy sites

26. The PPTS aims to promote more private traveller site provision and to increase the number of traveller sites in appropriate locations with planning permission to address under provision and maintain an appropriate level of supply. It also requires local planning authorities to identify and update annually a supply of specific deliverable sites sufficient to provide 5 year's worth of sites against their locally set targets.
27. Core Strategy Policy NW7 identifies a need for 9 residential and 5 transit gypsy and traveller pitches from 2011 to 2028. This is based on the findings of the North Warwickshire and Nuneaton and Bedworth Gypsy and Travellers Accommodation Assessment 2013 (GTAA). The Council indicates that since 2011 some 19 residential pitches and 12 transit pitches have been permitted in the borough. The appellant does not dispute this. I accept that this exceeds the requirements set out in Core Strategy Policy NW7 and means that the Council has maintained 5 years' worth of deliverable sites against its locally set target.
28. The appellant is concerned that the need identified in Core Strategy Policy NW7 is an underestimation, and that no allocations have been made despite a number of years of the plan period remaining. However, the assessment of need that informed the Core Strategy is not before me for consideration. That said, I am mindful that the requirement set out in Core Strategy Policy NW7 is not a cap and does not prevent other appropriate sites coming forward. I am also conscious that the GTAA is a number of years old.
29. Policy LP6 of the emerging North Warwickshire Local Plan Submission March 2018 (Emerging Local Plan) contains the same targets for gypsy and traveller sites as Core Strategy Policy NW7 and is based on the same 2013 GTAA. As a result of the ongoing Examination of the Emerging Local Plan the GTAA is being updated and a new study has been commissioned. This is yet to be published and is not before me. Any updated GTAA (and any consequent modifications to Policy LP6) are in any event matters for the Examination of the Emerging Local Plan. However, as things stand, the evidence base is somewhat out of date and it is not possible to accurately estimate current levels of need.

30. The appellant considers the high numbers of planning applications for gypsy and traveller sites in the borough since 2011 to be an indication of a need for private sites. The Council accepts that there are some unauthorised encampments in the borough, and although the Council has provided no information on the availability of pitches on public sites, the appellant refers to these being overcrowded and full, with no waiting lists in operation. These factors, along with the appellant's failure to find an alternative site, add to this argument. Accordingly, although the targets in Core Strategy Policy NW7 have been met, that updated evidence will find a greater level of need for gypsy and traveller sites in the borough cannot be ruled out.

Alternative sites

31. The appellant has been looking for a suitable site within a 30/50 mile radius for around two years, but has not found any. In her experience, nearby public sites are full and overcrowded, and pitches on private sites are not for sale and are kept for family members. Whilst the Council refers to some brownfield sites in the borough that are available for purchase, it recognises that these do not have planning permission to be used as gypsy sites (and may have permission for other uses including residential development) and accepts that their cost can be prohibitive. Based on the evidence before me, no known suitable alternative sites are available for the appellant and her family.

Personal circumstances and accommodation needs

32. The appellant and her family previously lived on the County Council run site at Alvecote where the appellant has two aging aunts. However, due to the overcrowded conditions there they moved to a house in Erdington for a number of months, and from there, on to part of the appeal site.
33. The family are all registered at the Peartree Surgery in Kingsbury. The appellant has specific health conditions which were discussed at the hearing and makes regular trips to Hope Hospital every 3 to 4 weeks. The appellant has four children ranging in age from 4 to 17 years. Two of the children have specific health conditions which were outlined at the hearing and are on regular medication. The younger two children are at Kingsbury Primary School and attend after school activities there. I understand that they are doing well and have established friendships. The eldest child is considering attending college in the future, though it is unknown where at this time.
34. The appeal site would provide a settled base from which the appellant and her family could continue to access education and health care more readily. This would be advantageous to the well-being of the family and it would also be in the best interests of the children. These matters count in favour of the proposal and accord with the aims of the PPTS to enable the provision of suitable accommodation from which travellers can access education, health, welfare and employment infrastructure.
35. Additionally, the proposal would allow the appellant to keep her four horses on the site. These were previously stabled at Brownhills but are now in Coventry on a temporary basis. The appeal site would allow the appellant to provide on-site care and security for her horses as part of her traditional lifestyle and I appreciate that Policy F of the PPTS encourages mixed use traveller sites. The proposal would also reduce the number of car journeys and carbon emissions that are associated with caring for the horses at distance and allow the

appellant to be close to her aunts at Alvecote and provide care for them as they grow older.

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

36. The proposal would be inappropriate development in the Green Belt and as such would cause substantial harm. It would also cause considerable harm to the openness and limited harm to one of the purposes of the Green Belt. These factors also attract substantial weight against the scheme. Additionally, the proposal would cause harm to the character and appearance of the area and conflict with the development plan in these regards.
37. On the other hand, in the context of the uncertain levels of need for gypsy and traveller sites in the area, alongside the absence of any allocated sites in the borough and the lack of alternative sites for the appellant, the contribution that the proposal would make to the supply of gypsy and traveller sites is a benefit which counts in its favour. However, the currently unknown nature of the likely future need for sites, limits the weight I attach to this benefit.
38. As set out above, the appellant's personal circumstances and the provision of a settled base for the family to maintain access to education and health facilities, proximity to family members and care for her horses, are all benefits of the proposal which add a good deal of weight in its favour. However, I am conscious that the proposal is for five pitches, not just one. At the hearing the appellant clarified that all five pitches would all be occupied by family members. The appellant and her husband (and dependents) would occupy one pitch and two pitches would be earmarked for her eldest children (aged 16 and 17) when they are ready to move out. The remaining two pitches would be retained in wider family occupation (for example by the appellant's parents, or those of her husband) or would potentially be occupied by the younger children when the times comes.
39. Whilst I appreciate the appellant's wish to provide accommodation in the longer term for her family and understand that the eldest two children are likely to marry in the next few years, as things stand, the appellant's personal circumstances (and those of their family) only extend to the requirement for a single pitch. In my view, the need for further pitches for family members in the future is a matter for consideration when and if it arises and should be considered with regard to any personal circumstances at that time. As such, the personal circumstances outlined in support of this appeal cannot be reasonably used to justify the scale of the proposal for five pitches.
40. The proposal would be located relatively close to services and facilities and it has not been put to me that it would not meet the sustainability considerations set out in paragraph 13 of the PPTS. Whilst it considers the proposal to be away from existing settlements, the Council raises no particular objections to the proposal in these regards or in terms of the corresponding criteria in Core Strategy Policy NW8. The absence of harm in relation to these factors counts neither for, nor against the proposal.
41. The appellant considers that the future occupiers of the site would use local services and facilities and so support the local economy. However, whilst this is a benefit of the proposal, the proposal's contribution in this regard would be

limited by its relatively small scale. Although there would also be some use of local contractors in the construction phase, these would be relatively modest and short-lived. The appellant also argues that there would be some gains in biodiversity arising from the proposed boundary planting. Nevertheless, any such gains would need to be considered alongside the loss of a good deal of the the open site to development along with the introduction of activity there and the consequent effect of this on biodiversity. Accordingly, I attach only very moderate weight to these benefits of the proposal.

42. I confirm that I have considered the possibility of granting a temporary planning permission (since a permission with a limited period would to some extent lessen the scheme's impact on the Green Belt and the character and appearance of the area and reduce the amount of resultant harm). However, Planning Practice Guidance (the Guidance) indicates that circumstances where a temporary permission may be appropriate include where a trial run is necessary in order to assess the effect of the development on the area or where it is expected that the planning circumstances will change in a particular way at the end of that period. It has not been put to me that such circumstances apply in this instance.
43. The Council does not consider a time limited permission to be appropriate due to the levels of harm that would arise even on a temporary basis and given the scale and extent of the development proposed. The appellant also considers that the investment that would be required to develop the site as proposed would not be viable over a temporary period. Taking all these factors into account, I also consider that a temporary permission is not justified.
44. Since it was raised at the hearing, I have also considered whether a personal permission (to restrict the occupation of the site to the appellant and her immediate family) would be appropriate. As set out in the Guidance, planning permission usually runs with the land and it is rarely appropriate to provide otherwise. There may be exceptional occasions where development that would not normally be permitted may be justified on planning grounds because of who would benefit from the permission. However, for the reasons given, as I see it, the appellant's personal circumstances can only be reasonably applied to her aspiration for a single pitch at the appeal site. Even if these were to be accepted, an exceptional personal need for the remaining four pitches proposed cannot be demonstrated on these grounds. Accordingly, I am not persuaded that this is an exceptional occasion whereby the proposal before me is justified on the grounds of who would benefit from it.
45. The appellant considers Core Strategy Policies NW7 and NW8 to be out of date and refers to paragraph 11 of the Framework and the presumption in favour of sustainable development. However, with footnote 6 of section (d) (i) of paragraph 11 in mind, I confirm that the since the land is designated as Green Belt the application of policies in the Framework provides a clear reason for refusing the development proposed.
46. I have had regard to the requirements of Article 8 of the First Protocol to the Convention, as incorporated by the Human Rights Act 1998, and am aware that the Article 8 rights of a child should be viewed in the context of Article 3(1) of the United Convention on the Rights of the Child. However, I am mindful that the appellant's individual rights for respect for private and family life (along

- with the best interests of the children) must be weighed against other factors including the wider public interest and legitimate interests of other individuals.
47. I have also considered the Public Sector Equality Duty (PSED) at section 139 of the Equality Act 2010 to which I am subject. Since the appellant is an Irish Traveller Section 149 of the Act is relevant. Because there is the potential for my decision to affect persons (the appellant and her family) with a protected characteristic(s) I have had due regard to the three equality principles set out in Section 149 (1) of the Act.
48. To dismiss the appeal would disrupt the education of two of the children and the healthcare of two of the children and the appellant. The negative impacts of dismissing the appeal arise since the family may be forced into a roadside existence and intermittent use of unauthorised sites. This would interfere with the best interests of the children and each member of the family's right for respect for private and family life and lends some additional weight in favour of the appeal.
49. However, I have found that the proposal would cause substantial harm to the Green Belt and further harm to the character and appearance of the surrounding area and am satisfied that the well-established and legitimate aim of granting planning permission in accordance with the development plan and planning policies which seek to protect Green Belts and the countryside in the wider public interest, can only be adequately safeguarded by the refusal of permission in this instance. Whilst bearing in mind the need to eliminate discrimination and promote equality of opportunity, in my view the adverse impacts of dismissing the scheme on the appellant and her family are necessary and proportionate.
50. Policy E of the PPTs advises that subject to the best interests of the child, personal circumstances and unmet need are unlikely to clearly outweigh harm to the Green Belt and any other harm so as to establish very special circumstances.
51. Bringing matters together, the other considerations in this case and the benefits of the proposal, even taking into account the family's Article 8 rights and the PSED considerations, do not clearly outweigh the totality of the harm identified. As such, the very special circumstances necessary to justify the development do not exist.

Conclusion

52. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

Elaine Worthington

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Aida McManus
T Doherty
J Doherty
T Dorey

AM Planning Consultants Ltd
Appellant
Appellant's husband
Friend of the appellant

FOR THE LOCAL PLANNING AUTHORITY:

Jeff Brown
Mike Dittman

North Warwickshire Borough Council
North Warwickshire Borough Council

INTERESTED PARTIES

Robert Williams
Margaret Moss
Andy Jenns

On behalf of Mr G Twomlow (local resident)
Kingsbury Parish Council
Local resident