
Appeal Decision

Hearing Held on 6 November 2019

Site visit made on 6 November 2019

by Nicola Davies BA DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 December 2019

Appeal Ref: APP/K0425/W/19/3232405

**Land North of Five Oaks Farm, Wycombe Road, Studley Green,
Buckinghamshire**

- 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 N Fletcher against the decision of Wycombe District Council.
 - The application Ref 18/06899/FUL, dated 18 July 2018, was refused by notice dated 4 January 2019.
 - The development proposed is change of use of land to 1 No. Gypsy pitches and associated works including 1 touring caravan, 1 No. mobile homes, 1 No. dayroom/stable block and hard standing.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The site address as provided on the planning application form has been replaced by a different version in subsequent documents. I consider this to be usefully more accurate and have thus employed it here. In addition, I have taken the appellant's name from the planning application form although I note a full Christian name has been provided on other documents.
3. The Wycombe District Local Plan August 2019 (the Local Plan) has been adopted since the appeal was submitted. Policies CP12, DM26 and DM39 of the 2018 submission version of the Local Plan referred to in the Council's decision notice have been brought forward and adopted as part of the new Local Plan. Adoption of this new Local Plan has superseded Policy GB2 of the Wycombe District Local Plan 2011, Policies CS1, CS9, CS14 and CS18 of the Wycombe Development Framework Core Strategy Development Plan Document 2008 and Policy DM17 of the Adopted Delivery and Site Allocation Plan 2013 (the ADSAP). Policy DM1 of the ADSAP remains in place. At the hearing Policies CP12, DM26 and DM39 of the 2019 Local Plan and Policy DM1 of the ADSAP were agreed by the parties to be those most relevant to this appeal. I have determined this appeal having regard to this updated policy context.

Main Issues

4. The main issues relating to the appeal are: -

(a) Whether the harm arising by reason of inappropriate development in the Green Belt, and any other harm, including those of the personal circumstances of the appellant and his family, would be clearly outweighed by other considerations so as to provide the very special circumstances required to justify the proposal.

(b) Whether any harm would arise from potential flood risk.

Reasons

5. There is no dispute between the appellant's agent and the Council that Mr Fletcher is a gypsy. On the available evidence and what I heard at the hearing it appears to me that the appellant satisfies the gypsy definition set out within Annex 1 of the Planning Policy for Traveller Sites August 2015 (the PPTS).

Green Belt

6. The site lies outside of any defined settlement boundary and is situated in the Green Belt and within the Chilterns Area of Outstanding Natural Beauty (the AONB). The National Planning Policy Framework (the Framework) sets out the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open: the essential characteristic of Green Belts being their openness and their permanence. Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. This is reflected within the PPTS that states that "*traveller sites (temporary or permanent) in the Green Belt are inappropriate development*". The Framework also says that when considering any planning application, substantial weight should be given to any harm to the Green Belt.
7. Both parties agree that the proposal would represent inappropriate development in the Green Belt.
8. 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 Buckinghamshire Gypsy, Traveller and Travelling Showpeople Accommodation Assessment (GTAA) 2017 has established that between 2016 and 2033 a total of 7 permanent pitches is required in Wycombe District for travellers who meet the PPTS Annex1 definition. This was based upon a base date of February 2016. This accommodation need has been adopted within the new Local Plan. The Council advised at the hearing that any future need that might arise beyond that need established by the GTAA will be assessed against the criteria of Policy DM26 'Criteria for Traveller Sites' of the Local Plan.
9. The appellant's agent has been highly critical of the methodology and information gathering behind the Council's GTAA. However, I note from the Council's Topic Paper 10, submitted in support of the Council's Statement of Case, that the Buckinghamshire GTAA does not account for inward migration. It is clear from the evidence that Mr Fletcher does not live within the District. It, therefore, appears to me that this planning proposal should be assessed against the criteria of Policy DM26 of the Local Plan.

10. Part 1 of Policy DM26 sets out that the development of new sites, or the extension or intensification of existing sites will only be allowed where the site is not in the Green Belt and is not in the settlement area of Marsh. As noted above, whilst the site does not fall within the settlement of Marsh it does, however, fall within the Green Belt. This places a clear restriction on establishing a gypsy pitch at the appeal site.

Openness

11. My attention was drawn at the hearing to the Court of Appeal case *Turner v SSCLG & East Dorset Council* [2016] EWCA Civ 466. That case confirmed that the openness of the Green Belt has a spatial aspect as well as a visual aspect. The Turner judgment clarified that it is possible that development that would harm openness could be acceptable visually and vice versa.
12. The Framework states that "*the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open: the essential characteristic of Green Belts are their openness and their permanence*". The appellant's agent conceded at the hearing that there would be an impact on openness as a result of the proposed development, however the point was made that the proposal would not have any volume implications for the wider Green Belt as it would not involve development elsewhere in the Green Belt.
13. The proposal would result in development in a location within the Green Belt where no development has existed before. The proposed development would reduce the openness of the Green Belt by virtue of placing development within it. As a result, this would have a negative effect on the openness of the Green Belt. For this reason, there would be a degree of harm arising from this development, in addition to that arising from the inappropriate nature of the development.
14. Part 2 of Policy DM26 requires proposals to relate well to an existing settlement that hosts services and facilities and not be isolated in the countryside; be of a scale which does not dominate the scale of the nearest existing settlement; provide safe and convenient access to the highway network; avoid unacceptable adverse impact on the amenity of neighbouring land users; and, address any adverse visual impact. I consider that the proposal would be acceptable in these respects and, although the site is located in the AONB, the nature of the site is that it is contained and largely screened by trees. The proposal would, therefore, not have an adverse impact upon the wider AONB. Indeed, the Photo Viewpoints provided in Appendix 2 of the Appellant's Landscape Statement support this. Part 2 also requires proposals to accord with national policy for flood risk. I shall deal with this matter further below. Part 3 of Policy DM26 does not apply as the proposal would not result in a loss of pitches. Whilst I have found the proposal satisfies many of the criteria set out in Part 2 of Policy DM26, this does not override or set aside Part 1 of this Policy.

Flood Risk

15. The Lead Local Flood Authority (LLFA) seeks to ensure that an adequate surface water drainage solution for the site is achieved that manages surface water runoff in order to reduce the risk of surface water flooding. Two potential approaches have been explored for surface water drainage.
16. The first approach proposes quarry dust as a surfacing material, although I note from SLR Consulting Limited's letter of 5 November 2019 that this approach is described as a permeable paving system that would incorporate a sub-base. The LLFA highlight that mapping produced by the British Geology Survey shows that low permeability clay underlines the site and SLR advises that the clay has low permeability. However, the depth of the clay is unknown. SLR also indicate that the bedrock is of Chalk that may be suitable for surface water disposal. Given the underlying geology I cannot be sure that it would provide suitable permeability to drain surface water or that a sub-base of an appropriate depth could be provided that would facilitate infiltration sufficiently to the Chalk bedrock to facilitate surface water drainage.
17. Further to the above, the LLFA note that if low permeability strata is encountered, this subsoil would be unable to drain and this would cause a backing up of flows on site and the occupants may experience flooding, particularly if the storage capacity of the sub-base is exceeded. In addition, if the storage capacity of the sub-base is exceeded unrestricted overland flow would enter the ditch adjacent to the site that runs alongside Wycombe Road and this could displace surface water from the site downstream via the ditch and may cause flooding elsewhere. Whilst SLR suggests that the permeable pavement would significantly reduce the runoff going to the ditch, on the available evidence I cannot be sure that this would be the case.
18. Turning to the second approach, the LLFA has suggested discharge to the ditch as an alternative drainage solution. Creating a pond or swale at the site could provide attenuation capacity as part of this drainage solution. However, this option would be subject to determining whether connection to the ditch is possible and conveyance of the wider ditch system can be achieved that would facilitate flows downstream.
19. Notwithstanding these drainage options, the appellant contends that the amount of development proposed is relatively small, limited to that of a mobile home and dayroom/stableblock, and would only amount to a small increase in impermeable surface at site. I note that the greenfield runoff rate for the site and post development runoffs have not been determined. Therefore, there is uncertainty around the surface water that even a small-scale development might generate.
20. It appears to me that the appellant's evidence has not demonstrated sufficiently that surface water run-off would be dealt with adequately. This brings the proposal into conflict with Policies CP12 and DM39 of the Local Plan, and DM1 of the ADSAP, that require proposals, amongst other matters, to reduce the causes and impacts of flooding both on and off-site.
21. The appellant has suggested that a suitable surface water drainage scheme could be achieved by imposing an appropriately worded planning condition, noting that the site is within Flood Zone 1, which indicates that there is a low risk of fluvial flooding. However, without surface water drainage calculations

that would inform whether or not there would be a drainage solution that could be satisfactorily accommodated at the site, I do not consider it would be reasonable to impose such a condition.

Personal Circumstances

22. I turn to the accommodation needs of the appellant and his family. I note that, due to family circumstances, the Fletcher family are soon required to leave their current home of the past 9 years and, as such, the family will be homeless. Therefore, the family requires a pitch of its own.
23. The appellant confirmed at the hearing that the appeal site has been owned by the family for over 50 years and this makes the site an obvious choice for the appellant. Mr Fletcher also has family ties with the gypsies at the adjacent site at Five Oaks Farm.
24. Mr Fletcher's school age children have been continuously attending primary school, however that school would be approximately 20 miles away from the appeal site. Whilst it is Mr Fletcher's intention to move his children to schools closer to the appeal site, it was advised that he has not yet approached local schools to place his children on the register.
25. With regards to health, it was clear to me that some members of the family require regular GP check-ups for existing and on-going health issues. Mr Fletcher advised that the family is registered with a GP but that is elsewhere and not local to the appeal site.
26. The appellant advises that he has no other site available to him on which to locate and that other family members cannot accommodate them. I have not been directed to any options of suitable alternative sites/accommodation within the District or in the wider area that might be available to the Fletcher family. The parties agreed that there are no known alternative vacant pitches available in the District. Mr Fletcher indicated that his aspiration for his children is for them to have an education and follow into the traditional way of gypsy and traveller life when adults. However, without a site he and his family would be forced to live a roadside existence without any fixed address for the foreseeable future. This would result in his children having to be taken out of school. In addition, with no fixed address it would not be possible to register with a GP and the family would have to rely on random visits to emergency services for health care. The personal circumstances of the appellant and his family carries significant weight in favour of the proposal.
27. The Council explained that next year Wycombe District Council is to merge with other neighbour authorities to form a unitary authority. As part of the creation of the new authority a review of Gypsy and Traveller accommodation need would take place. It appears to me that even if Mr Fletcher's accommodation needs were to form part of that review, the allocation and provision of a pitch for Mr Fletcher would be some time away.

Other Considerations

28. Wycombe District is constrained by its Green Belt designation with limited undeveloped land available outside of it. At the hearing it was pointed out that the Council had to liaise with the neighbouring authority of Aylesbury Vale to achieve its general housing allocations with some of Wycombe District allocation being within that neighbouring authority's area. I have also been

directed to 6 gypsy pitches that have been granted planning permission in recent years, 2 of which have been within the Green Belt & AONB. However I have no substantive information relating to those 2 Green Belt cases to determine what similarity, if any, those proposals have to the proposal before me. Furthermore, the Marsh area, which was said to be over 3 square kilometre area, has an embargo for gypsy sites in that area. I accept that the Green Belt places a constraint, however the fact that 4 gypsy pitches have gained planning permission for pitches outside of the Green Belt offers some indication that suitable sites outside of the Green Belt could potentially be found.

Planning Balance and Human Rights

29. Section 38(6) of the Planning and Compulsory Purchase Act 2004 indicates that determinations must be made in accordance with the development plan unless material considerations indicate otherwise.
30. The proposal would be inappropriate development in the Green Belt as defined by the Framework and this carries substantial weight. The scheme would also result in harm to the openness of the area. This also carries substantial weight. It has not been sufficiently demonstrated that surface water run-off would be dealt with adequately and the harm arising from potential flooding weighs significantly against the proposal.
31. The appellant is in clear need of a pitch and this carries significant weight. As there are children involved in this case, it is in their best interests to have a settled base which affords them access to education and other services. This is a primary consideration. Given the circumstances and context in this case I attached significant weight to the best interests of the children. In addition, the lack of other planning harm, including the lack of harm to the AONB, and the sustainability of the site are neutral factors which do not weight for or against the proposal.
32. I acknowledged that there is a general national and regional need for pitches to which I attribute significant weight. The Council indicates that it can demonstrate an up-to-date 5 year supply of deliverable pitches, nonetheless this is limited to District need only and does not address the housing needs of the appellant. I accept the appellant's point that the PPTS policy does not preclude the possibility that in some instances personal circumstances and unmet need may outweigh the harm to the Green Belt. The Government's aim is to increase the number of traveller site in appropriate locations to address the under provision and maintain an appropriate level of supply. However, in this case I have concluded that the proposal should be assessed against the criteria of Policy DM26 of the Local Plan and this policy places a clear restriction on the establishment of gypsy pitches within the Green Belt.
33. I sympathise with the housing circumstances the appellant finds himself facing. However, I do not consider in this case that the personal housing needs of the appellant and his children having a settled base, along with the lack of available sites within the District, and elsewhere regionally or nationally, despite having significant weight, would clearly outweigh the substantial harm to the Green Belt, by virtue of the development's inappropriateness and its harm to openness, as well as the significant harm arising from potential flooding. The other considerations hold little weight. Taking those considerations that hold significant weight in favour of the scheme individually

- or collectively, they do not amount to the very special circumstances necessary to justify inappropriate development in the Green Belt. This is the test that they have to meet.
34. I have considered the conditions put forward by the Council, but I do not consider any of the conditions would sufficiently overcome my concerns.
35. I have considered the grant of a temporary planning permission in line with the advice provided by the PPTS. If a local planning authority cannot demonstrate an up-to-date 5 year supply of deliverable site, this should be a significant material consideration in any subsequent planning decision when considering applications for the grant of temporary planning permission. However, the PPTS also says that such a material consideration should not apply where the proposal is on land designated as Green Belt and/or AONB, amongst other designations.
36. I have also considered the imposition of a personal permission that would allow Mr Fletcher and his family to reside at the site. However, the harm to the Green Belt as a result of inappropriate development would exist over the time the site would be occupied. I acknowledge that in terms of a personal time limited condition the bar would be set at a lesser level than that of a permanent permission, however this does not obviate the harm to the Green Belt whilst the site would be occupied. Given the young age of the appellant's children and his aspirations to school his children, if he stayed at the site for that period, the harm would exist over that time and this would be a considerable length of time.
37. Dismissing this appeal would result in the occupiers not having a home in which to locate when they must move out of their current home once the property at which they are residing is sold, whenever that may be. This would be an interference of the appellant's rights under Article 8 of the Human Rights Act 1998. I find that the issue of inappropriateness in relation to the Green Belt along with the resulting harm to the openness is so substantial and that, in the wider public interest, it cannot be clearly outweighed by the personal circumstances of the appellant and/or the other considerations. I have considered whether a lesser requirement or alternative would overcome the harm. For those reasons give above, I have ruled out the possibility of imposing a temporary or personal permission. Dismissing the appeal would be proportionate and necessary.
38. 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. Since the appeal involves gypsies and travellers, they have a protected characteristic for the purposes of the PSED.
39. 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 relating to the wellbeing of Mr Fletcher and his family. I have also had regard to the best interest of the appellant's children. Mr Fletcher's children are of school age. Their best interests include living on a settled and secure site with access to schools and to local healthcare facilities. This is a primary consideration on my

reasoning on a personal permission. However, it does not follow from the PSED that the appeal should succeed.

40. The appellant has referred me to a considerable amount of case law and appeal decisions in which very special circumstances, personal circumstances, Human Rights, the Public Sector Equality Duty and/or the best interest of the children were key to the considerations of those cases, including that of a Solihull case. All of the examples referred to me by the appellant involved a balancing exercise, the outcome of which would have been dependent upon the individual judgement of the decision-maker.

Conclusion

41. The proposed development would, by definition, be harmful to the Green Belt, and I attached substantial weight to the harm to the Green Belt having regard to the policy in the Framework. The proposal would also result in harm to the openness of the Green Belt. The benefits of the other considerations, including those personal circumstances of the appellant and his family, do not clearly outweigh this harm. Consequently, there are not the very special circumstances necessary to justify inappropriate development in the Green Belt. The proposal would, therefore, conflict with Part 1 of Policy DM26 of the Local Plan in that the site is located within the Green Belt. I have also found conflict with Part 2 c) of Policy DM26 and Policy CP12 of the Local Plan, as well as DM1 of the ADSAP in respect of flood risk. There would be no violation of the human rights on this occasion.
42. Having regard to all matters raised, in writing and made orally at the hearing, I find that the appeal should fail.

Nicola Davies

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Dr Simon Ruston, Ruston Planning
Rhodri Crandon, Tirlun Design
Nathan Fletcher, Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Alistair Nicholson, Development Manager, Wycombe District Council
Stephanie Penney, Principal Planning Officer, Wycombe District Council

INTERESTED PERSONS:

Andrew Palmer, Observer
Esther Proudfoot, Observer
Molly Jones, Observer
Paul Hemming, Observer
Margaret Willcock, Observer
Lesley North, Observer
Sue Mills, Observer
Towe Butwell, Observer
Roger Seabrook, Observer
Neil Watson, Observer & Speaker
Jane Prince, Observer
Kelvyn Bailey, Observer
Richard, Cornish, Observer & Speaker
J Langstaff-Ellis

DOCUMENTS SUBMITTED AT THE HEARING

1. Record of hearing attendance.
2. SLR letter dated 5 November 2019 signed by Ian Walton, Technical Director
3. Two letters from Buckinghamshire County Council dated 5 November 2019 signed by Vikki Keeble, Sustainable Drainage Team Leader