

Appeal Decision

Hearing held on 11 December 2019

Site visit made on 10 December 2019

by Mr JP Sargent BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 January 2020

Appeal Ref: APP/M1520/W/18/3219310

**Land adjacent to Keswick Road and Windermere Road, Benfleet,
Essex SS7 3HU**

- 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 Connor Wisbey against the decision of Castle Point Borough Council.
 - The application Ref 17/0909/FUL, dated 3 November 2017, was refused by notice dated 21 June 2018.
 - The development proposed is the use of land for the stationing of caravans for residential purposes, together with hardstanding and utility/dayroom ancillary to that use.
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Decision

1. The appeal is dismissed.

Procedural matters

2. I undertook an extensive unaccompanied site visit on the day before the hearing. Whilst I made clear at the hearing that I was prepared to visit the site again if further reason was given, no such reason was forthcoming.
3. At the hearing the appellant confirmed that the proposal was for a single gypsy and traveller pitch for a person or persons falling under the definition of a gypsy and traveller contained in Annex 1 of *Planning policy for traveller sites* (PPTS). I have considered the appeal on that basis.

Main Issues

4. The main issues in this case are
 - a) whether this is inappropriate development in the Green Belt and its effect on openness and the purposes of including land in the Green Belt;
 - b) whether it would harm the character and appearance of the area;
 - c) whether it would give rise to other harms and,
 - d) if harm would be caused by any or all of the above issues, whether this harm is clearly outweighed by other considerations so as to amount to very special circumstances.

Policy

5. There are no policies in the adopted *Castle Point Local Plan* that specifically address Gypsy and Traveller development. Moreover, the emerging local plan is still at a very early stage and so cannot be given any appreciable weight. Therefore, as no other relevant development plan policies have been brought to my attention, I have determined the scheme in the light of the *National Planning Policy Framework* (the Framework) and other national guidance.

Reasons

a) Green Belt

6. The appeal site lies in a strip of the Metropolitan Green Belt, some 750m wide, that separates the settlements of Thundersley and New Thundersley. It is currently part of a larger paddock, albeit in poor condition, that is at the junction of Keswick Road and Windermere Road. I understand the paddock used to be wooded until it was substantially cleared by the appellant, though I was not told this clearance required any consents from the local planning authority. It is proposed to form a single pitch on the land by siting 2 caravans there, laying an area of hard surfacing and erecting a day room. The parties agreed the development had not yet been implemented.
7. The Framework says that inappropriate development is, by definition, harmful to the Green Belt. Policy E in the PPTS, which was adopted in 2015, states that traveller sites in the Green Belt are inappropriate development, while paragraph 146 in the Framework, which is more recent, says changes of use of land are not inappropriate if they preserve the openness and do not conflict with the purposes of including land in the Green Belt.
8. The Framework also identifies keeping land permanently open as one of the fundamental aims of the Green Belt, while a stated purpose of the Green Belt is to assist in safeguarding the countryside from encroachment.
9. The proposal would erode the sense of openness in this location by the building of the day room and by the siting of caravans on this undeveloped piece of land. These elements of the scheme, together with the associated hardstanding, would also result in an encroachment of built form and structures into the countryside, diminishing its rural, lightly developed character to some extent. It is accepted that the harm caused by the caravans would be less than that of the day room as they could be moved off-site. However, the underlying purpose of the proposal is to provide a settled base so it is reasonable to assume one caravan at least would remain there for much of the time and this should be reflected in the weight attached to its harm.
10. Accordingly, I conclude that the scheme would conflict with one of the Green Belt's fundamental aims by harming openness, and it would constitute encroachment into the countryside in conflict with the Green Belt's purposes. Therefore, whether based on PPTS Policy E or paragraph 146 in the Framework, I find it would be inappropriate development.

b) Character and appearance

11. Across this strip of land between these 2 settlements is a scattering of individually designed bungalows and houses, generally (but not always) in large curtilages, interspersed with paddocks and areas of woodland, and served

by a network of unadopted roads with few street lights and pavements. Stables and other outbuildings are often found in the curtilages and on the paddocks and these can be seen to varying degrees from the roads. The low-density development, the woodland, the paddocks and the unadopted roads mean that, despite the housing, this strip of land has a rural character and appearance.

12. Within this setting I accept that the development would not be totally alien or discordant, as its caravans and day room would reflect the outbuildings found elsewhere. However, it would nonetheless be prominently located at a junction of 2 roads, and it would result in a further loss of the undeveloped areas that run between the houses around and are part of the locality's defining character. As a result, the scheme would erode to some degree the rural context of these houses and this area, and so would cause harm to the character and appearance of the surroundings.
13. Therefore, I conclude the proposal would detract unacceptably from the intrinsic character and beauty of this area of countryside, thereby harming its character and appearance in conflict with guidance in the Framework.

c) Other harm

14. The unadopted roads serving this area are, in places, in poor condition. Moreover, they are also part of a bridleway network and so are likely to be used by pedestrians and horse-riders. However, this would be only a single pitch and a condition could be imposed to prevent commercial activity at the site. Therefore, traffic flows should not be great. Although the touring caravan would be brought to and taken from the site from time to time, this would not occur particularly often. Consequently, the development would not cause unacceptable harm to highway safety on these unadopted roads.
15. Turning to the junctions of Keswick Road and Bassenthwaite Road with Church Road, even if visibility at these falls slightly below the standards generally sought, given how many houses the roads already serve the introduction of this one further residential unit would not cause undue harm.
16. Particular concern was raised about the scheme's traffic implications in relation to the school that stands near the junction of Keswick Road. On my visit I saw activity around the school at 1500h and again at 1530h as parents and carers came to collect children. I recognise that, as with many schools, there is congestion associated with the start and end of the school day, and at these times Keswick Road is used for parking. However, again as this road serves a number of properties this one further development would not have an unacceptable impact in this regard.
17. Although the development could be seen from the houses on the opposite side of Windermere Road, the separation distances, the effect of the intervening planting and the fact that the road is part of the public domain mean there should be no unreasonable loss of privacy. Mindful that there could be a condition prohibiting commercial activity I see no reason why noise should be unacceptable. Similarly, there are no grounds to find that any nuisance should arise from dogs at the site. The development would be well away from the school, and so there is no basis to conclude it would affect the children there by reason of privacy, noise or danger from dogs.

Conclusions on Issues (a), (b) & (c)

18. Therefore, I have found this to be inappropriate development, which is, by definition, harmful to the Green Belt. Moreover, whether assessed by themselves or as part of the consideration of inappropriateness, it would harm the openness of the Green Belt, and conflict with its purposes. Under paragraph 144 of the Framework I give this Green Belt harm substantial weight. The scheme would also detract from the character and appearance of the area, although given the nature of this harm I afford it only moderate weight.

d) Other considerations

19. The Framework states that inappropriate development should not be approved except in very special circumstances. These circumstances will not exist unless the development's harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations.
20. The PPTS elaborates on this position in Policy E (and re-iterates it in Policy H) by saying, in relation to traveller sites,

'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.'

21. The courts have held that the weight given to matters remains for the decision-maker. However, as the PPTS says it is '*unlikely*' that personal circumstances and unmet need would outweigh harm in the Green Belt and other harm, it is not saying those factors would, by themselves, never outweigh the harm. Moreover, whilst personal circumstances and unmet need are '*unlikely*' to outweigh harm, there is nothing in the guidance in the PPTS to say that they could not contribute to outweighing the harm when taken with other material considerations.
22. In seeking a determination of this appeal, it was the appellant's primary desire to secure a non-personal permission on the site, so it could be occupied by any who fell under the definition in the PPTS. To this end he relied on what he perceived as failures arising from the identification of need by the Council.
23. The *Castle Point Borough Council Gypsy, Traveller and Travelling Showpeople Accommodation Assessment* (the GTAA) and its associated documents found that there was a need for no additional gypsy and traveller pitches in the Borough. There are, no doubt, many different yet valid ways to prepare such a document, each of which will involve judgements and have its own strengths and weaknesses. Overall, I am not persuaded that, in broad terms, the particular approach followed by the GTAA has been inappropriate. Moreover, the GTAA can only reflect the situation as shown by its underlying evidence base, with any reasonable subsequent change in circumstances being addressed on its merits (in the absence, as in this case, of the Local Plan offering a criteria-based policy).
24. Since the GTAA was published in 2017 a planning permission for specified occupants has been granted for additional pitches at a gypsy and traveller site elsewhere in Castle Point.

25. As a starting point the appellant contended that there should be no distinction between gypsies and travellers who fall within the definition in the PPTS and those who do not. This meant the supply of pitches should be higher. I am not persuaded though that that is the basis on which need within the Borough should be assessed in relation to this proposal. To my mind, whilst the accommodation needs of both are to be addressed, they are nonetheless to be considered under different policy regimes, with those outside the definition for example not being subject to the guidance in the PPTS. Moreover, from the outset it was accepted that this scheme would be for gypsies and travellers within the definition, and so, if a condition to that effect was imposed, those who fell outside of that definition would not be eligible to live here. As such, the Council was not incorrect to focus on those who came under the PPTS definition.

26. Beyond this the appellant raised concerns about

- the methods of data collection used in the compiling of the GTAA,
- the assumptions it makes about concealed/hidden households (including those living in bricks and mortar),
- its basis for assessing household formation,
- how many of the Gypsies and Travellers whose status in relation to the PPTS definition is unknown can be assumed to fall within that definition, and
- the lack of a 5-year supply of sites and associated policy failure.

However, even if I were to agree with the appellant on all of these points, by his own calculations it would result in only a very few extra pitches being required in absolute terms for those within the definition in the PPTS. To my mind that level of additional provision can be readily and appropriately addressed through assessing each case on its own merits, in the light of national guidance and advice.

27. I was told that all of Castle Point is either designated as Green Belt or within the built-up area. The appellant therefore contended that siting gypsy and traveller pitches in the Green Belt was the only realistic way of meeting any need that arose. Despite this, the Council said that an application for a Gypsy and Traveller development has recently been submitted within the built-up area, but as that has not yet been determined the weight I can afford it is limited. Therefore, putting that aside and accepting the appellant's contention, I nonetheless consider that there could well be sites within the Green Belt where, although inappropriate if judged against Policy E in the PPTS, pitches could be provided with less impact on openness, less sense of encroachment and less effect on the area's character and appearance. Therefore, the extensive nature of the Green Belt in the Borough does not necessarily support the development of this site.

28. Consequently, I find that the matters broadly oriented around policy discussed above (the policy matters) do not clearly outweigh the identified harm and so do not justify a non-personal permission here. I therefore turn to consider the personal circumstances of the adults.

29. The appellant and his family currently live outside of the Borough, unlawfully 'doubling up' on another pitch. I understand why he and his wife want a settled base, though I anticipate this is a commonly held desire amongst the Gypsy and Traveller community. Whilst I took note of the appellant's health issues, I was told of no specific reasons why they needed to live on this site with its identified harms. They also do not have a roadside existence at present. I am therefore not satisfied that, even when taken with the policy matters, the personal circumstances of the appellant and his wife clearly outweigh the identified harm.
30. Finally, I turn to consider the best interests of their children. At the outset I have regarded no other consideration as more important or, in advance of the subsequent assessment of the individual circumstances, I have given none greater weight. However, these best interests will not always outweigh other considerations including those that impact negatively on the environment. I have nonetheless kept the best interests of the children at the forefront of my mind in reaching my decision.
31. The appellant's children are too young to attend school now and I was told of them having no specific health needs. I accept though that a settled base is in their best interests as it would allow them security, access to general health care, and access to social groups. In due course it also would allow them stable education and I accept that it is preferable for a settled home to be established before schooling starts to allow their time at school to begin seamlessly. The development would be such a base. However, these factors apply to most if not all Gypsy and Traveller children, and, when weighed against the harm I have identified to the Green Belt and to the character and appearance of the area, I find they do not justify occupancy of this particular site. Given this, I consider the best interests of these children, even if taken with the personal circumstances of the adults and the policy matters, do not clearly outweigh the harm I have identified. The grant of full planning permission is therefore not justified.
32. Although it is open for me to consider whether a temporary permission should be granted, the parties agreed that there was likely to be no material change in planning circumstance in the next 5 years and so no justification for such a decision exists. Based on the evidence before me I share this view and consider that a temporary permission is not justified.
33. In assessing this case I have had regard to the other decisions to which reference was made, many of which pre-dated the PPTS and the Framework. However, my findings are based very much on the facts before me and the current policy context, and I see nothing in them that leads me to a different view.
34. I accept that dismissing this appeal would interfere with the appellant's rights under Article 8 of the *European Convention on Human Rights* as it would deny him and his family opportunity to establish a home on this site. However, such rights are qualified, and interference may be permissible when the rights of the individual are balanced against those of the community. In this instance such interference would be proportionate on the rights of the adults and the best interests of the children given the public aim of safeguarding the Green Belt and the effects on the countryside.

Conclusions

35. Accordingly, I conclude that this would inappropriate development that would detract from the openness of the Green Belt and conflict with the purposes of including land in the Green Belt. Moreover, it would harm the character and appearance of the area. The other considerations offered by the appellant, including the best interests of the children, do not clearly outweigh this harm so as to amount to very special circumstances, and as a result the development is contrary to the Framework.
36. For the reasons given I conclude the appeal should be dismissed.

J P Sargent

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr M Green	Agent
Mr C Wisbey	Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Mr R Davis	Planning, Development & Enforcement Manager at the Council
Mr S Jarman	Agent
Mr K Zammit	Planning Officer at the Council

INTERESTED PERSONS:

Mr S Glynn	Local resident
Mrs B Kimberley	Local resident
Mr G Kimberley	Son of Mrs Kimberley

DOCUMENTS

FROM THE APPELLANT:

APP1	Revised witness statement dated 11 December 2019
APP2	Email to the Planning Inspectorate concerning suggested conditions (dated 23 December 2019)

FROM THE LOCAL PLANNING AUTHORITY:

LPA1	<i>Castle Point Borough Green Belt Review 2018 – Part 1</i>
LPA2	Policy HO7 from the emerging Local Plan
LPA3	<i>Tree Preservation Order 3/2018, Land Adj The Willows, Keswick Road, Thundersley, Benfleet, Essex</i>
LPA4	Appeal decision APP/M1520/W/18/3213684 concerning Janda Field, Fane Road, Benfleet, Essex (dated 15 October 2019)
LPA5	Email to the Planning Inspectorate concerning suggested conditions (dated 3 January 2020)

JOINTLY SUBMITTED:

JNT1	<i>Draft Statement of Common Ground</i> (signed by the appellant on 11 December 2019 and by the Council on 2 December 2019)
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