



Appeal Decision

Hearing Held on 14 January 2020

Site visit made on 14 January 2020

by A Blicq BSc (Hons) MA CMLI

an Inspector appointed by the Secretary of State

Decision date: 31 January 2020

Appeal Ref: APP/H1840/W/19/3237759

Roberts Paddock, Whitlenge Lane, Hartlebury, Kidderminster DY10 4HD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr Wayne and Mrs Tina Roberts against the decision of Wychavon District Council.
 - The application Ref 19/01671/CU, dated 16 July 2019, was refused by notice dated 16 September 2019.
 - The application sought planning permission for use of land for the siting of a mobile home and touring caravan without complying with conditions attached to planning permission Ref W/16/01883/CU, dated 11 November 2016.
 - The conditions in dispute are Nos 1 and 2 which state that: Condition 1 - *The use hereby permitted shall only be carried on by Mrs Tina Roberts, Mr Wayne Roberts, and their children Victoria, Wayne and Chloe and shall be for a limited period being the period of 3 years from 28 September 2016 or the period during which the premises are occupied by them, whichever is the shorter, and Condition 2 - When the premises shall cease to be occupied by Mrs Tina Roberts, Mr Wayne Roberts and their children Victoria, Wayne or Chloe or at the end of 3 years, whichever shall first occur, the use hereby permitted shall cease, all materials brought on to the premises in connection with the use shall be removed and the land restored to its former condition*
 - The reasons given for the conditions are: Condition 1 - *The development is deemed to be acceptable only on the basis of the personal circumstances of the applicant and the temporary nature of the development and time limited harm to the Green Belt, and Condition 2 - The development is deemed to be acceptable only on the basis of the personal circumstances of the applicant and the temporary nature of the development and time limited harm to the Green Belt.*
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Decision

1. The appeal is allowed and planning permission is granted for use of land for the siting of a mobile home and touring caravan at Roberts Paddocks, Whitlenge Lane, Hartlebury, Kidderminster DY10 4HD in accordance with application Ref 19/01671/CU, dated 16 July 2019, without complying with conditions 1 and 2 attached to planning permission Ref W/16/01883/CU, subject to the conditions listed in the schedule following this decision.

Background and Main Issues

2. In 2016 the Council granted temporary permission for a gypsy and traveller family to locate a mobile home and touring caravan on a site within the Green Belt, which already housed a stable and hardstanding. Use of the site for this

family had been granted two previous temporary permissions at appeal, in 2007 and 2012.

3. At each appeal, and in 2016, part of the reasoning for the granting of the temporary permissions was that before the permissions expired, the Council would have issued its Development Plan Document Site Allocations for Gypsies and Travellers (DPD). This would have identified other sites and enabled the family to vacate this particular Green Belt site. The previous applications also gave weight to the fact that there were school age children living on the site who required continuity of education. This is no longer the case.
4. At the hearing it was apparent that despite two separate calls for sites, insufficient sites have been identified to enable the DPD to progress. Even if the DPD is examined and adopted within the next two years as the Council hopes, the delivery of those sites is likely to take a further period of time.
5. The current application is to remove the conditions that limit occupancy of the site to a temporary period and require site restoration once that temporary occupancy has ceased.
6. The only concern, which is not disputed by the parties, is that the site represents inappropriate development in the Green Belt and this harm carries substantial weight. Consequently, the main issue is whether the disputed conditions are necessary and reasonable and whether they meet the other tests for conditions set out in the National Planning Policy Framework (the Framework) and Planning Policy for Traveller Sites (PPTS). In order to reach a conclusion on this issue it is necessary to consider the effects of the development on openness in the Green Belt and the Council's provision for gypsy and traveller sites, as well as any issues relating to the Human Rights Act 1998 and the Equalities Act 2010.

Reasons

Gypsy status

7. The gypsy status of the appellants and their extended family is not disputed by the Council. The lifestyles of the appellants' family were outlined at the appeal and I see no reason to conclude that the family does not meet the definition of gypsies as defined in Annex 1 of PPTS.

Openness of the Green Belt

8. Although the Framework sets out five reasons for the existence and protection of the Green Belt, the only reason relevant here is to safeguard the countryside from encroachment. 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 courts¹.
9. The locality of the appeal site is an area of narrow country lanes and tall hedgerows which afford occasional glimpsed views of dwellings, agricultural and commercial premises, as well as large open fields. The site is well-screened from the road by a mature hedge and I noticed that the mobile caravan is screened by vegetation from the adjacent fields to the rear.

¹ Turner v SSCLG & East Dorset Council [2016] EWCA Civ 466

10. Insofar as openness is generally taken to mean freedom from operational development, there is encroachment into the countryside and a loss of openness. However, the caravans take up a very small proportion of what was a site with previous hardstanding and stable blocks. Consequently, the loss of openness is limited to a small area. The existing boundary treatments lead me to conclude that the visual impact of the development is limited. My reasoning in this regard is reinforced by the conclusions of the previous appeals and the Council's statements.
11. Nonetheless, although the development represents minor harm to the Green Belt in respect of openness and the purposes of including harm in the Green Belt, even this minor harm carries substantial weight.

The need for sites and Council provision

12. At the time of the application the Council considered that it had a 5 year pitch supply. The Council notes that this is no longer the case.
13. In order to assess the level of demand I sought clarification on the figures given in the most recent GTAA². Both Tables 5.3 and A3.1 deduct temporary pitches from the supply side without having included them in the first place. Moreover, the GTAA states that *families residing on pitches whose planning permission expired within the period 2019 – 2023 will still require accommodation in the study area* whereas the Council's clarification states that occupants of temporary pitches *are not seeking pitches as they are already on a pitch that they have permission to be on*. Even if I accept that the queries raised make no numerical difference to the overall figure for demand, it seems that there is a lack of clarity and consistency in the evidence before me. I conclude that there is unmet need and that this is not in dispute between the parties.
14. The appellants have been on the waiting list for a socially funded site for nine years and to date have not been offered an alternative pitch. There is a site with vacant pitches in the district but other families on the site are from a different ethnic group. I accept that it would be inappropriate to expect this family to relocate to that site.
15. With regard to the DPD the Council's position is that although it is delayed, the delay is caused by the lack of sites in the Malvern Hills district. However, whatever the reason, it remains that the DPD is delayed. Given that there has been an expectation for the Council to identify suitable sites in a timely manner since 2006, it is difficult for me to give any weight to the suggestion that the DPD will be issued within the next couple of years. Even if it was, those sites would not be immediately available.
16. If the appeal was dismissed the family would return to an itinerant life on unauthorised sites. Such sites would need to be within easy reach of the stables as the horses and other animals on the site are central to the family's ongoing business and lifestyle. Such unauthorised sites could also be within the Green Belt. Although the Council argued that the sites that have been submitted for the DPD are in the public domain, when asked, the Council was unable to suggest any alternative site for the family.

² South Worcestershire Gypsy and Traveller Accommodation Assessment, Final Report October 2019

17. The appellants also noted that the Council has site allocations well in excess of five years for the settled community. This appears to suggest that there is not a general shortage of development land. The Council's failure to identify a commensurate supply of suitable gypsy sites for the DPD suggests that it is considerably more difficult to find gypsy sites than sites for the settled community. This adds to my concern that there is no certainty that the DPD will be ready for adoption in the foreseeable future.
18. I conclude that the Council has unmet need with regard to gypsy and traveller sites. Moreover, there is nothing before me to suggest that sufficient sites on the scale required to meet the requirements of the DPD are likely to be identified in the near future.

Personal circumstances

19. Although not given particular weight in the appellant's evidence, it is apparent from the previous appeal decisions and from discussion at the hearing that one of the family has chronic health issues. Whilst these appear to be of a nature that can be successfully managed, a permanent residential address enables continuity of care. A return to an itinerant life style would be likely to be detrimental to that individual's long term health. This adds minor weight to the appellants' argument.

Other considerations

20. Policy E of PPTS states that 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. However, there is nothing before me to suggest that personal circumstances and unmet need can *never* constitute very special circumstances. It is a matter of planning balance and judgment.
21. Moreover, case law has shown that other considerations amounting to 'very special circumstances' sufficient to outweigh the harm to the Green Belt can be commonplace occurrences.
22. In this case, a series of permissions over 12 years has been granted in the clear expectation that the Council would allocate sufficient suitable sites within the period of the permission, to enable the appellants to find an alternative home. This has failed to happen on each occasion.
23. Consequently, the appellants have experienced an extended of uncertainty surrounding their home. To my mind, to be in this situation for this length of time places an unreasonable burden on the appellants as well as requiring applications for renewal on a cyclical basis.
24. Moreover, the government's Planning Practice Guidance (PPG) suggests that a second temporary permission is rarely justifiable and this development has already had three such permissions. This is both time consuming for the Council and has resulted in the extended uncertainty, as well as ongoing costs, for the appellants. Although the appellants suggest that a further temporary permission would be acceptable, it would lead to further uncertainty. It would also fail to comply with guidance in PPG. In any case, even then there is no guarantee that the DPD would have been adopted by the time a further temporary permission expired.

25. Furthermore, although neither party has raised human rights considerations, a requirement to leave land that has been their home for 12 years would constitute an interference in the appellants' rights under Article 8³. I acknowledge that the appellants have known that the permissions were temporary. However, it is the period of time that has elapsed that suggests to me that this interference should be given some weight, particularly as there has been expectation from previous Inspectors and the Council itself that the situation would be resolved far more speedily than it has been.
26. Policy SWDP2 of the Local Plan lists acceptable development in the open countryside, and protects the Green Belt. Although gypsy and traveller sites are not listed as exceptions, development specifically permitted by Policy SWDP 17, which lists criteria for gypsy and traveller sites, could be permitted. As both policies preclude the development of gypsy and traveller sites within the Green Belt, allowing the appeal would conflict with these policies.
27. However, the figures informing Policy SWDP17 date from 2014. It appears that the recent review has resulted in the Council's recognition that it can no longer demonstrate sufficient pitch supply. In this regard I consider Policies SWDP2 and SWDP17 to be out of date with regard to gypsy and traveller sites, in line with Paragraph 11 of the Framework. These policies therefore weigh neither for nor against the appeal.
28. Although the Framework requires me to give substantial weight to harm in the Green Belt, the unmet need and the extended period of uncertainty experienced by the appellants amount to other considerations which are material to the planning balance. Moreover, the harm to the Green Belt that would arise from continued occupation of the site has to be balanced against the harm arising from the unauthorised occupation of another site nearby, as well as the harm to the health of one family member.
29. In the light of the above, I conclude that these other considerations do amount to very special circumstances sufficient to clearly outweigh the harm to the Green Belt, and that the appellants should continue to occupy the site. As there seems little realistic expectation that deliverable alternatives will emerge in the short or medium term, this occupation should not be time limited. In any case, dismissal of the appeal would be to effectively penalise the appellants for the Council's policy failure. There seems to be a significant shortfall of suitable sites in the area and there is nothing before me to suggest that the Council will be able to rectify this situation in the foreseeable future.
30. On that basis, I conclude that conditions 1 and 2 as attached to the recently expired permission are neither reasonable nor necessary and that planning permission should be granted for the permanent occupation of the site, subject to alternative conditions.

Conditions

31. As my reasoning is based on the specific circumstances of this particular family, I have concluded that a personal condition is necessary. I have therefore amended condition 1 to take the current family composition into account, but I have removed the time limitation. I confirmed at the hearing that all four adults occupy the caravan.

³ Article 8 of the European Convention on Human Rights: The Right to Respect for Private and Family Life and for the Home

32. Condition 2 is concerned with site restoration. Even with the removal of the time limitation in condition 1, the site still lies within the Green Belt. As such, if the family vacate the site it should be restored to its former use. I have therefore amended condition 2 to require restoration when and if that happens.
33. For the avoidance of doubt I have imposed a condition requiring adherence to the submitted drawings. I have also imposed conditions restricting the number of caravans on the site and the storage of commercial vehicles. These are to safeguard the character and appearance of the Green Belt and were attached to the original permission.
34. The Council suggested that a condition be imposed that would restrict the movement of the caravan within the site. However, given the site's size and screening, and the fact that I could not see where the mobile caravan could realistically be moved to, I disagree that this is necessary to make the development acceptable in planning terms.

Conclusion

35. The other considerations identified above amount to very special circumstances which clearly outweigh the harm to the Green Belt. The disputed conditions are neither necessary nor reasonable and do not meet the tests set out in the Framework or PPTS. Although I have found it necessary to vary the two conditions that are the subject of this appeal, the appeal is allowed.

A Blicq

INSPECTOR

APPEARANCES

APPELLANT

Alison Heine	Heine Planning Consultancy
Wayne Roberts	
Tina Roberts	
Chloe Roberts	

COUNCIL

Adam Bennett	Wychavon District Council
Denise Duggan	Wychavon District Council
Katherine Smith	Wychavon District Council

ADDITIONAL EVIDENCE

1. Updated pitch supply figures (submitted by Council)
2. Clarification of tables in GTAA (submitted by Council by email following the sitting and site visit)

SCHEDULE OF CONDITIONS

1. The use hereby permitted shall be carried on only by Mrs Tina Roberts, Mr Wayne Roberts and their children Wayne Roberts and Chloe Roberts.
2. When the premises cease to be occupied by any of the adults listed in condition 1, above, the use hereby permitted shall cease. All materials and equipment brought onto the premises in connection with the use shall be removed and the land restored to its former condition.
3. The development hereby permitted shall be carried out in accordance with the following approved plans: Site Location 1:1250; Site Layout Scale 1:500.
4. No more than 2 caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 (of which no more than one shall be a static caravan) shall be stationed on the site at any one time.
5. No more than one commercial vehicle per plot shall be kept on the land for use by the occupiers of the caravans hereby permitted and it shall not exceed 3.5t in weight.