
Appeal Decision

Hearing Held on 25 February 2020

Site visit made on 25 February 2020

by D Fleming BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 06 May 2020

Appeal Ref: APP/Z1510/C/19/3223665

Gulls Meadow, Woodhouse Farm Road, Tumbler's Green, Braintree, Essex CM77 8FP

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr M Nicholls against an enforcement notice issued by Braintree District Council.
 - The enforcement notice was issued on 25 January 2019.
 - The breach of planning control as alleged in the notice is without planning permission, the unauthorised change of use of land at Gulls Meadow for residential purposes, involving the siting of three mobile homes, one of which is occupied, together with storage containers and non-agricultural vehicles.
 - The requirements of the notice are:
 - a) Cease the use of the land for residential purposes.
 - b) Remove all mobile homes from the land.
 - c) Remove all storage containers from the land.
 - d) Remove all non-agricultural vehicles from the land.
 - The period for compliance with the requirements is three months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Decision

1. It is directed that the enforcement notice be corrected: by the deletion of the words used in the allegation and the substitution of the words 'Without planning permission, the material change of use of the land to a mixed use for the keeping of animals, as a residential caravan site for one gypsy family with a total of three caravans and one storage container and for storage purposes' and; by the deletion of 'four years' and the substitution of 'ten years' in paragraph 4 of the notice.
2. Subject to these corrections, the appeal is allowed and the enforcement notice is quashed. Planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended, for the development already carried out, namely the material change of use of the land to a mixed use for the keeping of animals, as a residential caravan site for one gypsy family with a total of three caravans and one storage container and for storage purposes, subject to the conditions in the schedule attached to this decision.

Application for costs

3. At the Hearing an application for costs was made by the appellant against Braintree District Council. This application is the subject of a separate Decision.

The Notice and Procedural Matters

4. A notice must enable every person who receives a copy to know exactly what, in the Council's view, constitutes the breach of planning control. In this case the notice alleges, in addition to the residential use, the siting of 'storage containers and non-agricultural vehicles'. No mention is made directly of any business use or the keeping of animals.
5. At the Hearing the parties agreed that there was only one storage container, which housed the electricity supply, the batteries and was also used to safely store gas bottles. The appellant explained that he is self-employed as a general dealer. He rents premises from the Council in Witham to store materials that can be recycled but anything of a higher value is stored either in his Luton van parked next to his static caravan or, if too large, is stored in the open in the gap between his static caravan and the line of trees, where he can keep an eye on it, until such time as he can sell it. The other vehicles on site are all used in connection with his business depending on what it is he is collecting or transporting. These are parked on the hard standing adjacent to the track that leads to the static caravan. There is a transit van, a flat-bed truck, a vehicle that has a mini skip and a muck lorry with a grabber. Each vehicle has two axles. He also keeps a stallion and a companion and trades in horses, as this is his heritage, as well as keeping goats as pets.
6. It is open to me to correct the notice so that it reflects the development that was taking place when it was issued. I am satisfied that no injustice would be caused even though the scope of the breach is extended as it appears the Council saw what the appellant was doing even though it was not clearly expressed in the notice. The allegation is therefore without planning permission, the material change of use of the land to a mixed use for the keeping of animals, as a residential caravan site for one gypsy family with a total of three caravans and one storage container and for storage purposes.
7. The notice also stated that the breach had occurred within the last four years when it should have stated ten years. I find that this too can be corrected without causing injustice as there is no appeal on ground (d).
8. The grounds of appeal originally included ground (f) but this was withdrawn during the Hearing. The appeal will therefore be determined on the remaining grounds of (a) and (g).

Background

Planning history of the site

9. The appeal site was previously owned by Ms D Fulgoni. She had received planning permission in 2010 to continue siting a mobile home on the land for residential purposes. This was subject to conditions requiring that the planning permission should expire after three years and that the occupation of the mobile home be limited to that of an agricultural worker. After an unsuccessful application in 2014, this permission was 'renewed' in effect in 2015 with

conditions limiting the use this time until 31 December 2018 and occupancy again limited to an agricultural worker.

10. The appellant bought the site in April 2016. As he and his family are members of the gypsy and traveller community, he needed a permanent address so that his children could be placed in a school. So that he would have somewhere dry to sleep he replaced Ms Fulgoni's mobile home, which had come to the end of its life, and, in addition, acquired another to use as a day room and laundry. He also has a touring caravan.
11. Although the Council stated that the appellant told them on their site visit in May 2018 that he was working on establishing an agricultural business, he denied this at the Hearing and said his primary source of income is from his work as a general dealer. This is a business that runs in his family as evidenced by his mother's birth certificate and he is well known for this work being a regular salesperson at Stanford's weekly general market.

Status of the appellant

12. The Council were not aware that the appellant was a member of the gypsy and traveller community and stated at no time during the enforcement investigation did the appellant make such a claim. The appellant though was known to the Council when he occupied a property in Silver End village.
13. The appellant states he has gypsy lineage dating back at least five generations. His parents came from Enfield and his grandparents came from Tottenham. He provided a copy of his mother's birth certificate which shows she lived in a caravan and the appellant's grandfather was a general dealer. The appellant continues with this line of business travelling all over, buying and selling anything. He also travels with his family to various 'horse meets' where he buys and sells horses. He did own a house several years ago, as the Council point out, but he never slept in it. It was used by his wife and their first borne child. He himself slept in a caravan in the garden.
14. On the basis of the oral and written evidence put to me, I am satisfied that the appellant has a nomadic habit of life for economic purposes. This accords with the definition of gypsies and travellers as set out in Annex 1 of the Planning policy for traveller sites (PPTS) and that the other occupiers of the site are his dependents.

Main Issue

15. The parties agree that the site is situated in a rural area outside of any development boundary where, in general, residential and business uses are restricted by policy to being within particular parameters. This is clear from the planning history of the site. The main issue is therefore whether the development represents an acceptable form of development having regard to the following matters:
 - the objectives of the development plan in respect of gypsy and traveller accommodation;
 - the character and appearance of the area; and
 - whether any harm arising from the above matters, is outweighed by any other material considerations.

Reasons

Appropriateness of development – Site location

16. The appeal site is situated on the eastern side of Woodhouse Farm Road within the hamlet of Tumbler's Green, about a mile from the village of Stisted, which is about 2 miles from the edge of Braintree. Tumbler's Green comprises a cluster of houses and farms situated on one side of the main road running through it. The appeal site is approximately 5ha in area and extends from the main road, where it has a short frontage, to Woodhouse Farm Road, where the access is positioned on the outside edge of 'Steam roller bend'. The site therefore lies within open countryside outside the village envelope of Stisted.
17. The Council's development plan comprises the Braintree District Local Plan Review (LP) adopted in July 2005, and subsequently saved, and the Braintree District Council Local Development Framework Core Strategy (CS) adopted September 2011. There is also an emerging local plan (ELP), the Local Plan Publication Draft for Consultation June 2017, which comprises two parts. An Examination in Public was completed on the first part and as a result the examining Inspector has asked for more information. As such, the weight that can be attached to part 1 policies is limited.
18. Policy RLP2 of the LP states that new development will be confined to within town boundaries and village envelopes. Outside these areas, countryside policies will apply. Policy CS5 of the CS states that development will be strictly controlled to uses appropriate within the countryside. ELP Policy LPP1 maintains the Council's position set out in Policy RLP2. These policies were adopted before the publication of the National Planning Policy Framework (the Framework). The approach to development in these policies though is consistent with the Framework.
19. The notice also lists policies that deal with development for permanent and temporary agricultural workers' dwellings. However, whilst the appellant keeps 4 goats, 2 horses, takes a crop of hay from his fields, keeps chickens and grows vegetables in raised beds and sells the eggs and produce from his access point, he does not claim to be an agricultural worker. These activities are also not his main source of income. Therefore, it is considered that these policies are not relevant to the development that has taken place.
20. Policy CS3 of the CS deals with gypsy and traveller development and sets out various criteria such as the requirement that the development should be well related to existing communities. Development should also be located within a reasonable distance of services such as shops, schools and medical facilities. Sites should also be designed to minimise their impact on the environment, have safe vehicular access, not be at risk from flooding, be capable of being provided with utilities and be appropriate in size. Although the definition of gypsies and travellers has changed since this policy was adopted, I find that it is consistent with national policy as contained in the Framework and the PPTS. These state that applications should be assessed and determined in accordance with the presumption in favour of sustainable development. In addition, Councils should very strictly limit new traveller site development in the open countryside that is away from existing settlements.
21. The appellant submits that there is an identified need for additional pitches within the district. His own site was overlooked in the Council's 2016 survey

and therefore his needs were not expressed in the 2017 Braintree Gypsy and Traveller Accommodation Assessment (GTAA) Need Summary Report. This concludes that there is a need for two additional pitches over the GTAA period to 2033. The Council explained at the Hearing that their approach to meeting need in the ELP, is to provide pitches at the proposed Strategic Growth Locations and Garden Communities or through the planning process. This is because no suitable sites were submitted for gypsy accommodation to the local planning authority for inclusion in the local plan. However, this approach is still emerging and as such Policy CS3 is the relevant development plan policy.

22. I find the appeal site's distance from Tumbler's Green or Stisted is not so far such that it can be regarded as being 'away' from existing settlements in PPTS terms and the appellant's view is that he is well placed in relation to Stisted. His wife works in the village and there is a nursery which is attended by the appellant's youngest child, that is a feeder to the village school. The appellant's older children attend a primary school near to where he used to live but it is hoped the second child will be able to transfer to the village school and the older child will be moving on to secondary school in September.
23. Although there is no bus service within the area, the Parish Council run a community bus service for local residents and secondary school children who live in the countryside are also picked up by the school bus service. There is a public house in Stisted, the nearest shop is a Tesco superstore on the edge of Braintree and medical facilities are available in Braintree and nearby Coggeshall.
24. The Council regard the site as being isolated within the countryside yet I find it is only a 15 minute drive from Braintree. It is also only a short walk to the cluster of houses in Tumbler's Green. Policy CS3 requires that sites should be within a 'reasonable' distance of services but does not define 'reasonable'. The appellant submitted a copy of an appeal decision¹ from 2011 to support his view as to what were reasonable distances for gypsy and traveller people to travel based on the 2011 Inspector's views. In that case the Inspector found the site was sustainably located. It was 2km from a bus stop, within walking distance 'technically' of a convenience store within a garage and 5km from Coggeshall. However, the policies and guidance on which this decision was based have all been superseded and bus services have been reduced substantially in the intervening period, which places more reliance on private cars. I therefore give this decision very limited weight.
25. Having regard to the ordinary meaning of 'reasonable', it is my view that the location of the appeal site is not so distant from services that it could be said the appellant has to travel an excessive distance to access facilities. The fact that the appellant relies on his car for most journeys is similar to nearby occupants in the settled community. The nature of the appellant's business also means he is reliant on his on vehicles for work purposes, irrespective of where he lives. Taking all this into account, it is my view that the use of the site as a gypsy and traveller pitch is appropriate. Other than the two pitches at Pattiswick, about a mile away, there are no other gypsy and traveller sites in the immediate area and as such the use of the site does not dominate the hamlet of Tumbler's Green or the village of Stisted.

¹ Ref: APP/Z1510/C/10/2143344 and 2143347

26. The appellant's residential use of the site is similar to the previous occupier in that his primary mobile home is located in the same area used by Ms Fulgoni. His touring caravan is parked behind it and the additional mobile home, which is used as a day room and laundry, is situated to the front on a separate hard standing. Nearby is the shipping container used to store the batteries and gas bottles. These caravans are seen against a backdrop of trees and are separated from the road by an indigenous hedge. The vehicles are parked next to the caravans and together with the container and the mobile units they form an identifiable pitch or 'yard' area, making use of hard standing that does not extend into the field unnecessarily but is sufficient in size to allow for vehicle movements. The access into the site remains rural in appearance in that it does not have a tarmac or concrete surface and the remainder of the site is open save for the chickens' enclosure.
27. It is considered that the layout of the site minimises the effect of the use on the environment. It is compact and largely unseen from the surrounding area. It is also not easily seen from the access point. No hedges appear to have been removed from the site and no non-indigenous species have been planted.
28. The Council advise that the site is not at risk from flooding and can be accessed safely by vehicles from the public highway. The appellant makes use of the previous occupier's sewerage system and water supply, which influenced his decision to site his units in the same place as that authorised by the Council previously. In all, I find no conflict with Policy CS3, in terms of the location of the site and the criteria set out in the policy. I therefore give this finding substantial weight.

Character and appearance

29. Policy CS8 of the CS9 requires that development must have regard to the character of the landscape and its sensitivity to change. Where development is permitted, it will need to enhance the locally distinctive character of the landscape in accordance with the Council's landscape character assessment (LCA). Policy CS9 also requires the protection and enhancement of areas of landscape sensitivity. From the information before me, the rural area in the vicinity of the appeal site has no national landscape designation.
30. The LCA shows that the appeal site falls within the High Garrett/Markshall wooded farmland landscape character area, which is gently undulating in the area of the appeal site. The area is characterised by arable/pastoral fields bounded by hedgerows with occasional open views across farmland where hedgerows and woodlands permit.
31. The appeal site is irregular in shape but is generally long and narrow when compared to the adjacent fields. It is bound by hedging on all sides, some of which contains mature trees. There is also a belt of trees adjacent to the south east boundary of the site. The access into the site comprises a field gate set back from the edge of the road and is well assimilated in the area. Most of his land is used to grow hay. It is only a section of the southern portion which has changed in appearance, where the appellant has created a 'pitch'. The open land within the site adjacent to the caravans was already subdivided with fencing by the previous occupier, who kept pigs. The appellant uses these pens for his animals.

32. I find that none of this is visible to passers-by and even if it were, the PPTS sets out that caravan sites are acceptable in the rural area provided they do not dominate the nearest settled community. There are no public footpaths across the appeal site or alongside its borders. The presence of the caravans is only glimpsed from the road where a section of the generally thick hedging is thinner in part. It is also possible to glimpse the roof of one of the caravans when approaching from Stisted. The appellant's use of this site is not visible on any skyline and the storage use is confined to a small area and to within the 'Luton van'.
33. The Council alleges that the use causes harm to the character and appearance of the countryside and they are concerned that the way the appellant has now developed the site gives the appearance of 'residential development' in an area that was previously open countryside.
34. However, as the LCA sets out, this part of the countryside has mixed characteristics in that it is open in part and enclosed in part. The appeal site slopes down from Tumbler's Green to 'Steam roller bend' and together with the hedging on all boundaries, the line of trees behind the 'pitch' and the belt of trees outside of the site, it is my view that it has an enclosed appearance. The appellant's use of the land has changed the appearance of the field but the harm caused is modest, not significant. Furthermore, conditions could be imposed to bolster a thin section of the hedge next to Woodhouse Farm Road, to identify the current areas of hard standing so that there is no further encroachment into the field and to limit the storage use and the number of vans parked on the site. This would protect and enhance the locally distinctive character.
35. The Council are also concerned that the use of the site would introduce additional traffic, which would change the character or damage the appearance of the protected lane. The use of the access would also mean there would be pressure to improve sight lines by removing hedging from a protected lane. Policy RLP87 of the LP seeks to conserve the traditional landscape and nature conservation of protected lanes, which have historic and landscape value, often with mixed deciduous hedges and raised verges.
36. However, the appellant has used the site since 2016 without the need to remove any hedging to improve sight lines and the highway authority has not raised any concerns about the design of the access. Although the national speed limit applies to this protected lane, it appears to be lightly trafficked and does not appear to provide a shortcut to anywhere. The Council has not provided any evidence to support their concerns and I saw at the site visit that the hedging and verges were intact. Even if the natural landscape was damaged, there is no evidence that this is linked to the appellant. Whilst the appellant owns several vans, he can only drive one at a time. They are also of such a size that he does not need a licence to park them on site. In reality the level of vehicle movements at the site would not be that much different from any other household. As such, I find the Council's argument regarding additional traffic and harm to a protected lane is unsubstantiated.
37. Overall, I conclude on this issue that the development does not have an adverse effect on the character and appearance of the area, subject to the imposition of the conditions as discussed. This aspect of the development is

therefore in accordance with Policies CS8 and CS9 of the CS and Policy RLP87 of the LP and, as such, attracts substantial weight.

Other matters

38. The unauthorised use was brought to the attention of the Council by a local resident in 2018, some two years after the appellant began using the site. No written representations have been received during the course of this appeal but at the Hearing a local resident from Tumbler's Green made submissions to support the development. It is apparent from her remarks that the appellant and his family are well integrated with the local community, which is one of the objectives of the PPTS and I therefore give this some weight.

Planning balance

39. I have found no conflict with the development plan read as a whole. For decision taking this means approving development proposals that accord with the development plan. Within their submissions and at the Hearing the parties addressed other material considerations including the need for gypsy and traveller sites, personal circumstances, Human Rights and equality considerations. These are not matters that I need to address as I have concluded that the proposal accords with the development plan. The appeal on ground (a) therefore succeeds and the appeal on ground (g) does not need to be considered.

Conditions

40. I have considered the need for conditions put forward by the parties in the light of the Planning Practice Guidance and the discussion at the Hearing. Having regard to my findings on the development plan, I do not consider that it is necessary for temporary planning permission to be granted and the standard implementation condition will be imposed. It is necessary though to restrict the occupation of the site to gypsies and travellers with three caravans of which one shall be a static and one shall be used as a day room and laundry.
41. In the interests of the appearance of the site, it is necessary to require the submission and approval of a scheme of soft landscaping, which shows the retention of all existing boundary hedging and additional planting along the Woodhouse Farm Road frontage. It is also necessary to control any additional lighting; to prevent commercial activities on the land, other than the parking of five commercial vehicles of which no more than one shall be used for storage and to confine open storage to behind the static caravan limited to a maximum height of 2m; and to prevent the stationing and storage of vehicles over 3.5 tonnes.
42. At the Hearing there was some discussion between the parties regarding the removal of permitted development rights. It is my view in the interests of the appearance of the site that this would only be necessary in relation to means of enclosure.
43. As the material change of use has already occurred and the layout has changed since the occupation by Ms Fulgoni, it will also be necessary to impose a condition requiring the submission and approval of a Site Development Scheme. This is in the interests of the appearance of the site. The condition is drafted in such a way as to require the appellant to comply with a strict timetable.

44. The condition is drafted in this particular form because, unlike an application for planning permission for development yet to commence, in the case of a retrospective grant of permission it is not possible to use a negatively worded condition precedent to secure the subsequent approval and implementation of outstanding detailed matters as the development has already taken place. The condition therefore provides for the loss of the effective benefit of the grant of planning permission where the detailed matters in question are not submitted for approval during the time set by the condition, approved (either by the local planning authority or by the Secretary of State on appeal), and then implemented in accordance with an approved timetable. Should the requirements of the condition not be met in line with the strict timetable, then the planning permission falls away.

Conclusion

45. For the reasons given above I conclude that the appeal should succeed on ground (a) and I will grant planning permission in accordance with the application deemed to have been made under section 177(5) of the 1990 Act as amended, which will now relate to the corrected allegation.

D Fleming

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr P Le Grys MA, Dip TP, MRTPI	Agent
Mr M Nicholls	Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Mr D Lawrence BA, MRTPI, RICS	Consultant Area Development Manager
Mrs N Robertson	Planning Enforcement Officer
Mr A Massow BA, MRTPI	Planning Policy Officer

INTERESTED PERSONS:

Mr and Mrs Hughes	Local Residents
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Documents

1. Copy of appeal decisions Ref: APP/Z1510/C/10/2143344 and 2143347
2. Copy of Policy CS3 of the CS
3. Copy of Policy LPP 36 of the ELP
4. Copy of extract from the LP Proposals Map showing the village envelope of Stisted
5. High Garrett/Markshall Wooded Farmland and Blackwater River Valley extracts from the LCA
6. Copy of Braintree GTAA Need Summary Report 2017
7. Appellant's Costs application accompanied by copies of emails dated 21 and 30 January 2019 from Mr Le Grys to Mrs Robertson and a copy of a letter from Braintree District Council to Mr Le Grys dated 8 February 2019
8. Copy of an email dated 1 February 2010 from Mr Tuff Planning Enforcement Team Leader to Mr Le Grys

Schedule of conditions

- 1) The site shall not be occupied by any persons other than gypsies and travellers as defined in Planning Policy for Traveller Sites, August 2015, (or any subsequent definition that supersedes that document).
- 2) No more than three caravans, as defined by the Caravan Sites and Control of Development Act 1960 and the Caravan Site Act 1968 as amended, shall be stationed on the site at any one time, of which no more than two shall be a static caravan and of these two, one shall be used as a day room/laundry, and no further caravans shall be placed at any time anywhere within the site.
- 3) No additional external lighting shall be put in place or operated on the site at any time, other than has been previously submitted to and approved in writing by the Local Planning Authority.
- 4) No vehicles over 3.5 tonnes shall be stationed, parked or stored on this site.
- 5) No commercial activity shall take place on the land other than the open storage of materials, limited to a maximum height of 2m, and the storage of materials within a Luton van; and the parking of five commercial vehicles, all less than 3.5 tonnes, namely a Luton van, a transit van, a flat-bed truck, a mini skip lorry and a grab lorry.
- 6) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development)(England) Order 2015 (or any Order revoking and re-enacting or amending that Order) no additional gates, walls or fences or other means of enclosure including bunding, shall be erected or placed within/to the boundaries of the site.
- 7) The uses hereby permitted shall cease and all caravans, vehicles, structures, equipment and materials brought onto the land for the purposes of such uses shall be removed and the land restored to its condition before the development took place within 28 days of the date of failure to meet any one of the requirements set out in (i) to (v) below:
 - (i) Within 3 months of the date of this Decision, submit details of
 - a) the internal layout of the site, hereafter referred to as the Site Development Scheme (SDS), including the layout of the pitch on the site, the siting of the approved caravans, the storage container, the open storage area, animal pens, hard standing areas and vehicular parking and manoeuvring areas;
 - b) Details of soft landscaping for the Woodhouse Farm Road boundary, including the retention of the native hedgerows along all boundaries of the site, and including details of species, plant sizes and proposed numbers, and densities and measures for their protection and retention;The SDS shall have been submitted for the written approval of the Local Planning Authority and shall include a timetable for its implementation.
 - (ii) Within 11 months of the date of this decision the SDS should have been approved by the Local Planning Authority or, if the Local Planning Authority refuse to approve the SDS or fail to give a decision within the prescribed period, an appeal should have been made to and accepted as validly made by the Secretary of State.

- (iii) If an appeal is made in pursuance of (ii) above, that appeal should have been finally determined and the submitted SDS should have been approved by the Secretary of State.
 - (iv) The approved SDS shall have been carried out and completed in accordance with the approved timetable.
- 8) The works comprised in the SDS pursuant to condition 7 shall be retained for the duration of the use of the site and development.

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