



Appeal Decision

Site visit made on 11 May 2020

by David Murray BA (Hons) DMS MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1 June 2020

Appeal Ref: APP/R3705/W/19/3242521

The Willows, Tamworth Road, Cliff, B78 2DS.

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mrs T Doherty against the decision of North Warwickshire Borough Council.
 - The application Ref. PAP/2019/0427, dated 16 July 2019, was refused by notice dated 5 November 2019.
 - The development proposed is the change of use of land to equestrian use and use as a single pitch gypsy site with day room, installation of septic tank and relocation of the access.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issues are whether the proposal constitutes inappropriate development in the Green Belt, and if so, whether the harm to the Green Belt, together with any other harm, is outweighed by other factors, including the appellant's personal circumstances and the best interests of children in the household, so as to constitute the very special circumstances necessary to justify the development.

Reasons

Background

3. The appeal site comprises a rectangular area of grassed land which lies in an area of countryside to the south of the hamlet of Cliff and to the east of the River Tame. The site fronts the A51 Tamworth Road which passes over the M42 to the south of the site, and there is a caravan/camping park on land partly to the north. The site and the surrounding area form part of the West Midlands Green Belt.
4. At the time of my visit I noted that there was a residential mobile home on the land together with two touring caravans, and a wooden building. A gap appeared to have been made in the roadside hedge to form a new access to the land and the part of the overall site used for the residential pitch was partly screened by timber fencing and trellis. The remainder of the site was fenced off as paddocks.

5. I have taken account of a previous appeal decision made in November 2019 under ref. APP/R3705/W/19/3220135. This case involved a proposal by the present appellant to develop a gypsy site comprising 5 pitches with dayrooms, together with equestrian use, a ménage and stables, on the same appeal site. The appeal was dismissed.
6. The Council advises that following the unauthorised occupation of the site as a traveller's site in February 2019 an injunction was granted by the High Court to remove the unauthorised development. This was varied in March 2019 to enable the defendants to site one mobile home and two caravans on the land pending the above appeal decision. The Council says that the use as a gypsy/traveller's site has continued notwithstanding the injunction and there is contempt of the Court Order but that is a separate legal matter to this planning appeal.

Policy context and principle of development

7. The development plan comprises the North Warwickshire Local Plan Core Strategy (CS) adopted in 2014 and saved policies in the North Warwickshire Local Plan. It is apparent that the Council is also preparing a revised local plan – the Submission Local Plan 2018 (SLP) which has been submitted for Examination and the Examination in Public has now taken place. Although the Council relies on the policies in the CS, two emerging policies in the SLP are relevant and will be addressed in the relevant issue.
8. There are two main aspects to the proposal: the change of use to equestrian use and the use as a single pitch gypsy site. The equestrian use has not been shown to be contentious in principle and therefore this policy section concentrates on the proposed use as a gypsy site. The CS policies most relevant to the principle of the development are: NW3 applicable to the Green Belt; NW7 and NW8 in relation to development for gypsies and travellers; and NW12 concerning the general quality of development. However, Policy NW3 mainly indicates the extent of the Green Belt and how settlements and infill development will be treated and does not give other policy guidance on development within the Green Belt. Therefore, on this aspect greater weight should be given to guidance set out in the National Planning Policy Framework (NPPF).
9. The appellant's agent says that as the CS was adopted prior to the publication of the national 'Planning policy for traveller sites' (PPTS) in 2015, the above policies should be considered as 'out of date'. However, it is not the related timescale of the two documents that is most relevant but whether there is any substantial difference in the policy provision.
10. CS Policy NW7 deals with the overall provision of gypsy and traveller sites, which I will consider in a subsequent issue, but I note that the Council recognises that the requirements of this policy have been met in numerical terms and that paragraph 11(d) of the NPPF applies in that element of the plan.
11. Policy NW8 sets out a series of criteria for the assessment of proposals for gypsy and traveller sites and the Council submits that the proposal fails the final bullet point in respect of the effect on the landscape which I will also consider in a subsequent issue. However, the preliminary part of the policy makes clear that to be acceptable in principle proposals for gypsy and traveller

sites need to be located inside, adjoining or within a reasonable distance of a settlement boundary outside of the Green Belt, whereas the appeal site lies within the Green Belt. This policy is not materially at odds with the guidance in the PPTS particularly as set out in Policy E. Therefore, Policy NW8 should not be considered 'out of date' and section 38(6) of the Act applies¹ and the appeal should be decided in accordance with the development plan unless material considerations indicate otherwise.

12. I conclude on this issue that the principle of the proposed single pitch gypsy site and its associated development conflicts with the locational criteria set out in Policy NW8 the most relevant part in the development plan.

Whether 'inappropriate development' in the Green Belt and effect on its openness

13. Guidance in paragraphs 143-146 of the NPPF indicates that the erection of new buildings and some changes of use are 'inappropriate development' harmful to the Green Belt which should not be approved except in very special circumstances. I am satisfied that the proposed gypsy site would be 'inappropriate development' because of the nature of the use and the ancillary building and associated residential paraphernalia that would arise from the use, and it is not one of the specified exceptions put forward. The proposal therefore conflicts with the specific guidance in the NPPF.
14. In terms of the effect on openness, this has a visual as well as a spatial dimension. At the site visit I found that the mobile home, caravans and the proposed day room would be visible from Tamworth Road. The presence of these parts of the proposal together with the area of hardstanding for parking and screen fencing create a more urban physical form which detracts significantly from the otherwise mainly open rural character of the area and especially the area to the north of The Lodge.
15. I recognise that part of this visual impact stems from the loss of the roadside hedge removed for the access and the proposals seeks to introduce replacement landscaping/planting to help screen the site from the road in the long term. However, in the short to medium term I find that the proposal would have a discernible and harmful visual impact on the openness of the area when seen from the public realm of Tamworth Road. Moreover, even if the development was substantially screened from public view the development of the residential gypsy pitch would have a significant adverse impact on the openness of the Green Belt and would not preserve it. Thus, the proposal would be contrary to the guidance in paragraph 146 the NPPF even if it was regarded as mainly a change of use.

Effect on the landscape

16. Similar concerns apply regarding the effect on the general rural landscape of the area. Although I noted the scattered other development around the vicinity of the site, the dominant landscape character is one of open fields and a verdant form. The proposal to develop part of the open grassed field with a traveller site would not assimilate into the surroundings and landscape of the area even with the additional planting proposed. I assess the visual impact as significant and this adverse effect means that the proposal conflicts with the final bullet point of Policy NW8.

¹ Section 38(6) of the Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990.

Need for and supply of gypsy sites

17. Policy B of the PPTS indicates that Councils must be able to identify and annually update a five years supply of deliverable sites for gypsies and travellers measured against locally set targets. CS Policy NW7 indicates that 9 residential and 5 transit Gypsy and Traveller sites will be provided between 2011 and 2028. This provision is based on a Gypsy and Traveller Accommodation Assessment (GTAA) undertaken in 2008. The appellant and the Council agree that since 2012 the Council has granted permission for up to 19 residential pitches and 12 transit pitches and on this basis it is demonstrated that the strategic requirements of Policy NW7 up until 2028 have already been met although the significant 'over-provision' may be an indication of more recent unmet local need.
18. I understand that emerging policy LP6 of the SLP repeats the requirements of CS Policy NW7. The appellant refers to and the Council acknowledges interim comments from the SLP Examining Inspector who questioned the figures set out in Policy LP6 as the evidence base is considered to be out of date. Accordingly, the Council has commissioned, along with neighbouring authorities, an update of the GTAA and publication of the results is awaited. These will no doubt feed into the further examination of the SLP and reflect the weight that can be given to Policy LP6 in due course. However, as the evidence stands at the moment there is nothing before me to show that the level of permissions granted for residential gypsy and traveller sites will not continue to meet the level of need identified.
19. I conclude on this issue that at the moment provision has been made by the Council though development management decisions for the supply of gypsy and traveller sites to meet and well exceed the previously identified local need but the emerging local plan will need to ensure that such provision reflects current and predicted future need.

Personal circumstances and children

20. The appellant's agent's statement sets out the background to the appellant's move to the appeal site; her medical condition and her family support who live locally. Further, the appellant has four children aged between 4 and 17 and the two youngest of these attend local schools. Moreover, they suffer from a medical condition and are registered with a local surgery. The headteacher of the school has written to say that the children attend school (or at that time pre-school) and are settled in school making friends and with good attendance.
21. Staying on the appeal site would continue to give the children a stable base in which to continue their education and social development and where both the appellant and the children would be able to obtain appropriate medical care including from the local surgery and hospital. The proposal would also enable the appellant to keep her horses on site rather than having to travel to tend them.
22. The appellant and her family are said to have been looking for an alternative site within a 30-50 mile radius for some time but that no alternative sites are available. The use of other 'brown field' sites was suggested by the Council at the previous appeal hearing but the appellant says these were not available for purchase or they may be allocated for alternative uses which are said to be cost prohibitive for the appellant. The use of other 'brown field' sites is said to

have been suggested by the Council at the previous appeal hearing but the appellant says these were not available for purchase or they may be allocated for alternative uses which are said to be cost prohibitive for the appellant.

23. The previous Inspector concluded that there were no known alternative sites for the appeal for the appellant and her family to turn to and that still appears to be the case.

Other considerations

24. Many other concerns about the proposal were put forward at application stage by the local community. I have had regard to these together with the individual letters and petition in support of the proposal submitted along with the appellant's case.
25. Some people allege conflict of the proposal with the route of the HS2² but I understand that the appeal site is not on land safeguarded for the route at the moment and therefore this is not an issue material to the decision. Concerns have also been expressed about the access to the site and the effect on highway safety, but I understand that the highway authority now raises no objection to the amended plans of the access and there is no other evidence before me to demonstrate that the proposal would harm highway safety.
26. No other factor has been shown to be of such importance that it is critical to the planning balance.

Planning and Green Belt balance

27. At the start of the planning balance I have borne in mind the requirements of the Public Sector Equality Duty and I have placed no other issue above the best interests of the children in this case.
28. Bringing my conclusions on the main issues together, I have found that the proposal for a single pitch gypsy site and equestrian use would conflict with the relevant CS Policy NW8 as the site is located in the Green Belt and would also result in a significant adverse effect on the local landscape contrary to the provisions of the final bullet point of that policy.
29. In terms of the Green Belt I have found that the proposal amounts to 'inappropriate development' and it would have a significant adverse effect on the openness of the Green Belt. Substantial weight has to be given to this harm in accordance with paragraph 144 of the NPPF.
30. This conflict with the development plan and Green Belt guidance in the NPPF has to be balanced with other factors.
31. The Council has been able to demonstrate a five year supply of new gypsy and traveller sites to meet Policy CS7 however the fact that the total provision for the plan period to 2028 has already been well exceeded may be an indication that the survey information is out of date and/or there is at present an unmet demand.
32. The appellant argues that because CS policy CS7 is spent as the allocations for gypsy and traveller sites have been met, therefore paragraph 11(d) applies to the decision process. However, I have found that Policy CS8 is still relevant to

² High Speed Rail Link 2 – London to the Midlands and the North

the main planning issues and in any event Footnote 6 related to this paragraph in the NPPF indicates that policies in the NPPF designed to protect areas of particular importance like Green Belts can provide clear reasons for refusing planning permission.

33. I have also placed considerable weight on the appellant and her family's personal circumstances. Being able to continue to live on site would enable the family to have a settled base with continued access to medical and educational facilities. I am sure that would be in the best interests of the children. Whereas a refusal of permission would be likely to lead to the family having to live a life on the roadside as no alternative site has been shown to be available.
34. Policy E of the PPTS indicates that subject to the best interests of children, 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.
35. Overall, I conclude that the benefits to the appellant and her family, including the best interests of the children living on site, do not outweigh the harm to the Green Belt and the conflict with the development plan that I have identified. Very special circumstances have not been demonstrated. A permanent permission is therefore not justified as the proposal conflicts with the development plan and the NPPF when these are both read as a whole, and this finding is not outweighed by other considerations. Neither has it been demonstrated that there are relatively short term special circumstances or benefits that justify either a limited period permission or a personal permission that over-rides the specific harm that would arise particularly to the Green Belt.

Conclusion

36. I conclude that a refusal of permission is necessary. Although this would result in an interference with the rights of the appellant and her family, such a decision is proportionate and necessary in the public interest. I conclude that the appeal should be dismissed.

David Murray

INSPECTOR