
Appeal Decision

Site visit made on 14 September 2020

by Nicola Davies BA DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 November 2020

Appeal Ref: APP/X1545/W/19/3241506

Land North of The Stables, Colchester Road, Great Totham CM9 8ED

- 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 W Draper against the decision of Maldon District Council.
 - The application Ref FUL/MAL/19/00651, dated 31 May 2019, was refused by notice dated 3 September 2019.
 - The development proposed is change of use of land to form three gypsy pitches with associated access road and hard and soft landscaping.
-

Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr W Draper against Maldon District Council. That application is the subject of a separate Decision.

Preliminary Matters

3. I have taken the site address from the planning application form although I note it is expressed differently on other documents. I have also taken the appellant's name from the planning application form but note that a Christian name has been included on the planning appeal form.

Main Issues

4. The main issues raised in respect of the appeal are: -
 - (a) The effect of the proposed development upon the character and appearance of the area; and
 - (b) Whether the future occupiers of the proposed pitches meet the Planning Policy for Traveller Sites (the PPTS) 2015 Annex 1 definition for Gypsies, Travellers and Travelling Showpeople for planning purposes.

Reasons

5. The appellant is clear that the intended occupation of the site is by his family. My starting point is whether the use of land as a Traveller site is acceptable in planning terms, irrespective of any personal needs of the appellant and/or his family and with regard to the fact that the identity of the occupants could change. If I find that the use is acceptable on its merits, then the question of

status will be immaterial. However, if I find the change of use harmful then the status and personal circumstances of the proposed occupiers will be considerations.

6. The site lies outside of any defined settlement boundary and is therefore situated within the countryside. Policy S8 of the Maldon District Local Development Plan (MDLDP) 2017 restricts development outside settlement boundaries. Policy S8 of the MDLDP indicates that the countryside will be protected for its landscape, natural resources and ecological value as well as its intrinsic character and beauty. Policy D1 of the MDLDP seeks to ensure that all development will respect and enhance the character and local context.
7. Policy S8 of the MDLDP contains a list of exceptions of permissible uses in the countryside, which includes Travellers and Travelling Showpeople accommodation (Policy S8 (i)). Policy H6 of the MDLDP relates to provision for travellers and sets out assessment criteria for traveller proposals. This policy has three parts. Part 1 seeks to retain existing Traveller plots and pitches. Part 2 requires proposals for Travellers to meet one of the criteria set out. Part 2 criterion (b) allows for the expansion of adjoining sites that are within the same ownership. The proposal, being an extension of The Stables that hosts an existing traveller site, would comply with this criterion. Part 3 requires traveller sites to meet a number of criteria including (f) which seeks to avoid unacceptable harm to the character of the local area. In respect of the other criteria set out under Part 3 of Policy H6, the proposal would comply.
8. The proposal would introduce mobile homes, touring caravans, amenity blocks, private vehicles and a large expanse of hardstanding onto this undeveloped rural site. The area that surrounds the site is generally rural in nature characterised by open agricultural fields and vegetation, with the exception of The Stables to the south. The development would be of domestic urbanising form that would substantially alter the existing rural character of the site. This would represent a diminution of the character and appearance of the countryside landscape and would adversely impact upon its intrinsic beauty even if considered to be of relatively ordinary countryside in appearance. Domestic activities brought about by the proposed use would also diminish the rural tranquillity that currently exists.
9. The proposal has been supported by a Landscape and Visual Effects Appraisal (LVEA). A landscaping scheme would augment and/or create new landscaping on all boundaries and between pitches. The LVEA has explored visual receptor locations within the surrounding area and concludes that the development would not have a significant visual effect upon receptors (people) using the highways, footpaths or upon occupiers of nearby properties.
10. The proposed landscaping would sub-divide and create an uncharacteristic development within the more open character of the wider rural landscape. I consider this would result in a further visual harm to the rural landscape, in addition to that of the visual domestication of the site. Furthermore, the proposal includes a considerable amount of open land within the application red line boundary adjacent the proposed pitches. If permission were forthcoming this land would form part of a Traveller site and, as such, related activities could bring about urbanising activity within this part of the site. Contrary to the conclusions of the LVEA, I consider there would be considerable change to

the landscape and character of the area, whether perceivable or not to those travelling past the site along the public highway or in wider views from the surrounding area. Screening the site would not provide a justification for the development.

11. Annex 1 of the PPTS says that for the purposes of planning policy 'gypsy and travellers' means "*Persons of nomadic habit of life whatever their race or origin, including such persons who on grounds only of their own or their family's or dependants' education or health needs or old age have ceased to travel temporarily but excluding members of an organised group of travelling showpeople or circus people travelling together as such.*" Whilst I have been provided with an email that sets out a family tree of the relationships between the future occupiers to the appellant, no substantive information has been provided as to their way of life or that of the existing occupiers or the future occupiers at The Stables. Although the family may have been residents of Great Totham for in excess of 20 years, on the available evidence it has not been sufficiently demonstrated that the future occupiers would satisfy the planning definition of gypsy and travellers as set out within Annex 1 of the PPTS. As such, the traveller status of the intended occupiers is not able to be a factor in favour of the proposal in the planning balance.
12. For these reasons, I find that the proposed development would be harmful to the character and appearance of the area. The proposal would, therefore, conflict with Policies S8 and D1 of the MDLDP. The visual impact of the proposed development could not be ameliorated by the imposition of landscape conditions as the development would be harmful to the character and appearance of the countryside if it were to take place.
13. The site has previously been considered for allocation for gypsy pitch provision and scored highly within the Traveller Site Allocations Development Plan Document (DPD) Draft Background Paper: Methodology and Site Selection 2016. Even if the site has scored favourably in the Matrix assessment, I have found that this specific proposal would be harmful to the character and appearance of the area and, as such, would be contrary to Policy H6 Part 3 (f) and therefore also Policy S8 of the MDLDP.

Other Matters

14. There is a general national and regional need for gypsy and traveller pitches. The Government's aim is to increase the number of traveller sites in appropriate locations to address the under provision and maintain an appropriate level of supply.
15. I have been directed to applications and subsequent appeals for gypsy/traveller pitches, a number of which I note were determined prior to the adoption of the current development plan. I have also been referred to more recent cases. Officers considered the site at Tanglewood would be similar to that of this proposal. Nonetheless, although Officers recommended approval, the Council's Committee members went against Officer recommendation and refused that planning application. From the text provided relating to a recently allowed appeal at Captains Wood Road the expansion of that gypsy and traveller site would be within a well screened site. Notwithstanding any of those cases cited, on the evidence available to me it does not appear that the gypsy/traveller status of the occupiers pertaining to those proposals was a matter in dispute.

I, therefore, attribute limited weight to these examples as they would not justify the proposed development at the appeal site.

Planning Balance

16. 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.
17. I have found that the harm to the character and appearance of the countryside brings the proposal into conflict with Policies S8, D1 and H6 of the MDLDP and is not in accordance with the development plan when read as a whole. Furthermore, the PPTS indicates that traveller site development should be very strictly limited in the open countryside that is away from existing settlements or outside areas allocated in the development plan. The National Planning Policy Framework recognises the intrinsic character and beauty of the countryside and requires decisions to contribute to and enhance the natural and local environments.
18. There is a general national and regional need for gypsy and traveller pitches and this need carries significant weight.
19. It is advised that the appellant's two children along with their young families have been residents of Great Totham, however I have not been provided details as to the location and circumstances relating to their current home lives. The appellant shares caring responsibility with a relative for his elderly mother and she resides at The Stables whilst in the appellant's care. Even if the family members are not travellers (as per the Annex 1 of the PPTS definition) they may be in need of caravan accommodation and dismissal of the appeal could deny them a home. Whilst the four generations of the family may wish to live as a family group, I have not been directed to any current or future local housing circumstances or difficulties that the appellant's adult children and their young families may be facing. On the evidence available to me I cannot conclude that dismissing the appeal would deny the appellant's relatives a home.
20. The younger children are either at pre-school or primary school. In the best interests of the children, the site would offer the children a safe and secure site in which to live and from which they could have ongoing access to education at local schools. This is a primary consideration to which I give significant weight. However, the evidence before me does not indicate that the children's existing circumstances would not safeguard and promote their welfare.
21. I do not consider in this case that the personal housing needs of the appellant's family and their young children would clearly outweigh the harm to the countryside. Taking those considerations that hold significant weight in favour of the scheme individually or collectively, they do not outweigh the harm to the countryside.
22. I have considered the conditions put forward by the Council, but I do not consider that they would sufficiently overcome my concerns. Furthermore, this is not a case where a temporary or temporary personal planning permission would be appropriate.
23. Dismissing this appeal would not provide the proposed occupiers a home associated with The Stables. However, on the evidence before me I cannot

conclude that dismissing this appeal would potentially deny any of the future occupiers a home. Therefore, there would be no clear interference with the appellant's rights, or that of his family, under Article 8 of the Human Rights Act 1998. I find that the harm to the countryside to be so substantial and that, in the wider public interest, it is not clearly outweighed by the personal circumstances of the applicant, his family and/or the other consideration. I have considered whether a lesser requirement would overcome the harm. Dismissing the appeal would be proportionate and necessary.

24. 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. In consciously thinking about the aims of the PSED I have had due regard to the personal circumstances of the appellant and his family members. I have also had regard to the best interests of the children involved. However, it does not follow from the PSED that the appeal should succeed.

Conclusion

25. It is acknowledged that pre-application advice was sought in this case. However, having regard to the above findings, the appeal should be dismissed.

Nicola Davies

INSPECTOR