



Appeal Decision

Site Visit made on 9 February 2021

by Amanda Blicq BSc(Hons) MA CMLI

an Inspector appointed by the Secretary of State

Decision date: 26 February 2021

Appeal Ref: APP/V1505/W/19/3238054

Land at Readers Yard & The Willows, Fobbing, STANFORD-LE-HOPE SS17 9HQ

- 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 R Longhurst against the decision of Basildon Borough Council.
 - The application Ref 19/00930/FULL, dated 5 June 2019, was refused by notice dated 18 August 2019.
 - The development proposed is Three pitches for Gypsy/Travellers with associated amenity buildings, hardstanding and access from Moores Avenue in lieu of existing building and hardstanding.
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Decision

1. The appeal is dismissed.

Applications for costs

2. The applicant has made an application for an award of costs. This has been dealt with as a separate Decision.

Preliminary Matters

3. The evidence before me indicates that the proposals comprise the use of the site as a residential caravan site as well as the operational development of the amenity blocks and the hardstanding. During the appeal the appellant has confirmed that the description of development should include a reference to the change of use of the land. I have proceeded on this basis.
4. The only policies cited on the Council's decision are from the emerging Local Plan. However, this is still in the examination process with initial questions only recently published. Consequently, I am unable to give these policies any more than limited weight and I have determined the appeal primarily on the basis of the National Planning Policy Framework (the Framework) and Planning Policy for Traveller Sites (PPTS)¹.
5. The Council has withdrawn its objections to the appeal following an appeal decision to allow three bungalows on the same site. However, I am required to consider the application as if it had been made to me in the first instance. In any case, interested parties have raised concerns in relation to the development's location within the Green Belt.

Main Issue

6. The main issues are:

¹ Department for Communities and Local Government, August 2015

- Whether the development would be inappropriate development in the Green Belt having regard to the Framework and any relevant development plan policies;
- The effect of the development on the openness of the Green Belt;
- Whether the proposals would meet the requirements of relevant local policies and PPTS with regard to location;
- Whether the Council is able to demonstrate appropriate provision of gypsy and traveller sites; and,
- Would the harm by reason of inappropriateness, and any other harm, be clearly outweighed by other considerations so as to amount to the very special circumstances required to justify the proposal.

Reasons

Green Belt

7. The site is land contained between ribbon development on Moores Avenue and a railway line, with an adjoining plot fronting Moores Avenue which would provide access. It houses a long derelict shed and two smaller outbuildings in poor condition.
8. The Council notes that buildings on the site were last used as stables. The spread of activity and the configuration of hardstanding, parking and buildings shown on the 2004 aerial photograph suggest that the appeal site is a proposed sub-division of a larger site that extends westwards to High Road. The ground conditions were not apparent at my visit due to snow cover, but the evidence suggests it is currently a combination of hardstanding and grass or bare ground.
9. The PPTS states that traveller sites in the Green Belt are inappropriate development. The Framework states that inappropriate development in the Green Belt is harmful, and that substantial weight should be given to that harm. Paragraph 146 lists forms of development that are not inappropriate in the Green Belt, including material changes of use, provided those uses preserve the openness of the Green Belt and do not conflict with the purposes of including land within it. I now turn to a consideration of the effect of the development on openness.

Openness

10. Openness is generally accepted to refer to an absence of development, structures or activity. The volume of the building to be demolished is given as 774 cubic metres (m³). The site would contain three tightly spaced pitches, each with an amenity block. The aggregated volume of these blocks is given as 546 m³.
11. However, the volume quoted does not include the caravans that would be parked on the site. The covering letter to the application states that each pitch would be expected to house one static and one touring caravan. Given the likely sizes of such caravans, three static caravans, together with three tourers, would represent a very substantial increase in the volume of structures on the site. Moreover, there would be vehicles parked on the site and as well as the comings and goings of vehicles and tourers, and domestic paraphernalia. The

development would consequently have a significant adverse effect on the openness of the Green Belt.

12. The officer's report concludes that the sporadic and transient nature of the visual intrusion arising from the development would be more harmful than what currently exists on site, and the report refers to a Court of Appeal (CoA) judgment². Although referring to the CoA judgment the appeal statement contains the preceding High Court (HC) judgment³.
13. With regard to PDL, Paragraph 23 of the HC judgment states that *it was common ground between the parties ... that the site did constitute previously developed land*. It seems to me that this appeal is directly comparable to the appeal considered in the CoA and HC judgments. Paragraph 145 of the Framework would apply if the appeal was for a replacement building, but it is for change of use.
14. In any case, the CoA judgment states that *there is a difference between a permanent physical structure in the form of the proposed bungalow, and a shifting body of lorries, which would come and go*. This judgment endorsed the findings of the HC judgment. The Inspector for that appeal was entitled to make the assessment that permanent and transient features would have a difference impact on the openness of the Green Belt, even where the volumetric evaluation might show that the spatial intrusion was very similar. In any case, these judgments demonstrate that the impact on openness is a matter of planning judgement for the decision maker.
15. Moreover, in this appeal I have concluded that the total volume of fixed and moveable structures would be far greater than the existing structure, as the appellant has not taken the future caravans into account.
16. As such, the development would not preserve the openness of the Green Belt and would be inappropriate development, contrary to Paragraph 146 of the Framework and PPTS. I give this harm substantial weight.
17. The Council has cited emerging Policy GB6. However, this is concerned with replacement buildings in the same use as the original which would not be the case here. Consequently, this policy weighs neither for nor against the appeal.

Pitch location

18. During the appeal the Council confirmed that there are no saved policies relating to gypsy and traveller pitch provision. The appellant has brought emerging Policy H24 to my attention. Notwithstanding that it does not carry full weight, I have assessed the development against the design and location criteria set out in that policy.
19. The site is well located for access to the road network and local amenities, and notwithstanding that Moores Avenue has an unbound surface, the road serves a large number of dwellings and I see no reason why this concern should be determinative as access to three pitches would not be a significant increase.

² Turner v SSCLG and East Dorset Council [2016] EWCA Civ 466

³ Turner v SSCLG and East Dorset Council [2015] EWHC 2728 (Admin)

20. Furthermore, given that there is an extent permission for bungalows, it seems likely that essential services could be provided and that issues of potential land contamination could be dealt with by condition.
21. However, given the likely size of static caravans the layout appears very cramped. I am not satisfied that each pitch could house a static caravan, a tourer and parking in a satisfactory manner. Moreover, there would be three pitches on a site immediately to the rear of Kozy Kot and Magnolia. Whilst there is an extant permission for bungalows on the site, and both existing dwellings have fairly generous plots, future occupiers of the pitches are likely to have an expectation that they could continue their practice of outdoor living which could cause issues of noise and disturbance and conflict with the settled community.
22. As such, I conclude that the site is not of sufficient size to accommodate the proposed number of caravans or vehicles in the areas shown and that the number of pitches would not be of an appropriate scale to promote peaceful and integrated co-existence between occupiers of the site and the local community. Both these issues are set out as criteria in emerging Policy H24.
23. The Council's emerging Local Plan has included the appeal site as part of a larger allocation for gypsy and traveller pitches which takes in the land abutting the appeal site. However, only two pitches are allocated on that far larger site. Moreover, Paragraph 26 of PPTS requires sites to be well planned so as to positively enhance the environment and increase its openness, and to promote opportunities for healthy lifestyles. Although it is unclear to me how the Council has arrived at the allocation it reinforces my observations that this site would be inappropriately cramped if developed as shown. In any case, the Council notes that there are unresolved objections to this allocation, which consequently may change.
24. Consequently, the development would fail to meet several criteria of emerging Policy H24 which is concerned with the design and location of pitches for gypsy and travellers.

Pitch provision

25. The Inspector for the emerging Local Plan has highlighted that the Council's provision for gypsy and traveller sites falls significantly short of the latest identified need. The previous figure of 47 pitches required within the emerging plan period has almost doubled according to the latest need assessment.
26. The failure to provide adequate pitches carries significant weight in favour of the appeal. However, even if I gave the lack of pitch provision and this provisional allocation significant weight, it remains that the site is within the Green Belt, and Section E of PPTS states that subject to the best interests of the child, personal circumstances and unmet need are unlikely to clearly outweigh the harm to the Green Belt and any other harm so as to establish very special circumstances. There are no arguments advanced in relation to best interests of the child or personal circumstances before me.

Fall-back

27. Permission has been given for three modest bungalows and I see no reason why this would not represent a valid development of this brownfield site. Moreover, the evidence before me indicates that the volume of the bungalows

would be less than the combined volume of the amenity blocks and caravans in this appeal. Parking and domestic activity would be confined to prescribed external amenity areas. The individual bungalows would also be fixed entities rather than the spread of development across the site arising from a combination of amenity blocks and caravans. As such the fall-back scheme would be less harmful to the openness of the Green Belt than what is before me.

Other Matters

28. The parties are agreed that the site is previously developed land (PDL) but this does not alter my reasoning. The exception set out in Paragraph 145 of the Framework is concerned with replacement buildings, not changes of use. Even then there is a requirement that the development does not have a greater impact on the Green Belt than the existing development, or that where that would be the case, the development meets an identified need for affordable housing.
29. The appellant has drawn my attention to permission given for a bungalow where it would replace an existing outbuilding. However, in that case the Council concluded that the bungalow would not have a greater impact on loss of openness than the workshop replaced. That would not be the case here and the schemes are not comparable.
30. The site is hemmed in by the railway line to the north and a ribbon development to the south. I acknowledge that the existing structures are derelict and there is little intervisibility to other nearby land. Nonetheless, it remains that it is in the Green Belt.
31. Interested parties have raised other concerns, including localised flooding following the diversion of a stream. However, there is limited information before me in this regard and as I have found harm in relation to the main issues it is not necessary for me to consider this or other concerns further.

Planning balance

32. The Council is unable to demonstrate an adequate supply of specific deliverable sites sufficient to provide 5 years' worth of sites against its locally set targets. The site is brownfield land which would accord with Section 26 of PPTS with regard to the effective use of previously developed land. The development would make a small contribution to the local supply of pitches, for which there is clearly a significant need.
33. Nonetheless, I have found harm in relation to inappropriate development in the Green Belt, according to policies within the Framework concerned with the protection of the Green Belt and PPTS as well as harm in relation to pitch layout and proximity to the settled community. Although there is unmet need for gypsy and traveller pitch provision, the harm by reason of inappropriateness, and the other harm identified above, is not clearly outweighed by other considerations. That being so there are not the very special circumstances required to justify the proposal.
34. The Council has cited emerging Policy GB3 but this is only applicable where very special circumstances exist. As such, it weighs neither for nor against the appeal.

Conclusion

35. In the light of the above, I conclude that the appeal is dismissed.

A Blicq

INSPECTOR