
Appeal Decision

Hearing Held on 30 November 2021

Site visit made on 30 November 2021

by Philip Major BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 09 December 2021

Appeal Ref: APP/R3705/W/20/3255527

Wishing Well Farm, Breach Oak Lane, Fillongley, Coventry CV7 8DE

- 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 John Mason and Mr Michael Newbury against the decision of North Warwickshire Borough Council.
 - The application Ref: PAP/2019/0529, dated 14 September 2019, was refused by notice dated 3 March 2020.
 - The development proposed is the change of use of land from agriculture to use as a residential caravan site for 2 gypsy families, each with 2 caravans including no more than one static caravan/mobile home.
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Preliminary Matters

1. I carried out an unaccompanied pre-hearing site visit of the wider locality on 29 November and an accompanied visit to the appeal site on the day of the hearing. There is no dispute that the Appellants fall within the definition of Gypsies as set out in Planning Policy for Traveller Sites (PPTS). Based on the information provided and the representations made at the hearing I have no reason to find otherwise. Since the planning application was determined the Council has adopted the North Warwickshire Local Plan (LP), and the Fillongley Neighbourhood Plan (NP) has been made. These documents form part of the development plan for the Borough.

Decision

2. The appeal is allowed and planning permission is granted for the change of use of land from agriculture to use as a residential caravan site for 2 gypsy families, each with 2 caravans including no more than one static caravan/mobile home at Wishing Well Farm, Breach Oak Lane, Fillongley, Coventry CV7 8DE in accordance with the terms of the application, Ref:PAP/2019/0529, dated 14 September 2019, subject to the conditions set out in the schedule attached to this decision.

Main Issues

3. At the hearing the Appellants accepted that the proposed development fell to be considered as inappropriate development in the Green Belt. Consequently the main issues in the appeal are:
 - (a) The impact of the proposed development on the openness of the Green Belt and the purposes of including land within the Green Belt;

- (b) Whether the site is located in an acceptable location in relation to services and transport;
- (c) Whether the harm by inappropriateness, and any other harm, is clearly outweighed by other considerations sufficient to amount to the very special circumstances necessary to justify the grant of planning permission (the planning balance).

Reasons

Openness and Purposes

- 4. The appeal site is located in a rural area to the east of Fillongley and to the north of Corley and Corley Ash. Development in this rural area between villages and larger settlements is principally made up of scattered farms and sporadic dwelling houses either singly located or in small groups. The M6 bisects the area from east to west. The outer edges of the large urban area of Coventry are further to the south.
- 5. Within this overall context the introduction of the appeal development would have an impact on the openness of the Green Belt. However, the impact would be modest in scale, related mainly to 2 touring caravans and 2 static/mobile home structures. When seen alongside the existing large agricultural building and stables on the site they would be minor intrusions into openness. Activity associated with the use would be of a different character to that associated with a purely agricultural use but would be unlikely to be materially more intensive, if at all. The Council has fairly recognised these matters in its assessment of the proposals.
- 6. Similarly the Council has realistically assessed the extent to which the development would impact on the purposes of the Green Belt. I agree with the judgement that there would be no different impact on the 5 purposes of including land within the Green Belt given the existing lawful use fallback position. Taken overall the actual harm to openness and purposes of the Green Belt is minimal. There would be a visual implication of the proposed development, and the Council has rightly, in my judgement, assessed this as being limited. Indeed the site is remarkably well screened, and dominated by the existing buildings. Nonetheless, the fact that the development falls within the definition of being inappropriate development in the Green Belt (the definitional harm) attracts substantial weight, as set out in the National Planning Policy Framework (NPPF). There is clear conflict with Policy LP3 of the LP and the objectives of the NP. Other harms are minor and carry little weight against the proposal. As such I find no material conflict with landscape based Policy LP14 or the relevant criteria of general development Policy LP29.

Location

- 7. Fillongley and Corley have limited services, and it is likely that for many day to day needs the Appellant families would have to travel further afield. Given the location of the appeal site that is almost certain to involve the use of private motor vehicles. However, I accept that the NPPF recognises that opportunities to maximise sustainable transport solutions will vary between urban and rural areas. In addition PPTS acknowledges that there will be instances where traveller sites are located in rural areas, albeit that it is anticipated that local planning authorities should very strictly limited new traveller sites in open countryside that is away from existing settlements.

8. In this case the site is a relatively modest distance from both Fillongley and Corley and in my judgement should not be seen to be away from existing settlements in PPTS terms. In other words the site is not remote from the settlements. In this I agree with the Inspector who determined the case at Corley Ash¹. Travel to and from those settlements other than by private car is possible. Breach Oak Lane itself is narrow, as is Square Lane, which links with Tamworth Road to the south. These are not lanes which lend themselves to regular walking, especially in inclement weather or darkness, but because of the limited traffic flows on these lanes, and the presence of verges, they can be walked in reasonable safety during daylight hours. As such it is possible to access the bus stop on Tamworth Road for journeys further afield. In addition Tamworth Road/Coventry Road has a paved pedestrian footpath linking Fillongley with Corley. Pedestrian traffic between the appeal site and local villages, or access to the modest bus service, is therefore possible.
9. Even if the Appellants and their respective family members were to rely almost wholly on private vehicles, which I do not rule out, it is likely that many journeys would be of modest length. For example, the school attended by children is not far away. Although Policy LP10 does not directly apply to this site (it applies to sites outside the Green Belt only) it provides a useful guide to the criteria which are commonly used to assess traveller proposals. Despite emphasising its lack of applicability here the Council does accept that 4 of the 5 criteria are met. Given my findings above relating to walking to services or the bus stop it is my judgement that the site would be consistent with all 5 criteria. It is also my judgement that the proposal is acceptable when assessed against the spatial policies of the LP, notably Policies LP1 and relevant parts of LP29.

Other Considerations

10. PPTS is clear 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. Clearly that does not mean that there are no circumstances in which a Green Belt site can be permitted, but the bar has been raised to a considerable height.
11. In this case there are children of school age on the site. It is common ground that the best interests of the child are a primary consideration, and that no other consideration can be of greater weight. This is a substantial factor in favour of the proposal. I note here in passing that the Council had misunderstood the fact of the attendance of the children at a local school, which resulted from a typographical error in submitted documentation. That misunderstanding, to which no blame attaches, led to a judgement on weight applicable to the needs of the children with which I disagree. The needs of the children attract substantial weight.
12. There is no agreement on the actual level of unmet need in this locality and surrounding districts, and it is apparent that there has been significant in-migration which was not anticipated at the time of the preparation of the Gypsy and Traveller Accommodation Needs Assessment. I have no reason to doubt that the site where the Appellants formerly resided is no longer available to them because of this in-migration in large part. However, the Council does accept that there is a general need for sites, and to its credit has a programme

¹ APP/R3705/W/18/3199149

in place to assess and address the need. But this is in its infancy and is not likely to bear fruit for at least 2 or 3 years.

13. In the meantime the Appellants have no alternative site or sites on which they could reside and made it clear at the hearing that their only recourse in the event of this appeal failing would be to revert to a roadside existence. I accept that this would have a negative impact on the schooling of their children, and potentially on access to healthcare. I therefore have no difficulty in accepting that there is a general need for sites, and that the Appellants have particular needs for accommodation. This is a significant factor in favour of the proposal.
14. I accept that the majority of the Borough is in the Green Belt, and that this limits the scope of search for appropriate sites. But this fact alone does not weigh in favour of the proposal.
15. In this case the planning balance is relatively straightforward. First there is substantial weight attributed to the harm to the Green Belt, by definition, and conflict with Policy LP3. Secondly there is minor harm resulting from the impact on openness and visual amenity. As I have explained above, I disagree with the Council that this is a locationally unacceptable site in transport terms. Thirdly there is also substantial weight which must be attributed to the needs of the Appellants' children. A return to a roadside existence would not be in their best interests. Fourthly, I also give significant weight to the fact that there is an acknowledged unmet need for traveller sites, and that there are no alternatives available to the Appellants. Any future policy for meeting need is some years away.
16. Taking these matters in the round, and bearing in mind that the needs of the children are a primary consideration, the balance in this case falls in favour of granting planning permission.
17. In reaching this judgement I have also given consideration to whether a time limited planning permission should be granted. However, because of the particular attributes of the appeal site, and the lack of physical harm to the locality, I have decided that it is suitable for a permanent site notwithstanding that it is definitionally inappropriate. However, because my overall conclusion depends in part on the needs of the children, I have also decided that it would be reasonable to restrict occupation to these particular families by the imposition of a suitable condition. I deal with other conditions below.

Other Matters

18. Access to the site was previously approved for the benefit of agricultural vehicles. The access is wide and enjoys sufficient visibility to enable its safe use. I have noted the comments made in relation to water supply and sewage disposal but have no substantive evidence that there would be unacceptable impacts from this proposal.

Conditions

19. A list of suggested conditions was prepared by the Council and is largely agreed by the Appellants. Where necessary I have changed wording for clarity and precision. Apart from specifying occupants of the site it is also necessary to limit occupation to those meeting the definition of gypsies and travellers. In order to protect the amenities of the area conditions are necessary to restrict commercial development on the land, and to require details of landscaping,

drainage, site layout and lighting. A condition requiring maintenance of landscaping is also reasonable. It is necessary to require the access to the site to be surfaced in a bound material in order to preserve highway safety, and to require gates to open inwards only. I do not consider that it is necessary to configure the access sight lines beyond what currently exist, but it is reasonable to require the sight lines to be kept clear in the interests of highway safety.

Overall Conclusion

20. As I have set out in this decision it is my judgement that there are other considerations in this case which are sufficient to clearly outweigh the harm by inappropriateness, and other harm, such that very special circumstances have been demonstrated.

21. For the reasons given above I conclude that the appeal should be allowed.

Philip Major

INSPECTOR

CONDITIONS

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans:
 - Site location plan
 - Site layout plan

As stamped received by the local planning authority on 16 September 2019.

- 2) The site shall not be occupied by any persons other than gypsies and travellers as defined in Annex 1: Glossary of Planning Policy for Traveller Sites (2015) (or its equivalent in replacement national policy).
- 3) The occupation of the site hereby permitted shall be carried on only by the following and their resident dependants:
Mr Michael and Sarah Newbury
Mr John and Channel Mason
- 4) No more than 4 caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 as amended (of which no more than 2 shall be static caravans) shall be stationed on the site at any time.
- 5) No commercial activities shall take place on the land, including the storage of materials, and no vehicle over 3.5 tonnes shall be stationed, parked or stored on this site.

- 6) The use hereby permitted shall cease and all caravans, mobile homes, structures, equipment and materials brought onto the land for the purposes of such use shall be removed within 30 days of the date of failure to meet any one of the requirements set out in i) to iv) below:
- i) Within 3 months of the date of this decision a scheme for the landscaping of the site; the disposal of foul and surface water drainage; the internal layout of the site, including the siting of caravans if different from the site layout plan; and any external lighting (herein after referred to as the site development scheme) shall have been submitted for the written approval of the local planning authority and the scheme shall include a timetable for its implementation.
 - ii) If within 6 months of the date of this decision the local planning authority refuse to approve the scheme or fail to give a decision within the prescribed period, an appeal shall 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 shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.
 - iv) The approved scheme shall have been carried out and completed in accordance with the approved timetable.

Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter be retained whilst the use remains.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

- 7) If within a period of 5 years from the implementation of the site development scheme, any trees or plants which formed part of the approved site development scheme die, are removed or become seriously damaged or diseased then they shall be replaced in the next planting season with others of similar size and species.
- 8) The development shall not commence until the vehicular access to the site has been surfaced with a bound material, in accordance with details to be submitted to and approved in writing by the local planning authority, for a distance of 12 metres as measured from the near edge of the public highway carriageway. The vehicular access to the site shall not be constructed in such a manner as to reduce the effective capacity of any highway drain or permit surface water to run off the site onto the public highway.
- 9) No gates shall be hung within the vehicular access to the site so as to open within 12.0 metres of the near edge of the public highway carriageway.
- 10) Existing visibility splays at the site entranced shall be retained as currently configured, and no structure, tree or shrub shall be erected, planted or retained within the existing visibility splays exceeding, or likely to exceed at maturity, a height of 0.9m above the level of the public highway carriageway.

APPEARANCES

FOR THE APPELLANT:

Mr Philip Brown	Managing Director, Philip Brown Associates
Mr Michael Newbury	Appellant
Mr John Mason	Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Mr Ian Griffin	Planning Officer North Warwickshire Borough Council
Mr M Ditton	Policy Planning Officer North Warwickshire Borough Council

INTERESTED PERSONS:

Local Residents	4 local residents attended and contributed at the hearing
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DOCUMENTS SUBMITTED AT THE HEARING

- 1 Appeal Decision APP/R3705/W/18/3199149 from Mr Brown
- 2 Extracts from Fillongley Neighbourhood Plan, from the Council