



Appeal Decision

Site Visit made on 13 October 2021

by JP Sargent BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 December 2021

Appeal Ref: APP/R3705/W/20/3260829

The Willows, Tamworth Road, Cliff, Kingsbury 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 Mr & Mrs J Doherty against the decision of North Warwickshire Borough Council.
 - The application Ref PAP/2020/0341, dated 1 July 2020, was refused by notice dated 6 October 2020.
 - The development proposed is Material change of use of land for stationing of caravans for residential use for Gypsy-Traveller family with associated development (relocated access, hard standing and package treatment plant).
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues in this case are
 - a) whether this is inappropriate development in the Green Belt,
 - b) what its effect would be on the landscape, and
 - c) if it would be inappropriate development, whether its harm by reason of inappropriateness and other harm is clearly outweighed by other considerations so as to amount to very special circumstances.

Reasons

3. The *Planning Policy for Traveller Sites* (PPTS) states without qualification that 'traveller sites (temporary or permanent) in the Green Belt are inappropriate development'.
4. Moreover, the *National Planning Policy Framework* (the Framework) says that keeping land permanently open is a fundamental aim of the Green Belt. It confirms that inappropriate development is, by definition, harmful. Criterion (e) of Framework paragraph 150 accepts that material changes in the use of land are not inappropriate, provided they preserve openness and do not conflict with the purposes of including land in the Green Belt. Under Policy LP3 in the *North Warwickshire Local Plan 2021* schemes will be considered in line with the Framework apart from where more specific, localised criteria are applicable, none of which have been identified as relevant in this instance.
5. It appears to be accepted that the appellants and their children accord with the definition of gypsies and travellers found in the PPTS. I understand they now

live immediately adjacent to the appeal site, and it is their intention to move onto it if the appeal is successful.

6. The site is part of a field that lies in the countryside outside any settlement boundary. The surrounding area has a generally rural appearance comprising fields and woodlands with a scatter of farm properties and dwellings. This proposal would be introducing a caravan with associated hardstandings and paraphernalia onto this land, a little away from other built form, and the development would be visible not just from Tamworth Road but also from in the surrounding landscape. As a result, I share the view of the Inspector who dismissed an appeal on the site for a similar development in 2020 (the 2020 decision) and consider it would erode the sense of openness currently experienced in the locality. Moreover, the site would acquire a more developed character, and so the proposal would conflict with the purpose of safeguarding the countryside from encroachment (Framework paragraph 138).
7. Local Plan Policy LP10, which concerns Gypsy and Traveller provision, states sites will be permissible outside of the Green Belt. It does not expressly say that such uses would not be permitted in the Green Belt. However, for the reasons given above concerning openness and encroachment, in my opinion the development would also not be assimilated into the surroundings and landscape without any significant adverse effect. Therefore, I consider it to be contrary to the final bullet point of the policy.
8. In coming to these findings, I accept that planting is to be introduced to soften the impact of the development. I also recognise that the amount of built development on the site would be reduced when compared to that proposed under the 2020 decision, as a day room is no longer intended and the static caravan would not be raised up. However, these points would not be sufficient to overcome my view that there would be a harm to openness and a sense of encroachment.
9. Accordingly, having regard to the PPTS and paragraph 150 in the Framework, I find this scheme would be inappropriate development in the Green Belt, failing to preserve openness and conflicting with one of the Green Belt's purposes.
10. The Framework states that inappropriate development should not be approved except in very special circumstances. These circumstances will not exist unless the development's harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations. In this regard I have had a number of different considerations put before me.
11. Firstly, the appellants' personal circumstances were highlighted. I have noted their health issues as submitted, and appreciate an on-going need for regular medical care that is provided locally. Moreover, I accept that these issues would be more readily tackled if the appellants had a fixed address allowing the care to be delivered in a consistent manner. These health matters are therefore something to which I afford significant weight. I understand too that being here means the appellants can look after relatives nearby, but I have little information about the nature of this care or where they live, and so the weight it can be afforded is limited.
12. Coupled with this is the second consideration of the effect of the COVID pandemic. I recognise that this must have significantly impacted on sectors of the Gypsy and Traveller community in a number of different ways, concerning

employment opportunities, limited social contacts, the ability to move to new sites and the effects of living in crowded touring caravans. On the evidence before me the proposal would not alter the first 2 of these. In theory moving to new sites occupied in part by others could still be affected because, although restrictions are now less than they were, social distancing is still an issue and so moving onto somewhere another family already lives could be mutually unacceptable. As a result, with alternative sites being harder to find, increased travel would occur, meaning living in touring caravans could be more likely.

13. However, little firm evidence has been put forward to show it has in reality been a difficulty in finding other sites due to the pandemic, and I would expect that maintaining general standards of amenity would ensure social distancing was achieved to a great extent on a shared site. Moreover, if more travel results, it is reasonable to assume those living together in this way would form a 'bubble' for the purposes of social distancing. The weight I afford this is therefore not significant. Furthermore, the pandemic will pass in time, and so whilst the limited weight from these points could be used in favour of a temporary permission, it adds little in support of a permanent permission on the site.
14. A third area is the appellant's view that there is a shortfall in Gypsy and Traveller provision in the Borough. Under the *Public Sector Equality Duty* I am to have due regard, amongst other things, to the need to take steps to meet the needs of persons who share a relevant protected characteristic that is different from the needs of persons who do not share it, and in relation to this I appreciate the appellants' cultural heritage. The most recent *Gypsy and Travellers Accommodation Assessment* (GTAA), the *Report on the Examination of the North Warwickshire Local Plan* and the subsequently adopted version of the Local Plan all post-date the 2020 decision and so create a different planning context to that before the previous Inspector.
15. In the Local Plan there is a commitment to bringing forward a Gypsy & Traveller Development Plan Document (DPD) that will include allocations informed by the GTAA and any subsequent review. Notwithstanding the Council's contentions, it is therefore reasonable to assume that the need for gypsy and traveller sites in the Borough is not currently resolved. This scheme if granted permanently, would make a contribution to addressing such a need. However, no specific timetable for the DPD has been given, but rather it is to be forthcoming '*as soon as practicable*'. The vagueness of this timescale means I cannot assume it will be in the near future, and so I am unable to treat its production as justifying a temporary permission. Rather, if persuaded by the arguments of need, I would have to favour the grant of a permanent permission.
16. Related to this point I recognise too that a Court Order requires the appellants and their children to leave their existing adjacent site if I dismiss this appeal. With such a shortfall, they say they would have nowhere to go and would face a roadside existence, and I have no reason to question this.
17. However, the PPTS in Policy E says, in relation to traveller sites,
'subject to the best interests of the child, 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.'

This policy accepts that there could be some occasions where such harm was, in fact, outweighed by personal circumstances and unmet need. However, as it anticipates such occurrences would be 'unlikely', it is reasonable to assume they would be improbable and would not be expected. Given this, although I have had full regard to the appellants' submissions, I find that their personal circumstances, the unmet need and the prospect of a roadside existence (exacerbated by the pandemic), even if taken together, are not so sufficient as to constitute one of the 'unlikely' instances where an exception to the general thrust of this guidance is justified.

18. Outside of settlements much of the Borough is designated Green Belt, but that situation is found in many authorities. Consequently, it cannot be a basis to justify a gypsy and traveller site in the light of the PPTS policy quoted above.
19. I therefore turn to be best interests of the children. At the outset I have regarded no other consideration as more important or, in advance of the assessment of the circumstances of the case, I have given none greater weight. However, these best interests will not always outweigh other considerations including those that impact negatively on the environment. I have nonetheless kept the best interests of the children at the forefront of my mind in reaching my decision.
20. I have relatively little information concerning the appellants' children. However, it can be assumed they would benefit from the opportunity this proposal offers to provide a settled base for their health, educational and social needs. This is demonstrated by the way 2 are currently doing well in their schooling, progressing with their learning and making friends. I appreciate too that a settled base can assist in home-schooling, whether that be by having easier access to tutors or by allowing time to be spent on education rather than travelling. However, such benefits of a settled base could apply to most if not all Gypsy and Traveller children. On the evidence before me, and acknowledging the appellants' children also have certain specific health issues, I am not satisfied that their needs are adequate to justify remaining in this immediate area. Given this, even if taken with the other considerations above, the best interests of these children are not sufficient to clearly outweigh the harm to the Green Belt so as to establish very special circumstances. As such, a permanent permission is not justified.
21. I now turn to consider whether a temporary permission would be acceptable. However, as there is only a vague timeframe for the production of the DPD, I cannot be confident that circumstances around this site or gypsy and traveller provision in the Borough will change in the foreseeable future to justify a permission for a shorter period. I have accepted that the granting of a temporary permission until the passing of the pandemic has the potential to be beneficial for this family given the difficulties of accessing other sites. However, there is little evidence to support this difficulty. I have been told no other sites are available anyway but, even if there was, this need not be a problem that would prevent occupancy. Consequently, I can only afford this limited weight. I therefore find that, again when taken with the other considerations listed above, a temporary permission would not be justified.
22. I accept that dismissing this appeal would cause some interference with the appellants' rights and those of their children under Article 8 of the First Protocol to the *European Convention on Human Rights*, as incorporated by the *Human*

Rights Act 1998. This is because this site would not provide the home they would need having been required to vacate their existing settled base under the Court Order. However, such rights are qualified, and interference may be permissible when the rights of the individual are balanced against those of the community. In this instance such interference on the rights of the adults and the best interests of the children would be proportionate given the public aim of safeguarding the Green Belt.

Conclusion

23. Accordingly, I conclude that this would be inappropriate development in the Green Belt that would harm openness, conflict with one of the purposes of the Green Belt, and would not be assimilated into the surroundings and landscape without any significant adverse effect. In the absence of any other considerations that clearly outweigh the harm by reason of inappropriateness, and any other harm, very special circumstances to approve this inappropriate development do not exist, and the proposal is contrary to Policies LP3 and LP10 in the Local Plan, the PPTS and the Framework. The appeal is therefore dismissed.

JP Sargent

INSPECTOR