



Appeal Decision

Hearing Held on 2 November 2021

Site Visit made on 2 November 2021

by Nicola Davies BA DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 December 2021

Appeal Ref: APP/V1505/W/19/3223400

Land East of White House, Carlton Road, BASILDON, SS13 2LT

- 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 Mark Cooper against the decision of Basildon Borough Council.
 - The application Ref 18/01429/FULL, dated 22 October 2018, was refused by notice dated 19 February 2019.
 - The development proposed is material change of use of land for stationing of caravans for residential occupation with associated development (hard standing and day room) part retrospective.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. A revised version of the National Planning Policy Framework ('the Framework') has been published since the planning application was determined by the Council. I have had regard to the Framework in reaching my decision.
3. The Council's decision notice refers to Policy BAS BE12 of the Basildon District Local Plan Saved Policies 2007 (the Local Plan) which relates to the built environment. The local planning authority confirmed at the hearing that they are only objecting to the proposal on matters pertaining to the Green Belt and not on matters of character and appearance of the area. On this basis the Council also confirmed at the hearing that Policy BAS BE12 was not appropriate to this proposal and Policy BAS GB1 of the Local Plan relating to Green Belt is the most applicable policy pertinent to this case. I have therefore considered this appeal on this basis and have not had regard to Policy BAS BE12.
4. The Statement of Common Ground questions what weight should be given to intentional unauthorised development. Although invited, the parties did not take the opportunity to discuss this at the hearing. The Council did not raise an objection. On the available evidence before me I am not going to consider this matter further and I attribute it no weight.
5. I saw at my visit that the site was being used for the stationing of a caravan for residential occupation and that the site had been surfaced. However, that development does not benefit from planning permission, and I must, therefore, consider the site in the form it was prior to the residential occupation of the

site taking place. The parties agreed at the hearing that prior to residential occupation the site was vacant and had a nil use.

Main Issues

6. The main issues raised by this appeal are: -
- a) The effect of the proposal on the openness of the Green Belt; and
 - b) 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

7. The proposal has been put forward as a gypsy and traveller site. There is no dispute between the appellant and the Council that the proposal seeks to accommodate gypsies and travellers that satisfy the definition set out within Annex 1 of the Planning Policy for Traveller Sites August 2015 (the PPTS). I am satisfied that the occupation of the site would be by travellers that meet the PPTS definition. A permanent planning permission is being sought.

Green Belt

8. The site lies outside of any defined settlement boundary and is situated in the Green Belt. The Framework sets out the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open: the essential characteristic of Green Belts being their openness and their permanence. Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. This is reflected within the PPTS that states that "*traveller sites (temporary or permanent) in the Green Belt are inappropriate development*". The Framework also says that when considering any planning application, substantial weight should be given to any harm to the Green Belt.
9. Policy BAS GB1 of the Local Plan states that "*The boundaries of the Green Belt are drawn with reference to the foreseen long term expansion of the built up areas acceptable in the context of the stated purposes of the Green Belt and to the provisions specified in this Plan*". This policy supports the Framework's aims to prevent urban sprawl and to keep the land within Green Belts permanently open.
10. Both parties agree that the proposal would represent inappropriate development in the Green Belt.
11. The proposal would result in development in a location within the Green Belt where no development has existed before. The scale of the proposed development would be limited to that of a small caravan and dayroom within a small plot. Nonetheless, with regard to the effect on openness, the proposal would reduce the openness of the Green Belt by virtue of placing development within it. As a result, this would negatively affect the openness of the Green Belt. For this reason, there would be a degree of harm arising from this development, in addition to that arising from the inappropriate nature of the development.
12. The proposal would be inappropriate development in the Green Belt, which paragraph 147 of the Framework indicates should not be approved except in

very special circumstances. Furthermore, with reference to paragraph 150 of the Framework, I find the proposed material change of use is inappropriate development because it would not preserve openness and conflicts with purposes to check urban sprawl and to safeguard the countryside from encroachment.

13. Policy BAS GB1 of the Local Plan defines the boundaries of the Green Belt but does not set out development management criteria for development within the Green Belt. I consider the objectives of the Framework and the PPTS to be more applicable in this case.

Other Considerations

14. The Council does not have a 5-year supply of land to address the current and historic need for pitches within the Borough. I have been directed to a 2011 appeal decision at Windsor Road, Bowers Gifford, where it was recognised that there was an immediate unmet need for more gypsy sites at that point in time. It is evident from the high number of unauthorised sites in the Borough that there is a clear and immediate need for sites in Basildon. The lack of sites holds significant weight in favour of the proposal.
15. The Council advises that it is currently seeking to address this through the emerging Local Plan. The Council also recognises that it may be some time, post adoption of the emerging Local Plan, before any sites identified within a new Local Plan would come forward. Furthermore, Bowers Gifford Parish is earmarked for future residential development, and this would be established by an emerging Neighbourhood Plan. However, any such allocations for traveller sites are for consideration through the relevant plan adoption process.
16. Basildon Borough is constrained by its Green Belt designation with limited undeveloped land available outside of it. I acknowledge that there are other lawful sites or tolerated sites in the Green Belt plotland areas. However, I have not been directed to any within the vicinity of the appeal site, other than that of a long-standing planning application for a traveller plot on Grange Road that remains undetermined. It is not clear at this point in time how the emerging Local Plan would overcome the policy presumption against sites in the Green Belt or address the historic shortfall of pitch provision. Whilst it has been suggested that the emerging Local Plan may seek to facilitate development in the Green Belt, given the early stage of that plan very little weight can be attributed to this possibility.
17. The PPTS requires local planning authorities to set targets for providing Gypsy and Traveller pitches within each authority and requires an assessment of need to be undertaken annually. The need assessment published in 2018 identifies a requirement of 47 additional pitches and 6 pitches to represent 10% of the need of unknown households. The applicant's agent has been highly critical of the methodology and information gathering behind the Council's commissioned Opinion Research Services (ORS) 2018 survey that is being used to inform the emerging Local Plan. I have been directed to two appeals, one at Bicester and the other at Bulpham where information gathering to inform pitch need formed part of the considerations. There is contention as to whether the ORS future identified pitch need is robust and soundly based given those potential flaws identified in information gathering. However, the robustness of the ORS survey work will be a matter for the Local Plan examination and does not alter the fact that the Council does not currently have a 5-year supply of pitches.

18. Mr Cooper and Ms Ward (Mr Cooper's wife) are respectively Romany and Irish Travellers. As a mixed partnership the couple would not be accepted on many other traveller sites. At the hearing it was highlighted that future allocation would be unlikely to create single/individual pitches. If the envisaged emerging Local Plan site allocation of multi-pitch sites comes forward, site sharing is unlikely to be an option for Mr Cooper and his wife. This carries significant weight in favour of the proposal.
19. Mr Cooper has family ties with gypsies not far from the site within the Borough. Between him and his wife they collectively have five children, three of which currently live with them at the site. Mr Cooper's school age children are attending school locally. With regard to health, it is clear to me from the evidence provided that Ms Ward has on-going serious health conditions, and it is very important for her to have stability and familiarity. The family is registered with a local health provider. Due to family circumstances, Mr Cooper and his family require a pitch of their own. The appeal site is owned by the appellant, and this makes the site an obvious choice for the appellant.
20. The appellant advises that he has no other site available to him on which to locate and that other family members cannot accommodate them. The Council were unable to direct me to any options of suitable alternative sites/accommodation within the Borough or elsewhere that might be available or suitable for Mr Cooper and his family. Without a site, Mr Cooper considers that he and his family would be forced to live a roadside existence without any fixed address. The lack of an alternative site and the personal circumstances of the appellant and his family carry significant weight in favour of the proposal.
21. The appellant has referred me to two appeal decisions in Chester where the personal health needs of the family and the welfare and education of children were found to outweigh the harm to the Green Belt. Those examples involved a balancing exercise, the outcome of which would have been dependent upon the individual judgement of the decision-maker.
22. I note that there is some local support for the proposal, however the proposal needs to be considered in terms of the wider public interest and the great importance attached to protecting the Green Belt through land use planning policy.

Planning Balance and Human Rights

23. 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.
24. The proposal would be inappropriate development in the Green Belt as defined by the Framework and this carries substantial weight. The scheme would also result in harm to the openness of the area. This also carries substantial weight.
25. The appellant is in clear need of a pitch, and this carries significant weight. As there are children involved in this case, it is in their best interests to have a settled base which affords them access to education and other services. This is a primary consideration. Given the circumstances and context in this case I attach significant weight to the best interests of the children.

26. I acknowledged that there is a general national and regional need for pitches to which I attribute significant weight. The Council indicates that it cannot demonstrate an up to date 5-year supply of deliverable pitches and this does not address the housing needs of the appellant. 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.
27. I sympathise with the housing circumstances the appellant finds himself facing. I have considered and acknowledge the personal housing needs of the appellant, his wife and his children and the benefit of having a settled base close to health care facilities and education, along with the lack of available sites within the Borough, and elsewhere regionally or nationally. Despite having significant weight, I do not consider these matters would clearly outweigh the substantial harm to the Green Belt, by virtue of the development's inappropriateness and its harm to openness. I do not consider those other considerations that hold significant weight in favour of the scheme individually or collectively, justify inappropriate development in the Green Belt. This is the test that they have to meet.
28. I have considered the planning conditions put forward by the Council, but I do not consider any of the conditions would sufficiently overcome my concerns.
29. I have considered the grant of a temporary planning permission in line with the advice provided by the PPTS. If a local planning authority cannot demonstrate an up to date 5-year supply of deliverable site, this should be a significant material consideration in any subsequent planning decision when considering applications for the grant of temporary planning permission. However, the PPTS also says that an exception is where the proposal is on land designated as Green Belt. I attribute significant weight to this. In addition, the harm to the Green Belt that I have identified would take place over any temporary period of occupation of the site.
30. I have also considered the imposition of a personal permission that would allow Mr Cooper and his family to reside at the site. However, the harm to the Green Belt as a result of inappropriate development would exist over the time the site would be occupied. I acknowledge that in terms of a personal time limited condition the bar would be set at a lesser level than that of a permanent permission, however this does not obviate the harm to the Green Belt whilst the site would be occupied. Mr Cooper advised at the hearing that he would accept a condition allowing a five year occupation of the site. If he stayed at the site for that period, the harm would exist over that time.
31. I have had regard to the Human Rights Act 1998 and rights under Article 8 in respect of the private and family life and the home and the rights of the children. The applicant and his family are in clear need of a pitch and would benefit from being settled where his family can access health care facilities and education. In dismissing the appeal this would result in the occupiers not having a settled home in which to locate. This would be an interference of the appellant's rights under Article 8 of the Convention incorporated into the Act. Nonetheless, I find that the issue of inappropriateness in relation to the Green Belt along with the resulting harm to the openness is so substantial and that, in the wider public interest, it cannot be clearly outweighed by the personal circumstances of the appellant and/or the other considerations. I have considered whether a lesser requirement or alternative would overcome the

harm. For those reasons give above, I have ruled out the possibility of imposing a temporary or personal permission. Dismissing the appeal would be proportionate and necessary.

32. In exercising my function on behalf of a public authority I am aware of my duties under the Public Sector Equality Duty (PSED) under 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. Since the appeal involves gypsies and travellers, they have a protected characteristic for the purposes of the PSED.
33. In consciously thinking about the aims of the PSED I have had due regard to the appellant's traditional way of life and the personal circumstances relating to the wellbeing of Mr Cooper and his family, and notably his wife's health. I have also had regard to the best interest of the appellant's children. Mr Cooper and his wife's first child is now of school age. The best interests of the children include living on a settled and secure site with access to schools and to local healthcare facilities. This is a primary consideration on my reasoning on a personal permission. However, it does not follow from the PSED that the appeal should succeed.

Conclusion

34. The proposed development would, by definition, be harmful to the Green Belt, and I attach substantial weight to the harm to the Green Belt having regard to the policy in the Framework. The proposal would also result in harm to the openness of the Green Belt. The benefits of the other considerations, including those personal circumstances of the appellant and his family, do not clearly outweigh this harm. Consequently, there are not the very special circumstances necessary to justify inappropriate development in the Green Belt whether on a permanent or temporary basis. There would be no violation of the human rights on this occasion.
35. Having regard to all matters raised, in writing and made orally at the hearing, I find that the appeal should fail.

Nicola Davies

INSPECTOR

ATTENDANCE

FOR THE APPELLANT:

Mrs Alison Heine
Mr Mark Cooper
Dr T A Acton

FOR THE LOCAL PLANNING AUTHORITY:

Mr Martin Firmstone
Ms Adeola Pilgrim
Mr Ian Cummings
Mr Ryan Funnell

INTERESTED PERSONS:

Mrs Christine Barlow (Bowers Gifford and North Benfleet Parish Council)

DOCUMENTS SUBMITTED AT THE HEARING:

Letter from Dr Singh's Surgery dated 3 June 2019

Two letters from local residents (Miss J Goodmand of Glenwood, Carlton Road, Bowers Gifford dated 4 May 2019 and Nicola Lazell of White House, Carlton Road, Bowers Gifford dated 24 April 2019)

Record of Attendance