



Appeal Decision

Inquiry opened on 29 March 2022

Accompanied site visit made on 31 March 2022

by Philip Major BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7th April 2022

Appeal Ref: APP/J1535/W/21/3287595

The Steers, Pigstye Green Road, Willingale, Ongar CM5 0QF

- 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 Messrs Martin, Jerry and Michael O'Connor against the decision of Epping Forest District Council.
 - The application Ref: EPF/0772/21, dated 25 February 2021, was refused by notice dated 6 October 2021.
 - The development proposed is the change of use of land to use as a residential caravan site for 5 gypsy families, each with 2 caravans including no more than 1 static caravan/mobile home, together with laying of hardstanding and erection of 2 ancillary amenity buildings.
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Decision

1. The appeal is dismissed.

Preliminary Matters

History and Baseline

2. The planning history of the appeal site is relevant here. In 2017 planning permission was granted, on appeal¹, for the use of about half of the current appeal site as a mixed use for horse keeping and stationing of residential caravans. In early 2022 a further appeal decision² granted permission for a mixed use of horse keeping and the stationing of caravans on the same site without complying with a condition subject to which the 2017 permission had been granted. It is not in dispute that these permissions related to the provision of 3 pitches, and that each would be restricted to no more than 2 caravans, with no more than one static/mobile home.
3. In the period after the 2017 decision the whole of the land covered by the appeal before me has been covered in hardstanding formed by hardcore/gravel. In addition the area used for the stationing of caravans has been extended, and caravans are now located at various positions across the entire extent of the current appeal site.
4. A good deal of debate took place at the inquiry as to whether the 2022 permission could be regarded as the baseline, or fallback, position. In essence I am asked to determine whether there is a reasonable prospect of that permission being implemented in accordance with the conditions attached to it. In particular the 2022 permission requires the submission of a scheme of

¹ APP/J1535/C/16/3147359

² APP/J1535/W/20/3263208

development, pursuant to condition 7, within 3 months. That would be on or before 24 April 2022. I was informed in writing that instructions have been given for the scheme required by condition 7 to be prepared and submitted. I was also provided with an iteration of a plan relating to the putative submission. On that point I am satisfied that the first requirement of condition 7 is likely to be satisfied. Not to follow this course would remove the possibility of the 2022 permission being a fallback position. Following on from any such submission, and assuming that the submitted scheme was approved, it would be incumbent upon the Appellants (who are the same as in the appeal before me) to alter the current site layout in order to accord with, amongst other matters, the spatial extent of the 2022 permission.

5. At this stage I do not know the detail of the likely submission designed to satisfy condition 7 and it is not a matter for me to consider. However, I am prepared to accept, on the balance of probabilities, that the Appellants would, if required, restrict development to the extent permitted in 2022, and would implement any approved scheme. On that basis I can also accept that the 2022 permission can be regarded as a fallback position at the current time. In essence, therefore, the proposal before me would extend the permitted site from 3 pitches to 5 and take in the remainder of the land beyond the permitted site, which is currently laid with hardcore and used for the stationing of caravans.

Proposed site occupants of the extended part of the site

6. The permitted site (if lawfully implemented) is currently occupied by the 3 Appellants and their families. At the time of the application it was anticipated that 2 daughters of Mr Martin O'Connor, with their families, would occupy the 2 new proposed pitches. Those families include young children. However it is now the intention that 2 daughters of Mr Miles O'Connor (who is related to the Appellants but does not live at the appeal site) would occupy the 2 new pitches. These daughters are due to be married during 2022. Neither has any children.
7. I heard at the inquiry about the intended husbands of Mr Miles O'Connor's daughters, though they were not present to give evidence. Each is reported to be a traveller who works away primarily as a landscaper, each running their own business and travelling from place to place with no fixed address. The information provided was limited, however, and it is not possible on the evidence before me to accept without question that the prospective husbands fall within the definition of gypsy and traveller contained within Planning Policy for Traveller Sites (PPTS) of 2015, but this is not determinative in the appeal. I do accept the traveller credentials of Mr O'Connor's daughters.

Planning Obligations

8. The Appellants have submitted alternative planning obligations in the form of Unilateral Undertakings pursuant to S106 of the 1990 Act. Each is designed to make contributions towards air quality mitigation relating to the Epping Forest Special Area of Conservation. I have noted that the Council has reservations in respect of the timing of contributions and the amounts offered. Notwithstanding that point the Council has confirmed that the obligations would satisfy the matters highlighted in its second reason for refusing planning permission, and no longer seeks to pursue that reason. However, in light of my final decision on this appeal I do not need to consider the obligations further.

Previously Developed Land

9. The Appellants have sought to argue that the appeal site is formed of previously developed land as associated with, or forming the curtilage of, the stables which exist at the northern end of the site. The stables were granted planning permission for equestrian use. As non-agricultural buildings they can be accepted as previously developed land. But I do not accept the proposition that anything other than the stables and hardstanding immediately adjacent to the stables could reasonably be regarded as previously developed. In any event the 2022 planning permission for the northern portion of the site, as a fallback position, includes that area of the land which can be accepted as previously developed. In my judgement the southern part of the site cannot be defined as previously developed land.

Intentional Unauthorised Development (IUD)

10. There is no doubt that the site has, at least in part, been developed intentionally and without the benefit of planning permission. As pointed out at the inquiry this is a matter which is still capable of being a material consideration. The weight to be given to this matter is for me to consider, and in this case I am aware that the unauthorised development has been carried out, incrementally, over a number of years. Although unlikely to tip the balance in this case if all other matters pointed to the grant of planning permission, this is still a factor which weighs negatively against the Appellants' case.

Site Location

11. The site is located within the Metropolitan Green Belt and it is common ground that the proposal is inappropriate development. It is also common ground that substantial weight attaches to the harm by inappropriateness.

Policies

12. A number of policies of the adopted and emerging Local Plans have been agreed as relevant. Not all of those policies are determinative in the appeal, and I refer to those I regard as the most important in the reasoning which follows. I agree that the emerging Local Plan, which has completed the majority of its stages towards adoption (expected shortly) can be given significant weight.

Main Issues

13. As a consequence of the inappropriate nature of the proposal the main issues in the appeal are:
- (a) The extent of the general need for sites for gypsies and travellers, current supply, and the particular need for sites for the Appellants and their families, including any personal circumstances;
 - (b) The effect on the openness of the Green Belt and its purposes;
 - (c) The effect of the proposal on the character and appearance of the surrounding landscape;
 - (d) Whether the harm by inappropriateness, and any other harm, is clearly outweighed by other considerations such that very special circumstances exist to justify the grant of planning permission.

Reasons

General Need and Supply and Needs of the Appellants' Families

14. At the current time the Council acknowledges that it cannot demonstrate a 5 year supply of traveller sites, albeit that this is expected to change upon adoption of the emerging Local Plan, expected in mid 2022. At that point allocated sites would come 'on stream'. The trajectory for provision of the allocated sites is ambitious, but there is as yet not enough evidence to suggest that some allocated sites could not be provided within 5 years. Overall there is an acknowledged need for such sites and this was quantified by the Gypsy and Traveller Accommodation Assessment of 2017.
15. The round table discussion of general need at the inquiry to a large extent concentrated on whether or not the identified general need was realistic, or whether a higher figure would be reasonable because of the high number of 'unknown' travellers in the survey work who could potentially meet the PPTS definition. I have some sympathy with the suggestion that the assumed quantum of those who are likely to meet the definition is somewhat low, and that an increase in the number of pitches required would be justified. This is particularly so as the GTAA is now some years old.
16. That said, it is right that Mr Miles O'Connor's daughters were identified in the GTAA survey work as requiring pitches in the future, so their individual needs have been taken into account when that document was drawn up. The daughters currently reside with him on a site in Nazeing and I wholly understand their wish to become independent, with their own pitches from which to begin married life. At this stage, as acknowledged, there are no children's needs to be taken into account.
17. As requested I visited the site where Mr Miles O'Connor, his daughters and the rest of his family currently live. It is meeting the needs of the family at present, but I accept that it would not be likely to be capable of fully meeting the needs of the daughters once they are married. The pitch is probably too constrained to successfully accommodate another 2 caravans, let alone any additional mobile homes. No alternative sites have been identified as being suitable.
18. In relation to the sites which are proposed for allocation in the emerging Local Plan it was confirmed at the inquiry that many of them are expected to be extensions or intensifications of existing sites. These are consequently expected to provide for the needs of expanding families already living at those locations, and would be unavailable for Mr O'Connor's family. As such any availability in the future would be reliant on either the strategic sites allocated in the Local Plan, or other sites to be considered as they come forward (windfall sites) which would be assessed against the criteria based emerging Local Plan Policy H4.
19. Taking this matter in the round it is my judgement that there is a current general need for gypsy and traveller sites in the District which is likely to be in excess of that identified in the GTAA. I also accept the personal need for sites for Mr O'Connor's daughters, with the caveat that the needs of their intended husbands cannot yet be accepted in light of the limited information on their traveller status. I accord the need for sites, both in general and personally, significant weight. So far as supply is concerned some sites should be available in the medium term at worst, though I accept that short term supply is likely to be a challenge.

20. However, as PPTS makes clear, subject to the best interest 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. This is not, as acknowledged at the inquiry, a blanket ban on sites in the Green Belt, but is a significant material consideration.

Green Belt Openness and Purposes

21. It is common ground that openness is capable of having both a spatial and visual dimension. Any impact in this case is reasonably assessed against the fallback position described above. In other words the extension of the site area by about half, and the development of 2 traveller pitches which would also include the proposed ancillary amenity buildings.
22. It is self-evident that the stationing of static and touring caravans and the erection of buildings would reduce openness. The very existence of structures, be they movable or permanent, would curtail the spatial dimension of openness. It is not necessary for such structures to be highly visible from the public domain to result in a loss of openness. Here, the structures which would be located on the extended site would in any event also be visible and have an impact in the visual dimension. This is notwithstanding the rather thin perimeter vegetation, through which it is relatively easy to see (albeit that I acknowledge this would be more difficult when the vegetation is in full leaf). Any proposal to surround the site with fencing (as has happened to a degree already) would also impact on openness. Furthermore it would be expected that there would be additional parking and manoeuvring on the site, which would add to the loss of the perception of openness.
23. Clearly the development of the northern part of the site has an impact on openness and this is reflected in both the 2017 and 2022 appeal decisions. But subject to the implementation of the 2022 permission the southern part of the site would retain a sense of openness associated with the paddock to the east, of which it was formerly a part. Hence in my judgement the proposed development would significantly reduce the openness provided by the southern part of the site. This would be particularly evident in the spatial dimension, but also the visual dimension given that structures would be located further south on the Appellants' land. This loss of openness would be harmful and that harm attracts substantial weight. It was suggested at the inquiry that within the spectrum of Green Belt harm this proposal should be regarded as being at the lower end of the spectrum. I disagree with that proposition as I have explained.
24. I am somewhat surprised that in considering this site as part of a study on the selection of potential gypsy and traveller sites in 2018 the authors (Arup) suggested that allocation of the site would bring no harm to the Green Belt. I can only speculate on why such a conclusion might have been reached, but no doubt the fact that some of the site was already in use may have been a contributing factor. In any event I fundamentally disagree that there would be no Green Belt harm.
25. There is agreement between the parties that the extension of the site as proposed would be in conflict with that purpose of the Green Belt which seeks to protect the countryside from encroachment. Indeed that encroachment has already taken place without authorisation. Taken together with the impact on openness these matters amount to significant further harm to the Green Belt. This results in conflict with Local Plan Policy GB2A and emerging Local Plan

Policy DM4, both of which are consistent with the requirements of the National Planning Policy Framework (NPPF) to restrict development in the Green Belt.

Character and Appearance

26. The appeal site lies within an area of attractive undulating countryside which has some notable characteristics, including the scattered settlement pattern, moderate field sizes, hedgerow boundaries, intermittent woodland blocks and narrow interconnecting lanes. These characteristics are typical of the Willingale Farmland Plateau Landscape Character Type, which is the most appropriate scale of landscape character assessment carried out. There is a strong sense of tranquillity.
27. The site is within a self-contained block of land with some perimeter vegetation. I acknowledge that the character of the northern part must be accepted, on the basis of the current fallback position, as having been changed from a small area of stabling, hardstanding and paddock to a larger area including the siting of residential caravans. But following implementation of the 2022 planning permission about half of the appeal site would remain open. This open land would be characteristic of the wider landscape, albeit with some boundary hedging. It would link naturally with the paddock to the east and form a minor but important part of the rural landscape.
28. The development proposed would interrupt the field pattern and extend the stationing of caravans into a significantly larger area than that permitted. This would further erode the rural characteristics of the landscape hereabouts, and would cause significant harm to its overall character. This harm would be exacerbated to a small degree by the increase in comings and goings resulting from the extra residents at the site.
29. Within the local context the appeal site is relatively well hidden from some public viewpoints, notably from the north and east. But from the west and south the site is clearly visible through the thin vegetation I have already referred to above. It is notable that the site is far more visible when approaching along the footpath from the south than would be the case with the 2017 or 2022 site layout. This marks out the case before me as significantly different to cases considered in 2017 and 2022. It is a particular feature of this case that this public right of way runs north to south and extends alongside to the western boundary of the site. This footpath is part of the extensive network of public rights of way in the locality.
30. Any users of the network in this area are highly likely to be doing so for recreational purposes and are therefore rightly to be assessed as highly sensitive to development which affects that recreation. Whilst I accept that some improvement to site screening could mitigate the visual impact of the development, I do not accept that any landscaping scheme could eliminate the actual and perceived presence of a site used for residential purposes. The illustrative material submitted with appeal documentation provides little evidence that such an outcome is achievable. The lack of likely appropriate mitigation leads to my judgement that those using public rights of way for leisure purposes would be faced with a significant adverse visual impact from the proposal.
31. In addition it is notable that the local lanes appear well used by leisure cyclists, many of whom I observed during my various visits to the locality. Whilst these receptors may pass more quickly through the area there would still be some extended glimpses of the appeal development, and this would be likely to

detract from the enjoyment of cycling in this area. It is well understood that complete concealment of traveller sites is not sought, but this particular site would be unacceptably prominent.

32. There are 2 private residential dwellings close to the site. That to the east has windows which face the site, but intervening quick growing vegetation is in the process of obscuring views. The property to the north-west has more limited visibility. In either case there would be a minor visual impact on the occupants of these properties, but not of a magnitude which would be determinative in this case.
33. Taking these matters together it is my judgement that the proposed development, notwithstanding the current fallback position of the 3 pitch site, would cause significant harm to the character and appearance of the surrounding landscape. In this I disagree with the landscape evidence submitted, which in my judgement significantly underestimates the impact of the proposals. The development would conflict with the objectives of Local Plan Policy CP2, which in general seeks to sustain and enhance the rural environment. Whilst the policy is not wholly consistent with the NPPF it nevertheless retains moderate weight. There would also be conflict with emerging Local Plan Policy DM3, which amongst other things, aims to ensure that development is sensitive to its setting in the landscape.

Other Considerations and the Planning Balance

34. The Green Belt in Epping Forest District covers some 92% of the District. Any development of traveller sites which are not allocated in the emerging Local Plan are therefore likely to be in the Green Belt. That is an agreed position. The current Local Plan (Policy H10A) requires a balancing exercise to be undertaken in relation to the demonstration of very special circumstances, and the impact on openness and character and appearance of the countryside. That exercise is inherent in this decision. The emerging Local Plan includes a criteria based policy for windfall proposals (Policy H4 part B).
35. The Appellants argue that the proposal before me accords with most, if not all, the criteria of Policy H4. I agree that some of those criteria would not be offended by this proposal. However, in view of my findings above I consider that there would be conflict with criteria i), vii) and ix). These relate to (amongst other things) local amenity and the natural environment, the physical and visual character of the area, and impact on the Green Belt. I do not find that any other criteria offer determinative reasons to weigh against the proposal. Nonetheless the proposed development cannot be said to accord with emerging Policy H4 as a whole.
36. I have dealt above with the general and personal need for traveller sites, and accord that factor significant weight. There is a lack of identified alternatives, which is incorporated in that significant weight. I am also aware that the Appellants assert a long-term failure of policy in not making adequate provision. This played a part in previous decisions here. I do not dispute that lack of adequate provision has been a feature in the past, and at least in the short term, continues. But I am also aware that it is expected that the Council will be able to indicate a 5 year provision of sites in the near future. Nonetheless, the lack of provision in the past does demonstrate a policy failure which must continue to attract some weight until the emerging Local Plan has been adopted. Even at that point it is by no means clear to me that the

question of need has been settled, but future reviews of that situation are not a matter for me in the context of this appeal.

37. I have accepted the needs of Mr O'Connor's daughters for sites on which to begin married life and have heard of no alternatives for them which are currently available. I acknowledge that they would like to live in close proximity to Mr Michael O'Connor in order to provide care when needed, but there is no evidence to suggest that any such care cannot be provided in other ways. Living as a family group is, of course, common and traditional in traveller families. However, it is expected that there will be sites made available within the next 5 years, and whilst these may not be ideal for the purposes of this family (either in timing or location) I have no evidence that they could not be available quite soon, nor that they would be unsuitable or in any way unachievable for the intended occupants.
38. The location of the site in relatively remote countryside has been criticised, but was accepted as being acceptable for a traveller site in previous decisions. Whilst I realise that the distance to everyday facilities is such that a private vehicle would need to be used in preference to public transport, cycling or walking, the site is not so remote that this should be a negative factor in the appeal.
39. I summarise here my findings in relation to the main issues, other considerations and the planning balance, taking into account the current fallback position I accepted earlier.
- The development would be inappropriate development in the Green Belt, would harm openness and conflict with one of the purposes of the Green Belt. This attracts substantial weight.
 - There would be significant harm to the character and appearance of the surrounding area. This attracts significant weight.
 - The general need for sites is a material factor of significant weight, as is the personal need of the intended occupants. This factor applies with equal weight whether or not the proposed husbands of Mr O'Connor's daughters meet the PPTS definition.
 - Some positive weight in favour of the proposal attaches to the failure of policy, over time, to provide sufficient traveller pitches.
 - There is conflict with the development plan as represented by the current Local Plan, as set out above, as well as with emerging Local Plan policies.
40. PPTS makes it clear that in the Green Belt, 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. That is the case here. There are no needs of any child beyond those which were demonstrated for the fallback position to weigh in the balance. I am satisfied in this case that the other considerations advanced in favour of the development do not clearly outweigh the harm to the Green Belt, and other harm.

Human Rights and Public Sector Equality Duty

41. In considering this appeal I have taken account of the human rights of Appellants, and in particular the intended occupants of the site. The human rights of the 3 Appellants and their families would not be affected so long as the fallback planning permission is implemented. But there would be some

interference with the rights of prospective occupants. However, those prospective residents currently reside in other locations and would not consequentially be rendered homeless by dismissal of the appeal. It is clear that the opportunity to move elsewhere to begin married life is likely to be available in the near future and this would further moderate the impact of dismissing the appeal. Such a decision would strike a fair balance between the rights of the individual and the interests of the community, and would be proportionate.

42. I have also had regard to the Public Sector Equality Duty (PSED). The Appellants and prospective occupants share protected characteristics, and I have taken into account the need to avoid discrimination, advance equality of opportunity and foster good relations. It does not follow from the PSED that the appeal should succeed. As noted in relation to Human Rights above, implementation of the fallback permission would not lead to any detriment for the Appellants. For other prospective site occupants I have carefully considered whether dismissal of the appeal would conflict with my duty under the PSED. However, in my judgement there would be no conflict with the PSED in this case. In reaching a decision and in light of my findings set out above I am satisfied that it is right and proportionate to dismiss the appeal.

Consideration of a Time Limited Planning Permission

43. I have given consideration to the suggestion that a time limited planning permission would be appropriate if full planning permission is not granted. There are 2 major stumbling blocks to that course of action. The first is the degree of harm identified here albeit that the harm would be lessened by its time limited nature. More fundamental is the fact that the proposal before me includes permanent buildings on the southern portion of the site. It would not be appropriate to permit the erection of permanent buildings, albeit of modest size, for a temporary period, only to expect their removal after a relatively short period. Separately, PPTS indicates that the lack of an up to date 5 year supply of sites should not be a material consideration of significant weight when considering the matter of temporary planning permission in the Green Belt. Hence I have reached the conclusion that a time limited planning permission would not be appropriate in this case.

Other Matters

44. A number of previous appeal decisions have been cited to support the Appellants' case. I note that a great many include the important matter of the best interests of children. In light of the fallback position which currently exists that is a matter which is not in play in this appeal. In any event the cases provided all turn on their own unique circumstances and the individual judgements reached by the decision makers. Hence none is so directly comparable to this case that it can be supportive of the appeal.

Overall Conclusion

45. For the reasons given above I conclude that the appeal should be dismissed.

Philip Major

INSPECTOR

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Mr M Henderson	Of Counsel
He called	
Mr P Hughes BS(Hons)	Director, PHD Chartered Town Planners Ltd
MRTPI DipMan MCMi	
FRGS	
Mr S Jarman BSc DipTP	Opinion Research Services – appeared via online
PGCS	link for the round table discussion on need

FOR THE APPELLANTS:

Mr M Willers	Queen's Counsel
He called	
Mr R Billingsley	DJOGs Ltd
BSc(Hons)Ecology AMLI	
Mr M O'Connor	Son/brother of the Appellants
Mr B Woods BA MRTPI	WS Planning and Architecture

INTERESTED PERSONS:

Mr D Fresco	Local resident
Mr D Stokes	Willingale Parish Council – appeared via online link

DOCUMENTS HANDED IN AT THE INQUIRY

- 1 Opening statement on behalf of the Council
- 2 Bundle of letters in support of the Appellants
- 3 Statement of Mr Fresco
- 4 Statement of Mr Stokes
- 5 Confirmation that intentional unauthorised development can be a material consideration
- 6 Papers from DJOG confirming instructions to prepare a scheme designed to discharge condition 7 of the 2022 appeal decision
- 7 Arup report on site selection (extracts) March 2018
- 8 Unilateral Undertaking
- 9 Alternative Unilateral Undertaking
- 10 Closing submissions on behalf of the Council
- 11 Closing submissions on behalf of the Appellants