



Appeal Decision

Hearing held and site visit conducted on 24 March 2022

by Jonathan Price BA(Hons) DipTP DMS MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6 May 2022

Appeal Ref: APP/M1520/W/20/3251226

71 Watlington Road, Benfleet, Essex SS7 5DS

- 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 J O'Connor against the decision of Castle Point Borough Council.
 - The application Ref 19/0626/FUL, dated 23 August 2019, was refused by notice dated 23 March 2020.
 - The development proposed is siting of four mobile homes and four day rooms.
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Decision

1. The appeal is allowed and planning permission is granted for the siting of four mobile homes and four day rooms at 71 Watlington Road, Benfleet, Essex SS7 5DS in accordance with the terms of the application, Ref 19/0626/FUL, dated 23 August 2019, subject to the conditions set out in the Schedule attached to this decision.

Background and Main Issue

2. The proposal relates to a vacant parcel of land. The site lies immediately adjacent to a raised section of the Shoeburyness to Fenchurch Street Railway line, which here marks the built-up edge of Benfleet. It is next to a sewage pumping station and originally contained the manager's dwelling. Subsequent permissions for redevelopment with housing were granted and the site is zoned as existing residential in the adopted development plan. The four mobile homes would be to accommodate Gypsy and Traveller families.
3. The appeal site is served by a continuation of the short private access leading to a sewage pumping station. This runs off Watlington Road, near to where it continues beneath the railway line. The site is enclosed with close boarded fencing. The railway embankment and the footpath run along the southern boundary of the site and its other sides abut allotments and a residential back garden, as well as the pumping station.
4. The Council's refusal of planning permission was for a single reason. This was over the failure to demonstrate that an appropriate and achievable form of noise mitigation, sufficient to safeguard the health of future residents of the proposed mobile homes, could be provided.

5. The appellant's most recent Noise Impact Assessment¹ (NIA) indicates that, unmitigated, the appeal site is exposed to environmental noise from passing trains that would have a low to medium risk of significant adverse impact. The NIA concluded that internal noise levels within the mobile homes could be made commensurate with British Standard² internal design limits by suitably upgraded building fabric. However, exceedances of the internal guideline levels would have to be tolerated should windows be opened for cooling; unless mechanical ventilation was provided.
6. The NIA went on to conclude that the recognised upper limit to noise levels of 55dB within the external site areas would not be likely to be achieved. However, it noted that revising the site layout to gain sound screening from the buildings might provide for relatively quieter external amenity areas on the sides of the mobile homes away from the railway line.
7. At the Hearing, the Council confirmed its acceptance of the NIA conclusions. The main issue in the appeal is thus whether or not the proposal would provide acceptable living conditions for residents, having particular regard to the noise environment within external amenity areas.

Reasons

8. The appellant reports the train operator confirming that, currently, usually 294 trains run through Benfleet daily from Monday to Friday. On the weekend this number can vary a little more due to rail replacement buses/engineering works and would be slightly less than during the week. There are approximately 23 trains running from 0423-0700 and 13 after the hours of 2300-0117. No freight trains use this line and, in terms of non-passenger transit, just Network Rail service vehicles pass by, though evidently not regularly. Local residents present at the Hearing reported night time noise disturbance resulting from the passage of such maintenance vehicles.
9. At my visit I experienced the sound of passenger trains passing the appeal site along this electrified section of railway. These were regular and quite frequent. However, in the comparatively long periods in between, the site was relatively peaceful, being away from busy roads.
10. The mobile homes could be insulated and provided with mechanical ventilation to provide a suitable internal noise environment for living and sleeping. Passing trains would still cause a moderate degree of harm by detracting from the peaceful enjoyment of the external amenity areas around the proposed mobile homes. Whilst less than ideal, the noise environment within the external areas could be improved by the approved layout of buildings and caravans.
11. However, the adverse effects of train noise upon the enjoyment of the external amenity areas at this site would result in a finding of harm, in respect of the overall living conditions afforded to occupiers of this proposal. This level of harm would be no different to that which would have been experienced in the gardens of dwellings previously permitted on this site, where the prevailing train noise had not been found to give rise to unacceptable living conditions. The living conditions within the outside spaces to this proposal would be little different to that experienced in the gardens of neighbouring homes close to the

¹ 71 Watlington Road, South Benfleet, Essex Noise Impact Assessment Report 1402.00 - dBA Acoustics 4 February 2022.

² BS8233:2014 Guidance on sound insulation and noise reduction for buildings

railway line. Given adequate internal living conditions within the mobile homes could be secured, the overall level of harm found in respect of the noise environment within external amenity areas for this reason would be low.

Other Matters

12. I recognise the strong local opposition to the proposal and have taken into account the responses made to the planning application and the statements made to the appeal, as well as the petition in support of the Council's decision.
13. Although the proposal meets the specific needs of Gypsies and Travellers, this still remains a residential use of land on a site zoned as existing for this purpose. On this basis, I find the land use proposed to be acceptable in principle. There is a general need for housing, including that provided for Gypsies and Travellers, which the Council accepts. There are benefits in this need being met adjacent to a large settlement, where occupiers would have good access to healthcare, schools and other community facilities.
14. Relevant statutory consultees are satisfied the proposal raises no concerns in respect of flood risk, air quality, highway safety or proximity to any hazardous installations or operations. I find no grounds to conclude differently.
15. Subject to conditions, there would be no planning reasons to find the proposal unacceptable due to any material harm to the living conditions of neighbouring residential occupiers, either on account of lighting, noise or a loss of privacy.
16. The site was formerly occupied by a dwelling, which provides encouragement to this further residential proposal. The site is bordered by a sewage pumping station, a railway line and allotments, and so makes no positive contribution as part of any existing housing layout. As such, I find there would be no material harm caused to the character and appearance of the area. As a residential use is deemed acceptable in principle, little weight can be given to any harm found through a loss of openness.
17. The developed site would not offer much communal children's play space. However, it is within close proximity to large areas of public open space and so I find little harm in this regard.
18. The site is on the edge of, and set within, the residential suburbs of Benfleet. There are no grounds to find that the proposed Gypsy and Traveller accommodation would be isolated from, or lack convenient integration with, the wider community.
19. Various other issues are drawn to my attention. The County Council is responsible for addressing any impediment to the public right of way running along the foot of the railway embankment that might be caused by the adjacent fencing. Any potential requirement to move the fence in slightly would not affect the overall suitability of the site for the use proposed. Any other access impediments, such as through the storage of garden or other waste material, might also be the province of such separate measures.
20. Any burning of materials on the appeal site would be subject to controls applied through environmental health legislation. This would not be a matter with any bearing upon the appropriateness of the land use sought. The same would apply to any unauthorised connections to a water supply, which would be a matter for the relevant utility supplier to address.

Habitats Regulations Assessment

21. The appeal site lies within the Zone of Influence of the Essex Coast Recreation disturbance Avoidance and Mitigation Strategy (RAMS). The four homes proposed would be likely to have a significant effect upon the interest features of designated European sites through increased recreational pressure, when considered either alone or in combination with other planned residential growth. Mitigation of the proposal's impact can be secured through a planning obligation to provide the financial contribution per dwelling required under the RAMS.
22. A copy of the appellant's planning obligation to this effect was provided at the Hearing. I am satisfied that this meets the tests in Regulation 122(2) of the Community Infrastructure Levy Regulations 2010 and is a) necessary to make the development acceptable in planning terms, b) directly related to the development and c) fairly and reasonably related in scale and kind to the development. On the basis of this undertaking, I am able to conclude that the appeal proposal would have no adverse effect upon the integrity of any of the European sites addressed under the RAMS.

Planning balance, conditions and conclusion

23. The site is zoned for residential use and has previous consents for redevelopment with housing. I have not been made aware of any material change to the prevailing noise environment such as to no longer support the principle of housing in this location. The NIA has shown that the proposed mobile homes could be insulated against noise and be provided mechanical ventilation for cooling, so as to provide acceptable residential living conditions internally. Any harm found to arise from the external amenity areas being subject to the noise from the regular passage of trains would be low. This low level of harm would be outweighed by the proposal's benefits. These include meeting a general need for Gypsy and Traveller accommodation, making use of former residential land and the site offering relatively good access to services and facilities.
24. Following the Hearing, the main parties were given a short period to agree a schedule of conditions. I have considered those submitted against the tests in paragraph 56 of the National Planning Policy Framework. These are that conditions must be necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects.
25. The conditions meet the required tests, but for certainty I have amended that covering compliance to include the location plan as well as that of the design of the day rooms. The layout of the four mobile homes and day rooms is conditional, to ensure this best mitigates for noise impacts on external areas. This layout includes car parking provision, obviating the need for a separate condition. Otherwise, and without altering the effect of the conditions suggested, I have made amendments in the interests of succinctness. Subject to these conditions, and for the reasons set out above, I conclude that the appeal be allowed.

Jonathan Price

Inspector

DOCUMENTS SUBMITTED AT THE HEARING

Copy of Unilateral Undertaking, made on 24 March 2022 by Mr J O'Connor under s106 of the Town and Country Planning Act 1990, to pay a commuted sum towards the RAMS.

APPEARANCES

FOR THE APPELLANT:

Marc Willers	of Queen's Counsel
David Fernleigh	DBA Acoustics Limited
Brian Woods	WS Planning and Architecture
John O'Connor	Appellant

FOR THE COUNCIL:

Kim Fisher-Bright	Castle Point Borough Council (CPBC)
Edward Davis	Noise Consultant for CPBC

INTERESTED PERSONS:

Councillor Andrew Sheldon	CPBC St Mary's Ward Councillor/Essex CC
Councillor Russell Savage	CPBC St Mary's Ward Councillor
Sharon Ainsley	Local resident
Alan Sapp	Local resident

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
Reason: Imposed pursuant to Section 91 of the Town and Country Planning Act 1990.
- 2) The development hereby permitted shall relate to the following approved plan: J003026-DD01A – site location plan; J003026-DD04 – as proposed dayroom.
Reason: In the interests of certainty.
- 3) Prior to first occupation of the development hereby approved, a detailed site layout of the four mobile homes, four day rooms, external amenity areas, touring caravan pitches and eight motor vehicle parking spaces shall be submitted to and approved in writing by the local planning authority. The layout shall thereafter be provided and maintained as approved.
Reason: In order to secure appropriate living conditions for future occupiers of the site and to ensure the Council's adopted car parking standards are met.

- 4) Prior to first occupation of the development hereby approved, details of noise insulation and ventilation measures for the four mobile homes shall be submitted to and approved in writing by the local planning authority. Any mobile homes occupying the site shall thereafter conform to, and be maintained in accordance with, these approved details.

Reason: In order to secure appropriate living conditions for future occupiers of the site.

- 5) The site shall only be occupied by persons of nomadic habit of life whatever their race or origin, including such persons who on grounds only of their own or their family's or dependants' educational or health needs or old age have ceased to travel temporarily or permanently, but excluding members of an organised group of travelling showpeople or circus people travelling together as such.

Reason: In order to ensure that the site is retained to meet the identified needs of Gypsies and Travellers.

- 6) No more than four mobile homes, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 (as amended), and four touring caravans shall be stationed on the site at any time.

Reason: In view of the limited size of the site and the need to ensure the provision of appropriate living conditions for existing and future residents.

- 7) The site shall be used for residential purposes only. No business use shall take place on the site without the prior consent of the local planning authority.

Reason: In view of the limited size of the site and the need to ensure the provision of appropriate living conditions for existing and future residents.

- 8) Prior to first occupation of the development hereby approved, a surface water drainage scheme and maintenance plan to serve the development shall be implemented and thereafter maintained in accordance with details that shall have first been submitted to and approved in writing by the local planning authority.

The surface water drainage scheme and maintenance plan details shall ensure:

- a minimum run-off from the site is limited to greenfield rates for a storm event that has a 100% chance of occurring each year (1 in 1 year event);
- the development being able to manage water on site for 1 in 100 year events plus 40% climate change allowance;
- maintenance arrangements, including who is responsible for different elements of the surface water drainage system and the maintenance activities/frequencies.

Surface water drainage arrangements shall thereafter be retained and maintained as approved.

Reason: To prevent surface water flooding

- 9) Prior to first occupation of the development hereby approved, a scheme of landscaping, biased towards the provision of native and wildlife friendly

plant species, shall be submitted to and approved in writing by the local planning authority. All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the first occupation of the development and any trees or plants which, within a period of five years of first occupation of the mobile homes, die, are removed or become seriously damaged or diseased, shall be replaced in the next planting season with others of similar size and species.

Reason: In the interests of enhancing biodiversity, the appearance of the site and protecting the privacy of adjoining residents.

- 10) Prior to first occupation of the development hereby approved, refuse and recycling storage facilities shall be provided in accordance with details that shall have had the prior written approval of the local planning authority. The approved refuse and recycling storage facilities shall thereafter be retained during the lifetime of the approved development.

Reason: In order to ensure the provision of appropriate refuse and recycling storage facilities.

- 11) Prior to first occupation of the development hereby approved, storage to accommodate four bicycles shall be provided and thereafter retained in accordance with details that shall have had the prior written approval of the local planning authority.

Reason: To ensure adequate bicycle storage facilities, in accordance with the adopted parking standards.

- 12) Prior to first occupation of the development hereby approved, a Flood Response Plan (FRP) shall be submitted to, and formally approved by, the local planning authority. Upon occupation of the site, the approved FRP shall be enacted and thereafter maintained at all times the site is occupied. Any revisions to the FRP shall be submitted to and formally approved by the local planning authority.

Reason: In order to ensure the appropriate protection of occupiers of the site in the event of a flood.

- 13) Prior to first occupation of the development hereby approved, details of the location, height, direction and luminance of any external lighting shall be submitted to and approved by the local planning authority. No external lighting shall be provided within the site, other than as approved under this condition.

Reason: In the interests of the living conditions of the occupiers of the adjoining properties.

- 14) Any windows, doors or other glazed areas provided in the eastern elevations of the mobile homes and day rooms located on the eastern side of the site shall be obscure glazed to at least Level 3 on the Pilkington Scale and non-opening to a height of 1.7m above the finished floor level of the room in which the windows, doors or other glazed area is installed, and permanently retained as such thereafter.

Reason: In order to protect the privacy of the occupiers of the adjoining properties.

- 15) There shall be no discharge of surface water from the development onto the public highway.

Reason: In the interests of highway safety.

- 16) All loading, unloading, reception and storage of building materials, and the manoeuvring of all vehicles including construction traffic, shall be undertaken within the application site and clear of the public highway.

Reason: In the interests of highway safety.

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