



Appeal Decision

Hearing Held on 31 March 2022

Site visit made on 31 March 2022

by Mrs H Nicholls FdA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 June 2022

Appeal Ref: APP/G1630/W/20/3264747

Green Meadow, Kayte Lane, Southam, Cheltenham GL52 3PD

- 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 Gilbert Smith against the decision of Tewkesbury Borough Council.
 - The application Ref 19/00986/FUL, dated 4 October 2019, was refused by notice dated 17 July 2020.
 - The development proposed is change of use of land to use as a residential gypsy caravan site including: the stationing of 4 caravans for residential purposes, of which no more than 2 shall be static caravans; retention and extension of hardstanding; retention of existing stable and utility buildings; and boundary fencing.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The emerging Tewkesbury Borough Plan 2011 – 2031 Pre-Submission Version (eTBP) has progressed beyond Main Modifications stage and, at the time of writing, the Inspector's final report is awaited. Given this, the eTBP is a plan which is capable of attracting great weight by virtue of Framework para. 48.

Main Issues

3. The main issues are:
 - the effect of the proposal on the openness of the Green Belt and the purposes of including land in the Green Belt;
 - the effect of the proposal on the character and appearance of the area;
 - the effect of the proposal on the biodiversity value of the site;
 - the effects of the proposal on the living conditions of neighbouring occupiers at Newlands View;
 - the weight to be attached to other considerations put forward relating to the need for pitches, availability of alternative sites, and the personal circumstances of the family, including the interests of children; and
 - whether any harm to the Green Belt by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations, so as to provide the very special circumstances necessary to justify the development.

Background and Proposal

4. Part of the site has been used for the stationing of residential caravans occupied by the appellant and his extended family for a number of years. A personalised temporary planning permission permitting the use of the site for one pitch expired on 7 November 2020. The continued occupation of the site is in breach of the time limit condition imposed as part of this planning permission.
5. At the time of my visit, there were four caravans stationed on the site, of which one was a static, a number of utility buildings¹ and a stable building².
6. As the current use of the site is technically in breach of the condition, and so unauthorised, the proposal essentially seeks permission for two pitches. The second pitch has not yet been created and would involve laying additional hardstanding on a grass paddock adjoining the currently occupied site. The plans also indicate some areas of landscaping on parts of the northern and eastern boundaries and between the two pitches.

Reasons

Green Belt

7. As set out in Paragraph 137 of the National Planning Policy Framework ('the Framework'), the Government attaches great importance to Green Belts. The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts being their openness and permanence. The Planning Policy for Traveller Sites (PPTS) (2015) sets out that traveller sites in the Green Belt are inappropriate development. There is no dispute between the parties that the proposal constitutes inappropriate development in the Green Belt.
8. Policy SD5 of the Gloucester, Cheltenham and Tewkesbury Joint Core Strategy (2017) (JCS) sets out that the Green Belt will be protected from harmful development to enable it to serve its key functions. In this regard, the Green Belt between Gloucester and Cheltenham serves to prevent a merging of the two settlements, with the Policy seeking to preserve openness and prevent urban sprawl that would run counter to this aim.
9. The previous appeal decision on the site found that the addition of a mobile home, touring caravan, utility building and fencing would reduce openness as a matter of fact. The factors that limited the degree of harm to openness were the railway bridge, other nearby dwellings and the dwelling to the north, 'Newlands View'. However, the proposal before me for a larger scheme, extending alongside Newlands View, would have an incrementally greater effect on the openness of the Green Belt in this area. The increased site size and spread of caravans, buildings and fencing would further undermine the area's openness, introducing urbanising features without the degree of containment by Newlands View which was previously considered to be a mitigating factor.
10. The current proposal would also have a greater adverse effect on the degree of separation between Bishops Cleeve and Cheltenham. Whilst the extent of harm would still be modest when considered in context with the racecourse to the

¹ Though these were not accurately reflected in the submitted plans in terms of either number or scale/appearance

² Also subject of a previously dismissed appeal, Ref APP/G1630/W/19/3243488 dated 3 April 2020

south, it is clear that the northward spread of the proposal would represent a material incursion into the swathe of open land that separates the settlements.

11. The appellant argues that the harms were previously found to be limited, and that the proposal represents only further limited additional harm to both openness and the purposes of the Green Belt. However, both existing and proposed pitches are before me for consideration and in my view, when taken cumulatively, would have moderate adverse effects on both the openness and the purpose of the Green Belt, in conflict with the Framework, Policy SD5 of the JCS and the PPTS. Such harm attracts substantial weight.

Character and Appearance

12. The part of the site currently occupied is surrounded by high, timber close-boarded fencing of around 2 metres in height. The upper parts of caravans and buildings are visible above the fencing and from close range and higher vantage points, such as from the nearby railway bridge. Due to the extent of high timber boundary fencing, this part of the site appears visually incongruous and domineering in contrast to the generally more open, greener frontages of neighbouring dwellings on the western side of Kayte Lane.
13. The unoccupied part of the site is a broadly level area left to pasture. A timber close-boarded fence has recently been constructed along the western boundary with Newlands View, but its northern boundary is currently either open or partially enclosed by timber post-and-rail fencing. The hard, high boundary fencing between the proposed site extension and Newlands View, though allegedly not constructed by the appellant, has introduced another visually prominent, hard, urbanising feature which shields views of the green and open qualities of the field. This change is highly visible on approach from the north and on passing the site on Kayte Lane.
14. Whilst the proposal seeks permission for both pitches, the extension to the north would generate the greatest change on the ground. The additional pitch would take in a large area of undeveloped field and spread the caravans and associated domestic paraphernalia far beyond its current more compact area. It would bring the northern extent of the site closer to the Public Right of Way (PROW) to the north, which lies within a pleasantly open field with clear views towards the appeal site. In these views, the spread of structures, light-coloured caravans and lengths of high timber fencing appear particularly jarring. There would also appear to be a consolidation with Newlands View, its fencing and domestic paraphernalia, which would result in cumulative harm.
15. There is an acknowledgement in PPTS that traveller development will be likely to fall within rural or semi-rural settings and, should this appeal fail, it is likely that similar effects would result if it were moved to an alternative location. It is within this context that I have assessed the likely harm from the proposal. PPTS also requires that weight is given to soft landscaping that would positively enhance the environment. As such, I have given consideration to the extent to which the visual harm could be mitigated through soft landscaping measures such as through the planting of indigenous hedgerows, possibly also combined with a condition requiring the removal of some of the lengths of timber fencing which have been constructed in full or part.
16. In my view, the landscaping measures, once established, could offset some of the harm in views from the PROW and nearby escarpment within the Cotswolds

Area of Outstanding Natural Beauty. However, as a baseline, views of the 'existing site' from Southam Lane and Kayte Lane are not intended to be landscaped, leaving the harm from its existence fully visible from the closest range views. The 'extension' element of the proposal would result in cumulative effects of an increased spread of caravans and domesticity with the 'existing site' and in combination with Newlands View. The proposed landscaping, even if it were to establish successfully, would only be partly effective from the more distant viewpoints but even less so during winter months. There would also be a degree of incompatibility with the robust and enclosed nature of any hedges of a height suitable to have a screening effect and the 'open' characteristics of the surrounding area.

17. For the foregoing reasons, the proposal would be harmful to the character and appearance of the area, contrary to Policy SD6 of the JCS which seeks to protect the landscape character for its own intrinsic beauty and to ensure that all proposals have regard to the landscape and visual sensitivity of the area in which they are to be located.
18. JCS Policy SD13 relating to Gypsies, Travellers and Travelling Showpeople, details that proposals must not have an unacceptable impact on the character and appearance of the landscape and should be sensitively designed to mitigate any impact on its surroundings. In my view, the proposal's impact on the character and appearance of the landscape would be unacceptably harmful, thus also bringing the proposal into conflict with Policy SD13.

Biodiversity Value

19. The Council confirmed at the hearing that this reason for refusal related to an absence of information to demonstrate that any biodiversity impacts arising could be adequately mitigated, if necessary. Policy SD9 of the JCS requires that harm to biodiversity should be avoided where possible and where there is risk of harm, this should be mitigated by integrating enhancements into a scheme.
20. The appellant highlights that in the previous decision relating to the existing site, the Inspector found no evidence of irreplaceable losses of ecology or species, and that this reason therefore lacks substance. No biodiversity report has been submitted to clarify the matter either way.
21. The proposal includes the hard surfacing of a large area of grazing land which has connectivity to adjoining agricultural land. Whilst there appeared to be a lack of diversity of grass types that would support a range of species for foraging, this is an assumption based on what I saw during the site visit. Though it may also seem unlikely given the absence of hedgerows around much of the site itself, I do not know whether there is any use of the site by light-sensitive species. Put simply, I cannot assume that there would be no harm to the biodiversity interests of the site or surroundings given the absence of evidence to this effect.
22. For the above reasons, and in the absence of evidence to the contrary, the proposal would be harmful to the biodiversity value of the site, in conflict with Policy SD9 of the JCS.

Living Conditions of Neighbouring Occupiers

23. Newlands View is the adjoining dwelling which is interchangeably referred to within the evidence as a bungalow and mobile home. It is a twin unit version of the latter, but the Council pointed out that it does not appear to have ever been relocated from its current position.
24. From aerial photography submitted and from my own observations, it appears that the northward extent of the site has already crept beyond that of the original site extent, with high fencing now separating the two respective sites. As both the mobile home (Newlands View) and any caravan (including those currently stationed on the site) are single storey, an intervening boundary treatment of around 2 metres or thereabouts will prevent overlooking. This is currently the case and there is no direct overlooking of rear windows in Newlands View.
25. In terms of outlook, Newlands View is orientated east-west so its principal elevation looks towards Kayte Lane. A relatively high boundary fence has recently been constructed to the western boundary, which limits the outlook from the unit in this direction. The construction of the fence to the eastern (rear) boundary will have also suppressed the outlook from the secondary rooms to that of the high, timber boundary fence at close quarters.
26. As indicated, I consider it likely that the fence has been constructed due to the adjacency of the existing and proposed residential uses. The siting of the mobile home is unfortunate in terms of the outlook towards the fence, or a similar such fence that could, in principle, be constructed under permitted development rights, but the key outlook from the main living space towards the front and side of the unit would at least be maintained.
27. In terms of noise and disturbance, the proposal would involve the extension of hard surfacing and a similar number of vehicular movements to those created by the current occupants. Both uses are residential and so generate similar patterns of noise and disturbance from family activities, vehicle usage and other day-to-day domestic duties. The keeping of horses within the stables is the only real difference between the proposal and the residential use at Newlands View, though the keeping of horses for domestic purposes adjacent to dwellings is a fairly common feature within this rural area.
28. Given the similar nature of the uses, I do not consider that the proposal would result in harm to the living conditions of neighbouring occupiers at Newlands View in terms of noise or disturbance. For the reasons also set out above, I do not consider that there would be harm to living conditions from a loss of privacy or outlook either. Consequently, the proposal does not raise conflict with Policies SD4 or SD14 of the JCS, which seek to ensure that new development causes no unacceptable harm to the amenity of neighbouring occupants, and avoids or mitigates potential disturbances, including visual intrusion, noise, smell and pollution.

Other Considerations

Need for Traveller Pitches

29. The personalised, temporary permission given in 2017 was granted largely to enable progress to be made towards adoption of the eTBP containing site allocations for pitches which was anticipated to occur in the summer of 2019.

This target was obviously missed and at the time of writing, the Inspector's Final Report on the Submission Version of the eTBP, incorporating Main Modifications, is still awaited.

30. A recent communication from the Inspector³ indicates that the Council has provided the necessary minimum pitch allocations to address the needs of those travellers meeting the PPTS Annex 1 definition over the plan period, but that the non-PPTS pitch requirement (or 'unknowns') should also be provided for over the same period, albeit without a requirement for a five year supply distinct from the general five year housing land supply.
31. Following permissions granted and the inclusion of the Badgeworth site for 7 pitches as an allocation in Policy GTTS1, of the 55 non-PPTS pitches required, the Council have been unable to find suitable land to allocate for 31 of the pitches. As set out in the preamble to Policy GTTS1, the non-PPTS pitches yet to be approved over the plan period of the eTBP are anticipated to come from windfall applications providing for around 2 pitches per annum.
32. The appellant's representative indicated that he had not been instructed to make representations in relation to the eTBP to seek to offer the site as suitable for an allocation, nor to advance any issues in relation to the underestimation of need for pitches for PPTS or non-PPTS travellers. No other unresolved objections to Policy GTTS1 were drawn to my attention. At the hearing however, it was suggested that if all of the 55 targeted non-PPTS pitches were treated as being required for PPTS travellers, then the Council would not currently be able to demonstrate a 5 year supply as required by Paragraph 10 of PPTS.
33. I agree that if all 78 pitches required over the plan period were necessary to meet the PPTS Annex 1 definition then there would be a deficiency in the five year supply. If either 30% or 40% of the unknowns were transferred to PPTS-compliant travellers, as also suggested orally by the appellant, then by my calculations, there would be a five year supply taking into account the allocations, including the recent addition of Badgeworth. However, given the progress with the eTBP, in addition to the confirmed acceptability of the supporting evidence base, including the Gloucester Gypsy and Traveller Accommodation Assessment (2017), I do not find there to be a significant or pressing unmet need or lack of a five year supply.
34. Clearly, as directed by the examining Inspector, there is a need for pitches for non-PPTS travellers over the plan period, and in practice, some of these pitches will be for those actually meeting the definition, such as where the offspring of non-PPTS travellers choose to experience their traditional way of life and become PPTS travellers themselves. There will be a reliance on criteria-based JCS Policy SD13 to provide this higher number of pitches to facilitate the traveller way of life and the Policy does not set an upper limit on the number of pitches that will be granted.
35. The Council highlighted that prior to the expiry of the temporary permission, the appellant was invited to seek assistance from the County's Traveller Services to add the family on the waiting list for such accommodation. There is no indication that the appellant formally sought to take up the assistance offered by the Council. Though the Council highlight that several pitches had

³ Dated 16 June 2021

been available in the time between the expiry of the temporary permission and the date of the hearing, there is no suggestion that attempts were made to invite the appellant to consider their respective suitability. Furthermore, from the discussion about the allocations in the Plan, it is clear that the Council has found it difficult to identify sites to meet the needs of all travellers.

36. The appeal itself is indication that the appellant and his family are in need of PPTS-compliant pitches. Though the appellant only offered anecdotal evidence to suggest alternative pitches had been sought, he also expressed little hope of acquiring suitable pitches on any of the sites to be allocated in Policy GTTS1 of the eTBP, highlighting that of those, the most recent addition, Badgeworth, was already occupied by a family.
37. In this context, the proposal could represent a 'windfall' scheme of the type anticipated by Policy GTTS1, though, being specifically for the appellant and his family, it would not add to the generally available sites. The suitability of the proposal as a windfall scheme must be considered against JCS Policy SD13; a matter to which I return again below.

Personal Circumstances

38. The Human Rights Act⁴ establishes a right to respect for private and family life and the Public Sector Equality Duty⁵ requires that a public authority must foster good relations between persons who share a relevant protected characteristic and those who do not. The protected characteristic of the family, i.e. their Irish Traveller origins, are not disputed. Similarly, the appellant indicated that he and his son, met the PPTS Annex 1 definition by virtue of his lifestyle and work travel patterns. This point was accepted by the Council.
39. Article 3 of the United Nations Convention on the Rights of the Child requires a child's best interests to be a primary consideration, and no other consideration must be regarded as more important or given greater weight than the best interests of any child.
40. Since the previous appeal, there has been a few changes to the number of occupants on site. Whilst one household has left (Ms Michelle Smith), another has been formed by the appellant's son and his wife. The appellant and family resident at the site do not have any alternative pitches onto which they could relocate and nor have the Council highlighted any that are immediately available either. Dismissal of the appeal would therefore, in all likelihood, prevent the appellant and his family from living on the site, without any certainty of suitable alternative accommodation being readily available. Clearly, the alternative of an itinerant lifestyle would be disruptive for the family.
41. It was clarified that there were four resident children and one unborn child whose interests needed to be considered. Their ages were confirmed, as was the details of the pre-school and school attended by two of the four existing children, along with the tutoring received at the site by another. The need to attend these establishments or obtain such tutoring services from a settled base is clearly recognised.
42. There would be advantages for the general well-being of the family by having a settled base and being able to provide a stable home and access to basic

⁴ Article 8 of the European Convention on Human Rights as enshrined in the Human Rights Act (1998)

⁵ Public Sector Equality Duty under the Equality Act, 2010

amenities. This would be in the children's best interests. A further benefit of a settled base is that the occupants, whether healthy or not, can register with a local doctors' surgery and attend specific hospitals, and so establish a continuity of health care.

43. In terms of medical needs, it was made clear that the appellant's wife was under the care of Cheltenham Hospital for a serious condition and other family members also had appointments at hospitals either at the same Hospital or at Great Ormond Street. The appellant's son and his wife are expecting their first child and the Council did not dispute that regular medical appointments are necessary to ensure the welfare of the expectant mother and unborn child.
44. The interdependency of the households on one another and desire to continue to live together is also apparent. The appellant works with his son and he, along with his wife, also intend to support their son and his new wife with the caring responsibilities of the new baby when it arrives.
45. In terms of affordability of an alternative site, I am mindful that the appellant is still paying instalments of the costs award to the Council relating to the Injunction Order. Whilst the as yet unpaid Court costs were not disclosed, the appellant agreed that this debt prevents him from seeking to purchase an alternative site were one to become available.
46. I have had regard to the planning policy statement on Green Belt protection and intentional unauthorised development⁶ which applies in this case given the continued unauthorised occupation of the site, i.e. continued occupation, additional or extended buildings, an increased number of caravans exceeding the limit of the previously imposed condition and the northward extension of the site with hardsurfacing and fencing. Given the detailed site history, including an Injunction Order and appeal decisions which draw attention to intentional unauthorised development, I cannot assume now that the situation has arisen due to the appellant's *desperation* for a safe place to live as was previously the case. Rather, it appears that the correct procedures are being set aside and the ability to return the site to an agricultural condition has become more difficult with each additional building, service connection and additional spread of hardstanding that has been introduced. This factor is a material consideration that also weighs against the development.

Whether Very Special Circumstances Exist

47. As set out in paragraph 24 of PPTS, subject to the best interests of the children, 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. However, 'unlikely' should not be read to mean that these considerations will never clearly outweigh the harm and any decision must take account of actual weight afforded to both the harm and other considerations. The appellant highlights the caselaw⁷ which establishes that such individual considerations need not be rare in themselves, but that ordinary reasons may cumulatively become very special.
48. The weight to be attached to the best interests of the children is no less than the substantial weight to be attached to the Green Belt harm.

⁶ Department for Communities and Local Government (2015)

⁷ Basildon DC v SoS v R Temple [2004] EWHC 2759 (Admin); Doncaster MBC v SoS ETR [2002] EWHC 808 (Admin)

49. The personal circumstances taken collectively, including the lack of immediately suitable available alternative pitches, attract moderate weight, and I am mindful of the otherwise substantial compliance of the scheme with JCS Policy SD13, in terms of the accessibility of the site and ability to impose conditions to address the highway safety issue. The occupation of the site would maintain limited economic benefits to the area from the occupiers' use of local goods and services which also attracts material weight in the balance.
50. The absence of harm to the living conditions of neighbouring occupiers and the two submitted letters of support from local residents are neutral factors in the determination of the appeal.
51. However, in my view, the Green Belt harm and other harms, such as conflict with JCS Policy SD13 in character and appearance terms, are not outweighed by the range of other considerations and benefits when taken as a collective whole, such that they constitute the very special circumstances necessary to justify allowing the appeal.
52. Whilst the possibility of a further temporary permission was discussed, the appellant expressed discontent with such a suggestion and it was agreed that the adoption of the eTBP would not yield any different outcomes in terms of targeted pitch numbers or status of the site in policy terms. Therefore, there is no reasoned rationale for granting a second temporary permission.
53. I accept that dismissing this appeal would interfere with the appellant's rights under Article 8 of the European Convention on Human Rights as it would deny him and his family opportunity to establish a home on this site. However, such rights are qualified, and interference may be permissible when the rights of the individual are balanced against those of the wider public. In this instance such interference would be proportionate on the rights of the adults and the best interests of the children given the public aim of safeguarding the Green Belt and the effects on the countryside.

Conclusion

54. The proposal is inappropriate development in the Green Belt, which along with other harms, weigh substantially against the proposal. Though the best interests of the children have formed a primary consideration, the Green Belt and other harms would not be clearly outweighed.
55. Consequently, the appeal is dismissed.

Hollie Nicholls
INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr Gilbert Smith	Appellant
Mr Philip Brown	Agent for Mr Gilbert Smith
Mr Nicholas Ralph	on behalf of Mr Gilbert Smith

FOR THE LOCAL PLANNING AUTHORITY:

Mr Paul Smith	on behalf of Tewkesbury Borough Council
Mr Jeremy Patterson	One Legal

INTERESTED PARTIES:

Councillor Michael Dean	on behalf of Cleeve Hill Constituency
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SUBMITTED DOCUMENTS:

Document 1	Letter of support from local resident
Document 2	Letter of support from local resident
Document 3	Signed Statement of Common Ground