



Appeal Decision

Inquiry opened on 28 September 2022

Accompanied site visit made on 30 September 2022

Unaccompanied site visit made on 27 September 2022

by Philip Major BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 October 2022

Appeal Ref: APP/T0355/W/22/3295154

Brayfield Stables, Windsor Road, Water Oakley, Windsor SL4 5UJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission under section 73A of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Mr Wayne Owen against Council of the Royal Borough of Windsor and Maidenhead.
- The application Ref: 21/02317 is dated 23 July 2021.
- The application sought planning permission for the use of land for the stationing of caravans for residential purposes for 2 no. gypsy pitches together with the formation of hardstanding and dayrooms ancillary to that use without complying with conditions attached to planning permission Ref: APP/T0355/W/15/3131046, dated 11 November 2016.
- The conditions in dispute are Nos. 1 and 2 which state that:
 - 1) The use hereby permitted shall be carried on only by Mr Wayne Owen and Mrs Bonnie Owen together with their children and Mr Lee Cooper and Mrs Caroline Cooper together with their children, and shall be for a limited period being the period of three (3) years from the date of this decision, or the period during which the land is occupied by them, whichever is the shorter.
 - 2) When the land ceases to be occupied those named in condition 1) above, or at the end of 3 years, whichever shall first occur, the use hereby permitted shall cease and all caravans, buildings, structures, materials and equipment brought on to the land, or works undertaken to it in connection with the use, shall be removed and the land restored to its condition before the development took place, in accordance with a scheme and timetable of work that shall first have been submitted to and approved in writing by the local planning authority.
- The reasons given for the conditions are¹:
 - 1) A condition limiting occupation to the Appellant and resident dependants is necessary, because it is their personal circumstances which have weighed in the overall balance in favour of the grant of temporary permission. Occupiers are gypsies for planning purposes, nevertheless, it is necessary to additionally impose a condition restricting occupation to those persons who fall within that planning policy definition, because I have placed weight on status.
 - 2) Bearing in mind the need to allow sufficient time to find an alternative site with planning permission, and the local planning process to take its course, I consider three years is justified and reasonable. A restoration scheme would need to be agreed with the Council.

¹ As taken from the appeal decision

Preliminary Matters

1. The application was submitted after the expiration of the time limited planning permission granted on appeal which is set out in the headings above. At first instance the Council sought to argue that the permission therefore no longer existed and the application for the removal of conditions could not be entertained under S73 (as submitted). Hence it failed to determine the application. However, it is now agreed that, in effect, what is before me is an application for the use of the land as described above, which is retrospective in its nature, pursuant to S73A of the Act, and that it is open to me to determine the appeal on that basis.
2. The appeal site lies in the Green Belt and, had the Council determined that appeal it would have done so for the following reason:

The development represents inappropriate development in the Green Belt contrary to Policy QP5 of the Borough Local Plan and Paragraphs 149 - 150 of the National Planning Policy Framework (July 2021) and the allied 2015 National Planning Policy for Traveller Sites (Paragraphs 16 and 17).

Inappropriate development is by definition harmful to the Green Belt. The proposal would be harmful to the purposes of including the land in the Green Belt, as the use of the land for the siting of mobile homes, together with utility blocks would encroach into the countryside and erode the openness of the countryside. The evidence put forward regarding unmet need, personal circumstances and the interests of their children do not clearly outweigh the identified harm to the Green Belt, and any other harm, such that very special circumstances do not exist that clearly outweigh the harm caused by reason of its inappropriateness or any other harm. Accordingly, the proposal is contrary to Policy QP5 of the Borough Local Plan and the objectives of Section 13 of the NPPF (2021).

3. The appeal site has a relatively long and complicated planning history. Latterly that resulted in the personal and time limited permission granted in 2016. This was the second occasion on which a time limited permission was granted for the site and it was intended to allow time for the Council's policy on the supply of pitches to evolve, and/or for the Appellant to find an alternative site.
4. There is no disagreement between the parties that the development at the appeal site is inappropriate development as set out in the National Planning Policy Framework (NPPF). It is further acknowledged that this carries substantial weight in the decision making process.
5. The Gypsy status of the site occupants has not been challenged. Having heard evidence on this matter I am satisfied that the occupants continue to benefit from that status as defined in Planning Policy for Traveller Sites, 2015 (PPTS).

Decision

6. For the reasons given below I conclude that the appeal should succeed, as set out at the end of this decision.

Application for costs

7. An application for costs was made by Mr Wayne Owen against the Royal Borough of Windsor and Maidenhead. This application is the subject of a separate decision.

Main Issues

8. Bearing in mind the above matters the main issues in the appeal are:
- (a) The level of need for gypsy and traveller sites generally;
 - (b) The needs and personal circumstances of the Appellant and other residents of the site;
 - (c) Whether, in light of the above and any other matters, there are any considerations which clearly outweigh the harm to the Green Belt, and any other harm, such that very special circumstances exist sufficient to justify the grant of planning permission without the need for the disputed conditions.

Reasons

Development Plan Background.

9. The Council adopted the Borough Local Plan in early 2022. There are 2 policies which in my judgement are the most important for determining this appeal. These are Policy QP5, which follows the guidance in the NPPF and is restrictive of development in the Green Belt. That policy is included in the putative reason for refusal set out above. The other most important policy is HO4, which is a criteria based policy addressing Gypsy and Traveller site provision on windfall sites. The intention of the policy is to consider proposals positively in the light of national policy and the criteria of the policy itself. There are 5 criteria and all are required to be met. Policy HO4 sets a very high bar for development in requiring no harm to, amongst other things, landscape, visual character or amenity of the Green Belt. There is limited room within the policy for making balanced judgements on harm and for that reason it is not entirely consistent with the advice of the NPPF. Any conflict with that policy therefore carries reduced weight although I accept that the development plan must be read as a whole. I make this judgement in the knowledge that the policy was recently found sound in the context of the adoption of the Local Plan.

General Need

10. There is some disagreement in relation to the final figure of general need for sites and pitches in the locality. However, it is agreed that the Council cannot demonstrate a 5 year supply of deliverable traveller sites. As such there is conflict with PPTS.
11. There is also agreement that the need for sites is at a high numerical level. I am satisfied that over the course of the Borough Local Plan² period (to 2033) and the period of the latest update of the Gypsy and Traveller Accommodation Assessment (GTAA) the general need for sites³ is somewhere in the region of 100, or possibly rather more. This is a considerable need on any measure, but it is not necessary for me to know the exact number when considering a proposal involving 2 pitches early in the relevant time period. However, I do accept, as suggested by the Appellant, that the level of need is such that it will be challenging for the Council to be able to meet it. The serious and substantial need is, in turn, a substantial material consideration in favour of the proposal.

² Royal Borough of Windsor and Maidenhead Borough Local Plan 2013 – 2033

³ For those meeting the PPTS definition and those who have a need based on their cultural background

Personal Need and Circumstances

12. The occupants of the appeal site have lived there for a number of years (since 2009). Inevitably, over time, circumstances change. In this case children have grown up, and another has been born. At present there is one resident child who is enrolled at a local school, and one small child who would expect to enrol in the next 2 or 3 years. Beyond that several occupants of the site have medical issues which require regular attendance at surgeries.
13. There is nothing before me which suggests that there are suitable, acceptable, and affordable alternative locations to which the occupants could move. I have no difficulty in accepting that they would be rendered homeless and forced into a roadside existence if the appeal were to fail. That would be an unfortunate situation for the child in education and for those requiring regular medical treatment. The Council is unable to offer any encouragement that sites would become available soon and no available alternatives have been suggested.
14. I also have no difficulty in accepting that the years of uncertainty surrounding the occupation of the site have taken a toll on the mental health of residents. To have a settled base would no doubt assist in their well being in the future.
15. So far as the needs of the Appellant and other site residents are concerned, therefore, I am satisfied that it has been demonstrated that they have a current and pressing need for pitches, and that there are no identified alternatives to which they could relocate.

Green Belt Harm

16. The NPPF sets out clearly that inappropriate development in the Green Belt is harmful, by definition. There is no dispute about that matter, or that the harm must be afforded substantial weight. As noted earlier the NPPF guidance is reflected in Policy QP5 of the recently adopted Borough Local Plan (LP).
17. That the development reduces the spatial openness of the Green Belt is self-evident. The stationing of caravans and dayrooms could hardly do otherwise. It is clear that the situation has changed over time, and that the vegetation surrounding the site now lends it a more solidly enclosed appearance than in previous years. Indeed the main impact on openness is related to the vegetation around the site, but that could be planted anyway. The perimeter hedging is similar to the roadside vegetation hereabouts. The structures and caravans, in the context of the site, do little to reduce visual openness, albeit that they inevitably reduce spatial openness. As acknowledged in the landscape character appraisal for this locality, the surroundings are somewhat degraded, with scattered sporadic development. The reduction in openness, both spatially and visually, is therefore noticeable but not especially intense. The Inspector in 2016 found the impact on openness to be significant, but in my judgement it is somewhat less than that, no doubt reflecting the changing circumstances through the passage of time.
18. The site is in a largely, but not wholly, undeveloped gap between Maidenhead and Windsor. Quite clearly there is some encroachment of an urban type of development into the Green Belt, in contradiction of one of the purposes of identifying Green Belts. However the encroachment is small in area and would not fall within the description of another Green Belt purpose of checking the unrestricted sprawl of a large built up area. Hence, whilst there would be a

minor degree of encroachment it would remain minimal. It is also the case that the proposal, being of limited footprint in an extensive gap between towns, would not lead to any material perception of settlements merging, or being in danger of doing so. Conflict with that purpose of the Green Belt is also very limited.

19. Taken as a whole, the harm to the Green Belt must be afforded substantial weight, but the impact on openness attracts no more than modest negative weight, and the impact on the purposes of the Green Belt limited negative weight. It is pertinent to note at this point that the majority of the Borough outside urban areas lies within the Green Belt, and it is therefore highly likely that many future traveller sites would be within the Green Belt. There has, as yet, been no comparative exercise relating to potential sites, but I would be surprised if the site here was more damaging in Green Belt terms than many others.
20. As inappropriate development in the Green Belt the development conflicts with Local Plan Policy QP5. It would also, to a minor degree, conflict with criterion b. of Policy HO4⁴, albeit that this policy conflict carries reduced weight for the reason set out earlier. I take this conflict into the planning balance.

Other Considerations

Character and Appearance

21. The appeal site is within an area of ordinary countryside. It has no landscape designation and the landscape character assessment identifies that the landscape is fragmented, with some built development. I have no doubt that the intentions for the LCA of improving the landscape are sensible, but I make my judgement on the basis of the baseline, agreed to be what was present (or not) in 2009. I have only limited evidence of the situation then, but accept that it was possible to see long views across the site from some locations.
22. That said, this cannot be described as a sensitive or valued landscape. It is partly farmland which appears somewhat unmanaged, but also includes significant development as seen, for example, in the form of gravel extraction, concrete batching plant and the large buildings at Bray Studios. It is at the lower end of any measure of landscape sensitivity. The LCA itself indicates that wide areas are in poor condition. The appeal development can be seen fleetingly, but it makes no real difference to the overall character or appearance of the area. I reject the argument that site activity would be noticeable. The locality is far from tranquil, with frequent heavy goods vehicle movements to and from the concrete batching plant and other locations, together with significant general traffic along the A308.
23. Taking this matter in the round, and being respectful of the findings of previous Inspectors, I can only make a judgement on the evidence before me. My judgement is that the impact of the proposal on the character and appearance of the area is very limited indeed. I do not find conflict with LP Policy HO4 in landscape terms, or with the criteria of LP Policy EP1. Therefore, this is not a matter which weighs against the proposal in view of the minimal harm experienced.

⁴ Which relates, amongst other things, to the visual aspects of development in the Green Belt

Policy Failure

24. The situation surrounding this site has been ongoing for some 13 years. Successive time limited planning permissions have been granted in the expectation that local planning policies would be forthcoming which would assist in identifying locations for new sites. That has not happened and I regard that as a serious failure on the part of the Council. It has, in effect, promised but not delivered.
25. The Council continues to indicate that a new traveller local plan document will offer a way forward. The timescale set for this intention was indicated at the inquiry and the objective is to adopt the plan by the end of 2024. However, this seems to me to be ambitious, and given past failures, I give it limited weight. The Council has recently adopted the Local Plan, but that was years late, so the prospect for the traveller local plan must be treated with extreme caution. Frankly I do not hold out hope that there will be any material change in circumstances in the foreseeable future. It seems to me that although the Council has included a particular policy (HO4) relating to traveller site windfall developments in its recently adopted Local Plan it has failed to grapple adequately with the overarching issue of site provision.
26. I am not aware of any material progress since the Issues and Options Report and Site Assessment Methodology were published for consultation in early 2020. I was told that a call for sites has been made, but have seen little to back that up. Even with such a call it is incumbent upon the Council to progress with site assessments and proposed allocations. Taking these circumstances in the round I consider that there is a current failure of policy making which has been evident for many years. I find this significant in that it offers no certainty to travellers who are in need of a site. I reject the argument that finding policy failure double counts the acknowledged need for sites. Policy failure is a separate consideration which has been found to be material and important in many traveller cases.

Best Interests of the Child

27. It is established law that in cases such as this no other consideration should attract greater weight than the best interests of the child. That is not to say that where children are present planning permission will be granted, but it is a material consideration of the highest weight. Despite the fact that children previously resident on the site are now no longer attending school, this is still a primary consideration. It matters not that there is only a single school aged child present now. There is no dispute that best interests are provided at a stable family base. This factor must carry substantial weight.

Human Rights

28. Refusal of the proposal would interfere with the Article 8 rights of the site occupants. In this case interference would not be proportionate. Dismissal of the appeal would result in the site occupiers having no home after a period of many years residing in this location following a failure of policy by the Council. I agree with the Appellant that such a course would be wholly disproportionate.

Public sector equality duty

29. In considering this case I have also had regard to the Public Sector Equality Duty (PSED). The Appellant and other occupants share protected

characteristics, and I have taken into account the need to avoid discrimination, advance equality of opportunity, and foster good relations.

Planning Balance

30. I draw together here the conclusions on the above matters and their impact on the overall planning balance in this case.
31. The harm to the Green Belt attracts substantial weight overall, including the moderate harm to openness and limited harm to the purposes of the Green Belt. There is conflict with the development plan as I have set out. There is no other material harm in this case.
32. On the other hand there is a large unmet need for sites which carries substantial weight. Additionally, site residents continue to have a current and pressing need for pitches and there are no other locations to which they could move. This is a significant factor in favour of the proposal. The best interests of the child also attract substantial weight here in favour of granting planning permission. I also attach significant weight to the failure of the Council to bring forward proposals to deal with the long acknowledged need for site provision.
33. PPTS indicates that, 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. In this case that 'unlikely' scenario arises. In my judgement the balance here clearly tips in favour of the development. The substantial weight in favour of the proposal clearly outweighs the harm to the Green Belt, other harm, and the conflict with the development plan. I find that the other considerations would clearly outweigh the harm even had I afforded significant weight to the impact on openness, and found harm to character and appearance as in the 2016 decision.

Conditions

34. I deal first with the matter of time limited permission. Planning guidance is clear that successive temporary or time limited permissions should not readily be granted. In this case there have been 2 such permissions previously. As there is no reasonable prospect of an alternative site for the residents coming forward in the near or medium term I do not consider that a further time limited permission would be reasonable or proportionate. A permanent permission is warranted and disputed condition No 2 is no longer necessary or reasonable.
35. Conditions limiting the number of caravans on the site and the type of activity carried out are reasonable in order to minimise the impact on the Green Belt and countryside. In addition it is necessary to limit the occupation of the site to those meeting the definition of gypsy and traveller within PPTS because of the specific justification for the site. I have considered whether it would be reasonable to continue to restrict occupation to those named on the previous permission in condition No 1. In this instance, bearing in mind the failure of the Council to bring forward alternative site proposals, and in light of the great need for sites, I have decided that such a restriction would not be necessary.
36. The site has been developed with fencing and hedges, which seem to me to give adequate screening and privacy. I do not intend to apply a further condition limiting the erection of fencing as it would be unnecessary. However,

in order to ensure that the development retains its soft impact I will impose conditions requiring details of landscaping to be retained and improved.

Overall Conclusion

37. For the reasons given above I conclude that the appeal should succeed. I will grant a new planning permission without the disputed conditions but applying undisputed conditions from the planning permission granted on 11 November 2016 (APP/T0355/W/15/3131046) and adding further conditions, as set out below.

Final Decision

38. The appeal is allowed and planning permission is granted for the use of land for the stationing of caravans for residential purposes for 2 no. gypsy pitches together with the formation of hardstanding and dayrooms ancillary to that use in accordance with the application Ref: 21/02317 made on the 23 July 2021 without complying with conditions Nos 1 and 2 set out in planning permission Ref: APP/T0355/W/15/3131046 granted on appeal on 11 November 2016, but otherwise subject to the conditions set out in the schedule below.

Philip Major

INSPECTOR

Schedule of Conditions

- 1) The site shall not be occupied by any persons other than gypsies and travellers as defined in Annex 1: Glossary of Planning Policy for Traveller Sites (or its equivalent in replacement national policy).
 - 2) There shall be no more than 2 pitches on the site and on each of the 2 pitches hereby approved no more than 2 caravans shall be stationed at any time, of which only 1 caravan shall be a static caravan.
 - 3) No vehicle over 3.5 tonnes shall be stationed, parked or stored on this site.
 - 4) No commercial activities shall take place on the land, including the storage of materials.
 - 5) Within 6 months of this decision there shall be submitted for the approval in writing by the local planning authority a scheme of landscaping. The scheme shall include indications of all existing trees and hedgerows on the land, identify those to be retained and set out measures for their protection.
 - 6) 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 approval of the local planning authority; and any trees or plants which within a period of 5 years from the completion of the scheme die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.
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APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Mr M Henderson

Of Counsel

He called

Ms S Tucker MRTPI

Major Projects Officer, RBWM Council

FOR THE APPELLANT:

Mr M Rudd

Of Counsel

He called

Mr W Owen

Mr L Cooper

Mr M Green

Appellant

Site resident

Director, Green Planning Studio Ltd

DOCUMENTS

From the Council

- 1 Opening Statement
- 2 Letters sent in response to complaints
- 3 Notice of discharge of condition
- 4 Closing submissions
- 5 Written response to costs application

From the Appellant

- 6 Opening submissions
- 7 Witness statement of Mr Owen
- 8 Witness statement of Mr Cooper
- 9 Closing submissions