



Appeal Decision

Site visit made on 8 December 2022

by Martin Allen BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 January 2023

Appeal Ref: APP/T0355/W/22/3300618

4 Stratton Cottages, Fifield Road, Bray, Maidenhead SL6 2DY

- 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 Ms Sandra Bull against Royal Borough of Windsor and Maidenhead.
- The application Ref 21/03027 is dated 12 October 2021.
- The application sought planning permission for the change of use for the stationing of 2 residential gypsy caravan pitches with the formation of hardstanding and construction of 2 utility/ dayrooms without complying with conditions attached to planning permission granted by appeal decision Ref APP/T0355/W/16/3158516, dated 3 March 2017.
- The conditions in dispute are Nos 3 and 4 which state that:
 - 3) The use hereby permitted shall be carried on only by the following: Mr Anthony Reed and Mr Tony Reed, his wife Jenny and their resident dependants, and shall be for a limited period being the period of 3 years from the date of this decision, or the period during which the premises are occupied by them, whichever is the shorter.
 - 4) When the premises cease to be occupied those named in condition 4 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.

Decision

1. The appeal is allowed and planning permission is granted for the change of use for the stationing of 2 residential gypsy caravan pitches with the formation of hardstanding and construction of 2 utility/ dayrooms at 4 Stratton Cottages, Fifield Road, Bray, Maidenhead SL6 2DY in accordance with the application 21/03027 dated 12 October 2021, without compliance with condition numbers 3 and 4 previously imposed on planning permission Ref APP/T0355/W/16/3158516, dated 3 March 2017 and subject to the conditions in the attached Schedule.

Preliminary Matters

2. As set out above, the appellant has appealed against the failure of the Council to make a decision on an application made under Section 73A of the Act. The Council initially indicated that had the appeal not been submitted, it would have refused planning permission. However, during the course of the appeal, the Council has further indicated that it removes its objection to the scheme. I have considered the appeal accordingly.

3. There is no disagreement between the parties in regard to the gypsy status of the current occupiers. Based on what I have seen, I have no reason to take a different view.

Main Issue

4. The main issue is whether the conditions are reasonable and necessary, having regard to the site's location within the Green Belt, and other material considerations.

Reasons

Green Belt

5. The appeal site is located within the Metropolitan Green Belt. The Planning policy for traveller sites (the PPTS) sets out at paragraph 16 that:

"Inappropriate development is harmful to the Green Belt and should not be approved, except in very special circumstances. Traveller sites (temporary or permanent) in the Green Belt are inappropriate development."

Thus, the appeal scheme is inappropriate development in the Green Belt. Both the Council and the appellant agree with this position.

6. In terms of the effect on openness, the scheme would result in two traveller pitches being present. This would inevitably lead to a loss of openness in spatial terms. However, owing to the small scale of the development, together with its limited physical extent, this would be minimal. In addition to the spatial consideration of openness, there is also a visual element. In this case, the site is well screened from all directions. The only public view possible would be very limited glimpses from the adjacent road and these would be fleeting, along the access lane, and only when the gates are open. Consequently, in my view, the loss of openness in this case would be very limited.

Other considerations

Local Need

7. It is undisputed that there is currently a need for sites within the Council area. This matter was specifically explored within the recent appeal decision¹ (the Windsor Road case) which the Council has provided a copy of. From the Council's Statement of Case and the findings of the Inspector in this previous appeal, it is evident that there is a need for around 100, and possibly more, pitches to be delivered. This is by any definition a very large scale need. Moreover, I am also conscious that the Council's most recent Gypsy and Traveller and Travelling Show person Accommodation Assessment (GTAA), undertaken 2021/22, shows that the need has increased since the 2017/18 GTAA. Furthermore, there are no alternative, available sites identified for the occupiers to move to.

Failure of Policy

8. The Council accepts that it has failed to bring forward long-term site provision in the past. It has been intending to bring forward a Gypsy Traveller Local Plan, but this has been ongoing for some time. At the time of the previous appeal

¹ APP/T0355/W/22/3295154

decision on this site, it was envisaged that adoption of this would take place in March 2019. It now appears that this has been further delayed until the end of 2024. However, even this timescale is doubted by the Inspector in the Windsor Road case, who treated the prospect of the plan coming forward within this timescale with “*extreme caution*”. Within this context, I find that there has been an ongoing failure of policy to address the accommodation needs of gypsy travellers within the area.

Other Matters

9. I am aware that some concerns have been raised by interested parties in respect of highway safety, effect on living conditions and the potential for the number of residents on site to increase. There is no substantive evidence to show that the scheme has any adverse effect in these regards, or that the use would become more intensive. As such, these matters have little bearing on my decision.

Planning Balance and Overall Findings

10. The National Planning Policy Framework (the Framework) requires that substantial weight is given to any harm to the Green Belt. Very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations.
11. The PPTS states that:

“Subject to the best interests of the child, 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.”
12. The scheme is inappropriate development in the Green Belt, which is by definition harmful. I have also found some harm to openness, albeit that this would be limited. Accordingly, collectively I accord substantial weight to the harm to the Green Belt.
13. There are however benefits which are required to be balanced against this harm. The identified need for new pitches in the area is very large in its extent. These matters attract substantial weight.
14. In addition to this, it is clear that there has been a persistent and ongoing failure to adequately cater for the needs of gypsy travellers. Moreover, I consider there to be no reasonable likelihood that within the foreseeable future, circumstances will change. In my view, these matters carry significant weight.
15. It is my view that the unlikely situation, as mentioned in the PPTS, exists in the case of this appeal. I find that the matters in favour of the appeal scheme, namely the substantial and persistent unmet need for sites, together with the ongoing failure of policy, clearly outweigh the harm to the Green Belt and comprise very special circumstances necessary to justify the granting of permission. As a result, I find that a condition limiting the permission to a temporary permission is no longer necessary and that a permanent permission is warranted.
16. Reference is also made to the personal circumstances of the existing occupiers of the site. However, given that I consider that it is the circumstances in

respect of the need for sites and the failure of policy that justify the grant of planning permission, not the occupiers' circumstances, I also find that the condition restricting the permission to a personal one, is not one that is reasonable or necessary.

Conditions

17. The guidance in the Planning Practice Guidance makes clear that decision notices for the grant of planning permission under section 73 should also restate the conditions imposed on earlier permissions that continue to have effect. I shall impose all those that I consider remain relevant.
18. Given that development has already commenced on site, a condition in respect of a timescale for implementation is no longer required. Having regard to my findings above, I shall remove the conditions in respect of the temporary nature of the permission and limiting the occupation of the site to specific occupiers. In their place, a condition is required in respect of limiting the occupancy of the site to Gypsies and Travellers in general. The Council have suggested that, if planning permission is to be granted, it should be subject to a condition limiting occupation of the site to Gypsies and Travellers as defined in Annex A of the PPTS. However, the Court of Appeal in *Smith* held that the exclusion of Travellers who have ceased to travel permanently is discriminatory and has no legitimate aim.
19. There is no foretelling as to whether any occupiers might be forced to cease travelling permanently at any future point. Imposing the suggested condition could result in unlawful discrimination, with members of the family being unable to live on this site. The Council has not explained why that would be justified in this case. I shall therefore allow the appeal subject to a condition which restricts occupation to Gypsies and Travellers, defined so as to not exclude those who have ceased travelling permanently.
20. I have retained the condition specifying the approved plans, in the interests of certainty and to control the further carrying out of development on the site.
21. The Council has suggested a condition limiting the development to 2 caravans, only one of which shall be a static caravan. However, the original permission permitted the stationing of 4 caravans, no more than two to be statics. I see no reason to reduce the number of units within the site, in fact to do so would conflict with the description of the permitted development. Thus, I will retain the condition in its current form. In the interests of reducing visual clutter and safeguarding the Green Belt, I have also retained the condition in respect of prohibiting commercial uses and the parking of vehicles over 3.5 tonnes within the site.
22. A condition has also been suggested in respect of restricting the erection of fences, gates, or walls without the approval of the Council. However, given the enclosed nature of the site and that it is contained by well-defined boundaries, I do not consider such a condition is necessary in this instance.
23. In the interests of preventing the proliferation of buildings within the Green Belt, I have retained the condition preventing the construction of the new utility/dayrooms until an existing building is demolished. The permission also contained conditions in respect of external lighting, as well as foul and surface water drainage. Both of these conditions require details to be submitted for

approval. I have no information before me to show that these conditions have been complied with. I have amended these conditions, to refer to a timescale for compliance with them, given that development has commenced on site. In the event that some have in fact been discharged, that is a matter which can be addressed by the parties.

Conclusion

24. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should succeed.

Martin Allen

INSPECTOR

Schedule of Conditions

- 1) The site shall not be occupied by any persons other than Gypsies and Travellers, defined as 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.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 15/703/001 (location plan); 15/703/003 (proposed site); and 15/703/004 (utility/dayrooms).
- 3) Construction of the utility/dayrooms shall not commence until the existing brick storage building situated in the north corner of the site has been demolished and the demolished materials removed from the site.
- 4) No more than 4 caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 as amended, of which no more than 2 shall be static caravans, shall be stationed on the site at any time.
- 5) Within 3 months of the date of this decision, details of any external lighting shall be submitted to and approved in writing by the local planning authority. Lighting shall then be installed only in accordance with the approved details.
- 6) All foul drainage shall be to the main sewer. Within 3 months of the date of this decision, details of surface water and foul drainage arrangements shall be submitted to and approved in writing by the local planning authority. The approved drainage shall be in place within 3 months of the written approval and shall be retained thereafter.
- 7) No commercial activities shall take place on the land, including the storage of materials, and no vehicle over 3.5 tonnes shall be stationed, parked or stored on the site.