



Appeal Decision

Hearing held on 6 December 2022

Site visit made on 6 December 2022

by Zoe Raygen DipURP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3rd February 2023

Appeal Ref: APP/B1930/W/21/3283105

Land adjacent to The Mill House, Coursers Road, Colney Heath, St. Albans AL4 0PB

- 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 Patrick McInerney against the decision of St Albans City Council.
 - The application Ref 5/20/1124, dated 22 May 2020, was refused by notice dated 18 March 2021.
 - The development is use of land as residential for Gypsy and Traveller families and stationing of four static and four touring caravans with associated hardstanding, parking and related plant and infrastructure.
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Decision

1. The appeal is allowed, and planning permission is granted for use of land as residential for Gypsy and Traveller families and stationing of four static and four touring caravans with associated hardstanding, parking and related plant and infrastructure at land adjacent to The Mill House, Coursers Road, Colney Heath, St. Albans AL4 0PB in accordance with the terms of the application Ref 5/20/1124, dated 22 May 2020, subject to the conditions set out in the schedule to this decision notice.

Preliminary Matters

2. I have used the description of development from the appellant's appeal form and the Council's decision notice as this more accurately describes the development than that on the application form.
3. The Council's reasons for refusal refer to the 2019 version of the National Planning Policy Framework (the Framework). Since that time the 2021 iteration has been published and this decision has been made in that context.
4. As the proposal relates to a listed building I have had special regard to section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990. The Council advertised the proposal as affecting the setting of a listed building as required by Regulation 5A of the Planning (Listed Buildings and Conservation Area) Regulations 1990 subsequent to the Hearing and prior to my determination of the appeal.
5. Prior to the Hearing the Court of Appeal issued a judgement regarding the interpretation of the Planning Policy for Traveller Sites 2015 (PPTS) and the application of that policy to Gypsies and Travellers who have ceased to pursue

nomadic lifestyles¹. The Court of Appeal found that the PPTS definition change was unlawfully discriminatory with its main objective to make it harder for elderly and disabled ethnic Gypsies and Travellers to obtain planning permission. The case, and its implications for the Council's case for the need for Gypsy and Traveller pitches and the imposition of conditions, was discussed at the Hearing.

6. The appeal is for the provision of four Gypsy and Traveller pitches. It was clear at my site visit that the site had already been developed but differently to how proposed on the submitted plan BP-01-2020, with the development covering a much larger area than that proposed and the four caravans in a different position to as shown on the plan. What is for consideration is as shown on the submitted plans and not any alternative development which has, or has alleged to have, taken place. Accordingly, I have considered the appeal on this basis.

Main Issues

7. The appeal site is located within the Green Belt and parties agreed at the Hearing that by virtue of paragraph 16 of the PPTS the proposal is inappropriate development. The Council also confirmed that its comments regarding character and appearance within its statement should be considered in the context of the openness of the Green Belt. In that context, the main issues are:
 - the effect of the development on the openness of the Green Belt and the purposes of including land within the Green Belt;
 - whether the development is in an accessible location;
 - the effect of the development on the setting of the Mill House a grade II listed building;
 - the effect of the development on ecology; and
 - would the harm by reason of inappropriateness and any other harm, be clearly outweighed by other considerations so as to amount to the very special circumstances required to justify the development.

Openness and Purposes

8. Prior to the development on site taking place, it was open and undeveloped. The appeal site is within the open countryside, and although there is sporadic built form, the area is essentially open and devoid of development. The various aerial photographs and imagery supplied by the appellant and the Council show that the appeal site as was, contributed significantly to that openness. It is against this that I have considered the effect on openness rather than the current development on site.
9. The southern, western and northern boundaries of the appellant's land are marked by fairly dense tree cover. As a result, the caravans would not be particularly visible from the wider area being well screened by the trees. The boundary fencing has been in place sometime prior to the development taking place. This, together with the tree cover, means that only the upper parts of the caravans would be glimpsed from Coursers Road. Consequently, there

¹ *Smith v SSLUHC & Ors [2022] EWCA* (the 2022 judgement)

would only be a minor adverse visual impact on the openness of the Green Belt.

10. The stationing of the four static caravans as proposed would only cover a proportion of the site leaving space around and between them. They would be single storey in form with a modest mass. These together with the hardstanding would have a spatial impact on openness but would be contained over a relatively small area in an area of other sporadic development. There would therefore be a moderate adverse impact on openness and encroachment into the countryside contrary to the fundamental aim of Green Belt policy contained in the National Planning Policy Framework (the Framework) to prevent urban sprawl by keeping land permanently open and one of the purposes to assist in safeguarding the countryside from encroachment.

Accessibility

11. The appeal site is located a short distance from the nearest settlement Colney Heath which offers a good range of services and facilities. It is sited with access from a country road, with no dedicated footway or cycleway. Although there are public footpaths through the countryside in the area, these would unlikely be used all year round, and, due to the nature of country footpaths would not be accessible for all. It is highly likely therefore that residents would be reliant on a car to access nearby facilities and services. While the Framework seeks to limit the need to travel and offer a genuine choice of transport modes, it also recognises that opportunities to maximise sustainable transport solutions will vary between urban and rural areas.
12. I am also mindful that Policy C of the PPTS recognises that sites may need to be located in rural areas and the countryside. In addition, the occupants, would by definition travel by caravan. Although in the open countryside, this site is only a very short car journey to Colney Heath.
13. There is no dispute between the parties that the access meets the requirements of Policy 34 of the City and District of St Albans District Local Plan Review 1994 (the Local Plan) in terms of highway safety. From the evidence before me and my observations on site, I would agree. For the reasons above I am also satisfied that the accessibility of the site is not in fundamental conflict with the requirements of the Framework or the PPTS and therefore in this instance the appeal site is in an accessible location.

Listed Building

14. To the north-west of the appeal site is the Mill at Mill House, a grade II listed building. It is about 15 metres high and formed from a tarred red brick cone with a cemented top built soon after 1862. The sails were removed around 1890 and it has since been converted to residential use. Its significance, for the purposes of this appeal, is related to its historical and architectural importance in the local area.
15. The Mill would have been visible over the surrounding open countryside which provides its setting and its visibility would have aided an understanding of its use and significance in the landscape. There is some intervisibility between the appeal site and the Mill. As such the appeal site contributed to that significance being part of the open countryside.

16. I acknowledge that alterations made to the Mill House and its garden area have already altered the setting of the Mill. However, the alterations largely maintain the open rural setting. The introduction of development on the appeal site as proposed would erode its rural character given the siting and mass of the caravans on the site. As such the contribution the site made to the significance of the Mill, as part of its rural hinterland, would be diminished. However, I saw that intervisibility between the two is already reduced by the presence of trees. Furthermore, there is nothing substantive to suggest that this piece of open countryside contributes any more to significance than other surrounding pastoral land, even though once in the same ownership. The Mill would still be viewed as essentially being in a rural landscape. Consequently, the harm caused through the change to the appeal site would, in the terms of paragraph 202 of the Framework, be less than substantial.
17. For the reasons above, I conclude that the proposal would cause harm to the setting and significance of the Mill at the Mill House. There would therefore be conflict with Policy 86 of the Local Plan which seeks to preserve the setting of listed buildings.

Ecology

18. The appeal site is on the historic former common of Colney Heath, but there has been no survey undertaken of its ecological value prior to development occurring on site. The appellant has submitted a preliminary ecological appraisal but this was carried out after development on site had occurred and unsurprisingly therefore found no adverse impacts.
19. On that basis, it is very difficult to ascertain whether there has been any harm to the ecology of the appeal site itself. Hertfordshire Ecology, the Council's advisors, suggest that the area surrounding the appeal site, and within the ownership of the appellant, may support reptiles such as slow worms and the common lizard. As such, a survey could be undertaken to show whether present and a programme of mitigation/compensation proposed. The appellant confirmed at the Hearing they were content to carry out a survey and to undertake further biodiversity enhancement works. Both matters could be the subject of a suitably worded condition.
20. For the reasons above, based on the very limited evidence before me the site as, suggested by HE, it is likely that the appeal site itself has very little ecological value present and therefore, there would be no harm caused to its ecology by the development. On that basis, there would therefore be no conflict with Policy 106 of the Local Plan or the Framework which seek to ensure development does not adversely affect sites of wildlife importance.

Other considerations

Need

21. The Gypsy and Traveller Accommodation Assessment 2019 (GTAA) identifies a need within the city of 72 permanent Gypsy and Traveller pitches, for those who meet the definition in the PPTS, of which 44 pitches are needed between 2018-2023 and 10 pitches between 2023-2028.
22. The representative for the Council at the Hearing was unable to advise me how, if at all, the Council was considering any impact of the 2022 judgement on its assessment of need. The appellant considered that it would inevitably

mean that the need for pitches would be higher than that assessed in the GTAA.

23. An emerging new local plan was Examined in 2019 but following this the Examining Inspectors recommended that the Council withdraw the Plan. The Council is preparing a new local plan with a consultation document expected in June 2023 and final adoption in 2025. It is expected that this will allocate areas for new Gypsy and Traveller sites based on need. The Council also confirmed that, given the extent of Green Belt in the District, it is likely that some sites will be on Green Belt land and a Green Belt Review is being undertaken concurrently to inform the emerging Local Plan. It will therefore be some time until pitches are available through the Local Plan process.
24. The Council confirmed at the Hearing that only 19 pitches had been granted consent since 2019, and there remains a significant shortfall of pitches within the district. This would still be the case whether the need figure is amended or not to take account of the 2022 judgement. I therefore give the need for pitches great weight.

Availability

25. Prior to moving onto the site in 2020, some of the families were living on a site in Hartsmere and some on a site in Stevenage. The family were allowed to stay on the site in Hartsmere for a temporary period but the owner was unable to gain planning permission for additional capacity on the site. They are therefore unable to return to that site. Those on the Stevenage site were doubled up and the family are unable to return there. The family therefore moved onto the site albeit in the knowledge that planning permission did not exist.
26. The Council confirmed at the Hearing that there was no availability at its Gypsy and Traveller sites. The appellant submitted evidence demonstrating that there are currently 177 people applying for a pitch on one of the Council's ten sites. This was not disputed by the Council. There is no requirement for the appellant to demonstrate that no other sites are available, but no suggestions were made at the Hearing.
27. Based on the evidence before me, I am satisfied that if the appellant and their family were not able to live on the appeal site then they would have nowhere else to go. I give the lack of suitable and available alternative sites considerable weight.
28. Whilst this is a case of intentional unauthorised development referred to in the Written Ministerial Statement 2015, given the circumstances of the family's previous sites, the fact that a planning application was submitted and the lack of alternative pitches I give this limited weight.

Failure of policy

29. There is no dispute between the parties that the Council is unable to demonstrate a five year supply of pitches for Gypsies and Travellers.
30. That in itself though is not sufficient to demonstrate that there has been a policy failure by the Council. There must be evidence of a persistent failure of the Council to put policies or other measures in place to meet the accommodation needs of Gypsies and Travellers and of a corresponding long-standing unmet need for sites.

31. The Council confirmed at the hearing that it has no current policies relating to the provision of Gypsy and Traveller pitches and indeed has not done so for a considerable time given that the current Local Plan was adopted in 1994. The emerging Local Plan has been withdrawn and there is no certainty as to when a new one would be in place and what the level of allocations would be in that plan.
32. In the meantime, any need would require to be met through the determination of planning applications on an ad hoc basis with no development plan policy direction. Consequently, there has been a persistent failure of development plan policy to meet the needs of Gypsies and Travellers in the Borough over a lengthy period of time to which I give significant weight.

Personal circumstances

33. The appellant updated their personal circumstances at the Hearing. Between them the families have eight children between the ages of 1 and 10. I heard that the five children of school age attend the local school and are settled. In particular one of the children receives extra support due to medical difficulties. All are also registered at the local doctors. The appellant considers it would be in the best interests of the children to remain on the appeal site attending the local school from a settled and secure base on the pitches. I would agree. The education of the children and ability to access consistent health care would be disrupted should the families have to rely on a roadside existence. I therefore give this matter substantial weight, a view the Council concurred with at the Hearing.

Other Matters

34. I have had regard to comments regarding St Albans having a disproportionate share of Gypsy and Traveller pitches across the County. However, I have found that there is an unmet need in the district. The families on the site are already using the existing infrastructure and have been for some time so there would be no increased pressure by allowing this appeal.

Planning Balance and Conclusion

35. In accordance with paragraph 202 of the Framework, I have found that the proposal would cause less than substantial harm to the significance of a designated heritage asset, but nevertheless of considerable importance and weight. Under such circumstances, paragraph 202 of the Framework advises that this harm should be weighed against the public benefits of the proposal. I am firmly of the view that the benefits of providing Gypsy and Traveller pitches at a time of high unmet need which has been sustained over a lengthy period of time and with uncertainty over provision in the future would be sufficient to outweigh that harm.
36. I have found that the development is inappropriate within the Green Belt and causes moderate harm to its openness and one of its purposes. Together these attract substantial weight. The development is also a case of intentional unauthorised development. However, given the circumstances that I outline above this carries limited weight. There would be no identified harm to ecology and I have found the appeal site to be in a reasonably accessible location. These factors carry neutral weight. There would be harm to the significance of

a listed building to which I give considerable importance and weight, albeit this would be outweighed by public benefits.

37. To be balanced against the harm, I have found that there continues to be a significant unmet need within the District. In addition, the Council is unable to demonstrate an adequate supply. There has been a failure of development plan policy over a number of years to deliver the needs of Gypsies and Travellers, which means that there are no alternative or available sites for the appellant and their family to move to. It is uncertain when any would be available in the future. Furthermore, it would be in the best interests of the children to remain on the appeal site.
38. I have had regard to the PPTS that states 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 so as to establish very special circumstances. However, in this instance, the matters I have identified above together, including the best interests of the child, carry very great weight such that they clearly outweigh the harm to the Green Belt. Looking at the case as a whole, I consider that very special circumstances exist which justify the development. As such there would be no conflict with the requirements of the Framework or Policy 1 of the Local Plan which states that within the Green Belt, except for development in Green Belt settlements or in very special circumstances, permission will not be given for development.
39. I have given some consideration as to whether permission should be restricted to five years only as suggested by the Council. However, it is not certain that there would be any Gypsy and Traveller sites allocated in the plan at that time. Furthermore, given the relatively young ages of the children on the site there would still be disruption to their education after this time if they had to move from the appeal site.
40. I accept that the development at Nuckies Farm, close to the appeal site, was granted on appeal for 3 pitches on a temporary basis for five years only². However, that decision was made three years ago and based on the evidence before me I consider a permanent permission is justified in this instance.

Conditions

41. I have had regard to the conditions suggested by the Council and that were discussed at the Hearing and considered them against the tests in the Framework and the advice in the Planning Practise Guidance (PPG), making such amendments as necessary to comply with those documents.
42. Condition 1 is imposed to give certainty. I considered whether the permission should be restricted to the appellant and his family given that their circumstances formed part of the Green Belt balancing exercise. However, in my view a personal condition is not necessary as I have already found that there is an outstanding need for Gypsy and Traveller pitches and personal circumstances have not been the only determining matter.
43. There is though justification for the site to be occupied by Gypsies and Travellers to safeguard the supply of the site for this purpose and as such a condition is necessary to restrict occupation. In order to avoid discrimination to the elderly or disabled, the condition should include those Gypsies and

² APP/B1930/W/18/3212960

Travellers who have ceased to travel permanently. Even though I am not aware that any of the current occupants have ceased to travel due to age or disability, that may not always be the case and to apply such a condition restricting their occupation of the site would, in the light of the 2022 judgement, be unlawfully discriminatory.

44. It is necessary to restrict the number of pitches and caravans to protect the character and appearance of the area. A condition is imposed to ensure that the proposal is laid out in accordance with the approved plans and the appeal site is delineated by a post and rail fence, the Package Treatment Plant is installed, an ecological survey is undertaken and an ecological and landscape enhancement plan is submitted and implemented.
45. These details are required to provide certainty, ensure suitable drainage facilities are provided and the ecology of the site is protected and enhanced respectively. There is a strict timetable for compliance because permission is being granted retrospectively, and so it is not possible to use a negatively-worded condition to secure the approval and implementation of the matters outlined in this condition before the development commences. The condition will ensure that the development can be enforced against if the details are not submitted for approval within the period given by the condition, or if the details are not approved by the local planning authority or the Secretary of State on appeal, or if the details are approved but not implemented in accordance with an approved timetable. A further condition restricting external lighting is necessary to protect the character and appearance of the area.

Conclusion

46. For the reasons given above I conclude that the appeal should be allowed.

Zoe Raygen

INSPECTOR

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY

Nigel Ozier

Director of Planning &
Development Aitchison Rafferty
on behalf of St Albans City
Council

FOR THE APPELLANT

Joseph G Jones

Consultant

Mr Patrick McInerny

Appellant

DOCUMENTS SUBMITTED AT THE HEARING

- 1 Signed copy of Statement of Common Ground
- 2 email dated 6 January 2022 regarding HCC Gypsy and Traveller pitch application list
- 3 Table showing Count of Traveller Caravans January 2022

CONDITIONS

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans: LP-01-2020, BP-01-2020.
- 2) 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.
- 3) There shall be no more than four pitches on the site and on each of these pitches hereby approved no more than two caravans, shall be stationed at any time, of which only one shall be a static caravan as defined by the Caravan Sites and Control of Development Act 1960 and the Caravan Site Act 1968 as amended.
- 4) The use of the land hereby permitted shall cease and all caravans, structures, equipment and materials brought onto the land for the purposes of such use shall be removed within 28 days of the date of failure to meet any one of the requirements set out in i) to vi) below:
 - i) Within 6 months of the date of this decision the appeal site shall be laid out in accordance with the approved plans BP-01-2020 and LP-01-2020.
 - ii) Within 3 months of the date of this decision details of the following, together with a timescale for implementation shall be submitted to and approved in writing by the Local Planning Authority:
 1. A post and rail fence to delineate the appeal site as shown on approved plan LP-01-2020;
 2. An ecological and landscape enhancement and management plan for the area in the appellant's ownership including boundary planting, biodiversity net gain and timetable for implementation
 3. An assessment for the suitability for reptiles on land in the ownership of the appellant
 - iii) Should the land in the ownership of the appellant be shown to be suitable for reptiles then within nine months of the date of this decision a survey shall be undertaken to assess whether reptiles are present and submitted to and approved in writing by the Local Planning Authority. If the site does contain reptiles, then a programme of mitigation/compensation measures shall at the same

time be submitted to and approved in writing by the Local Planning Authority and implemented in accordance with an agreed timescale.

- iv) The Package Treatment Plant shall be sited and installed in accordance with the details set out within the Foul Drainage Assessment Form received 19 December 2020, the Kingspan Klargest technical specifications received 05 June 2020, the Soakaway Letter Report ref YEX1563 received 19 December 2020 and Drainage Information statement received 19 December 2020 within 6 months of the date of this decision.
- v) If within 11 months of the date of this decision the local planning authority refuse to approve the scheme or details or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
- vi) If an appeal is made in pursuance of v) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.
- vii) The details agreed in ii) 1 and 2 shall have been carried out and completed in accordance with the approved timetable. Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter be retained. Upon implementation of the approved lighting scheme specified in this condition the scheme shall thereafter be maintained.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

- 5) Details of any external lighting shall be submitted to and approved in writing by the Local Planning Authority prior to its installation. Lighting shall only be installed in accordance with the agreed details.

*****END OF CONDITIONS*****