



Appeal Decision

Hearing and site visit held on 24 January 2023

by Martin Allen BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 February 2023

Appeal Ref: APP/J3720/W/21/3288945

**Four Acres Farm, Land adj Oak Tree Farm, Ullenhall, Henley-in-Arden
B95 5NZ**

- 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 Eine Doherty against the decision of Stratford-on-Avon District Council.
 - The application Ref 21/00778/FUL, dated 8 March 2021, was refused by notice dated 9 November 2021.
 - The development proposed is the change of use of land from agricultural use to mixed use for the keeping of horses with stables and the stationing of 3 No. caravans and utility block for residential purposes for private Traveller site and associated development (retrospective).
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Decision

1. The appeal is allowed and planning permission is granted for the change of use of land from agricultural use to mixed use for the keeping of horses with stables and the stationing of 3 No. caravans and utility block for residential purposes for private Traveller site and associated development at Four Acres Farm, Land adj Oak Tree Farm, Ullenhall, Henley-In-Arden, B95 5NZ in accordance with the terms of the application, Ref 21/00778/FUL, dated 8 March 2021, subject to the conditions set out in the attached Schedule.

Preliminary Matters

2. The site address above differs from that shown on the planning application form. However, the appellant has used this address on the appeal form, and I consider this accurately describes the location.
3. The description of development above is also different from that on the planning application form. However, the appellant has indicated that a revised description was agreed. This however was changed again prior to the Council issuing a decision. I have used the agreed description as this accurately describes the development for which permission is sought, other than removing reference to the proposal being retrospective, as this does not describe an act of development.
4. The Council does not contest the Gypsy status of the appellant. Based on what I have seen and the discussion at the hearing, I have no reason to disagree. I have considered the appeal on this basis.
5. The planning application sought permission in retrospect. I was able to see at the time of my site visit that development of the site had commenced, with the

hard surfacing having been laid, a mobile home and tourer on site. I have considered the appeal on this basis.

Main Issues

6. The main issues raised are:

- Whether the proposal would be inappropriate development in the Green Belt, and the effect on the openness of the Green Belt,
- The effect of the proposal on the character and appearance of the area,
- Whether the location is accessible to nearby settlements and facilities, and
- Whether any harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations, so as to amount to the very special circumstances required to justify the proposal.

Reasons

Inappropriate development and effect on openness

7. The appeal site is located within the 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 part of the appeal scheme comprising the pitch for accommodation is inappropriate development in the Green Belt. Both the Council and the appellant agreed with this position at the hearing.

8. The appeal scheme is for the change of use to a mixed use of the land, which would also include the keeping of horses and the erection of a stable building. Under the provisions of the National Planning Policy Framework (the Framework), the provision of such a building and change of use would not be inappropriate development, on the proviso that they preserve openness.
9. In terms of the effect on openness, the scheme would result in the stationing of a mobile home, two touring caravans, a utility block and stables within the site, as well as an area of parking. This would inevitably lead to a loss of openness in spatial terms, including from the proposed stables. However, owing to the small scale of the built development, together with its relatively 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 views possible would be very limited glimpses from the adjacent road and these would be fleeting.
10. Consequently, in my view, while the loss of openness in this case would be very limited, it would nonetheless persist. It follows that, as a result of the loss of openness from the stables, that the equestrian element of the scheme would also be inappropriate development.

Character and appearance

11. The appeal site comprises a parcel of land to the south of the A4189 road. It is generally well screened along the road by the presence of mature hedging and

vegetation. There is some sporadic development within the surrounding area, comprising dwellings and agricultural buildings. However, for the most part the area is characterised by its rural appearance, of field enclosures and hedging. From the information before me, the appeal site prior to being developed formed part of this rural landscape and contained no buildings.

12. Development has already commenced on the appeal site. The vehicular access has been formed and whilst this is in the location of a previously existing field access, this has been widened and formalised to serve the development. An area of hardstanding has been laid and a mobile home and touring caravan brought onto the site. The area of the pitch has also been fenced off from the remainder of the field, which is a paddock area.
13. The introduction of the mobile home, touring caravan and hardstanding result in a stark change from the previous undeveloped field and they are at odds with the rural character of the area. However, this change is limited in its extent on the ground, occupying only a relatively small area of the previous field. Furthermore, the development that has taken place is only visible from vantage points in close proximity to the site and thus its visual effect is very localised. Moreover, the principal views of the site are available from the A4189 to the north, which is a road with fast moving traffic and substantial screening in the form of landscaping along its boundaries, which is proposed to be reinforced further. As a result, any public views of the site would be fleeting, available predominantly through the vehicular access and restricted to traffic as it passes the site. The use of the remainder of the site as a paddock for the grazing of horses would, other than the introduction of a stable building, have little greater visual effect than the previous agricultural use.
14. The site lies within the Arden Special Landscape Area (the SLA), and it is alleged within the Council's Delegated Report that the scheme would not meet the "provisions of this designation and the intrinsic character principles thereof." However, there is no explanation of how this is the case. At the hearing, it was somewhat clarified that concern in this respect related to the loss of hedgerow that has taken place to create the modified vehicular access. The Council highlighted that hedgerows are characteristic of the area.
15. While I agree that hedgerows are a characteristic of the area within which the appeal site is located, the actual loss of hedgerow to accommodate the changes to the point of access is, in my view, minimal. The hedging along the boundary of the road is retained in the majority and any further hedging that has been lost within the site is not significant. As such, I consider that the effect in this respect is very limited and not of such magnitude to have a demonstrable adverse effect on the overall characteristics of the SLA.
16. In terms of the changes to the point of access, it would appear that this has been widened and formalised in order to allow vehicles to enter and leave the site. I agree that this has resulted in a feature that is more prominent in the local area. However, it is not dissimilar to other vehicular access points that can be seen within the immediate vicinity, most notably there are three vehicular access points to the east which are larger and more formalised in design. Within this context, I find that the access as it exists is not an incongruous feature at this location.
17. I note that there is some concern over the presence of lighting within the development that exists. Given the countryside location, there is the potential

for excessive lighting to have an adverse effect. However, this matter could be controlled by a suitably worded planning condition, should I be minded to allow the appeal. Thus, subject to this control, there would be no unacceptable effect in this regard.

18. Accordingly, I find that harm arises from the introduction of the mobile home, touring caravans and hardstanding. However, this harm is limited in its extent. Nonetheless, the scheme would conflict with policies CS.5 and CS9 of the Stratford-on-Avon Core Strategy (the Core Strategy), insofar as they seek to ensure development maintains the character of the district and reflects the character of a locality.
19. In light of my findings above, I determine that there would be no harm to the SLA. As such, there would be no conflict with policies CS.12 or CS.21 of the Core Strategy, in regard to this main issue.

Accessibility of location

20. The site is located along the A4189, which is a busy road with fast moving traffic. There are no pedestrian facilities along this part of the road and as a result, walking along it would be a particularly unattractive proposition and it would be very unlikely that occupants of the site would choose to do so. There are no bus-stops within the vicinity of the site.
21. Furthermore, there are no services or facilities in close proximity. The village of Ullenhall is over 1 mile away and Mappleborough Green is over 2 miles away, both with limited facilities. There are some facilities at the eastern fringe of Redditch, comprising a petrol filling station, convenience store, restaurant and garden centre, but these are insufficient to cater for the general, day-to-day needs of the site occupants.
22. The appellant accepts that there would be a reliance on the private car. I consider that this would be a heavy reliance, and the use of taxis as school transport for the children occupying the site does not dissuade me of this.
23. In light of the above, I find that the location is not accessible to nearby settlements and facilities by means other than the private car. Thus, the scheme conflicts with policies AS.10 and CS.21 of the Core Strategy. Together, and amongst other things, these policies seek to ensure that development makes provision for sustainable forms of transport and that gypsy traveller sites are accessible by modes of transport other than the private car.
24. Policy CS.15 is referred to, yet this refers to the strategic spatial distribution of development across the district during the plan period. As such, I do not consider it to be directly relevant to this matter.

Other considerations

Need for sites

25. The Council relies on the Stratford-on-Avon District Gypsy and Traveller Accommodation Assessment Update Study (April 2019) (the GTAA). At this base date, referring to gypsy travellers complying with the "ethnic definition" rather than that set out in the PPTS, the GTAA identified a need for 36 pitches to be provided between 2019-24, with 70 pitches needed up to 2035.

26. At the hearing, the Council was not able to give information in regard to the level of need that currently exists. Nonetheless, there was discussion over the number of pitches that have been granted planning permission recently and it was estimated that around 15 pitches have been granted planning permission since approximately November 2021, but it was unknown whether these are for permanent or temporary pitches. The main parties agree that there is no 5-year supply of traveller sites and no alternative sites available.
27. Notwithstanding that some pitches have been granted permission; it is clear that there is still a significant, unmet need for sites within the district.

Failure of policy

28. The Council has no site allocation policy within the development plan and a criteria-based policy is relied on. The appellant asserted that there has been a long-standing need within the district since 2014 and I heard nothing that would lead me to find otherwise. At the hearing, the Council accepted that the need for pitches has not been addressed by this criteria-based policy and that there was a persisting, ongoing need for sites within the district. I also note that a Gypsy Traveller development plan document has previously been drafted, but at this time has been disbanded.
29. 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.

Personal circumstances

30. The site is occupied by the appellant, wife and eight children. As stated above, there are no available, alternative sites that the family could move to. Should they have to leave the site they would be forced to resort to living on the roadside, effectively meaning that they would all be homeless, and they would be deprived of their home.
31. It was raised at the hearing that a temporary Stop Notice was issued on the site in March 2021 and, while no enforcement action has been taken in respect of this, the Council maintains an open enforcement case in respect of the development of this site. The Council's representative informed me that they were unable to say whether an enforcement notice would be issued but did indicate that the outcome of this appeal would influence consideration of enforcement action. As such, I consider that should I dismiss the appeal, it is likely that enforcement action would be undertaken by the Council, which would have implications for the site occupants, likely resulting in them having to vacate the site. This is a matter that I will take into consideration.
32. I note that the family have previously been doubled up at the appellant's father's pitch but for reasons that have been outlined within the appeal, they are unable to return to this site.

Best interests of the children

33. There are eight children occupying the site currently with their parents, with a further child expected later this year. The best interests of these children are a primary consideration in the determination of this appeal, and I have kept these best interests at the forefront of my mind.

34. The occupancy of a stable, settled base would bring benefits to the children, most notably through access to consistent healthcare and education. At this time, five of the children attend primary school and two attend pre-school. I was also told that the eldest of the children has almost completed their primary education and will soon be moving onto secondary school. The family's occupation of the appeal site would result in significant benefits for the children, not least in terms of allowing their education to continue uninterrupted.
35. There would also be benefits in terms of security for the children through having a safe and secure site to occupy, and not having to resort to roadside living.

Other Matters

36. The Council raised concern that the grant of planning permission at the site could result in part of the appeal site comprising previously developed land (PDL), as defined within the Framework. However, while this may be the case if permanent permission were to be granted, this is not a matter which I consider weighs against the scheme. Furthermore, if any temporary permission were granted, there would be a requirement to remove the development after a specified time and restore the site. As such, there would be provision for restoration made through development management procedures. Thus, the site would not accord with the definition in the Framework and would not become PDL.
37. I am also conscious that the site has been developed thus far without the benefit of planning permission. Accordingly, the development can be considered to be intentional unauthorised development in the Green Belt. I am mindful that this is a material consideration that I must take into account. However, I am also conscious that the appellant has sought to regularise the situation by applying for planning permission, as well as the reasons for moving onto the site i.e., they had nowhere else to go and were forced to leave the site they previously occupied. As a consequence of these considerations, I do not find that this matter weighs against the appeal scheme.
38. I am aware that matters including the loss of trees, concerns over anti-social behaviour, potential flood impact, effect on the occupiers of neighbouring properties, effect on biodiversity, property values and concerns over highway safety have been raised by interested parties. However, there is no substantive evidence before me that would lead me to conclude that the appeal scheme would result in any demonstrable harm in these respects. Furthermore, the Council raise no objection on these grounds. As such, they have little bearing on my decision.

Planning Balance

39. 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.
40. 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."*

41. The scheme, taken as a whole, is inappropriate development in the Green Belt, which is by definition harmful. This harm is accorded substantial weight.
42. There would also be harm to the character and appearance of the area, although I find this to be limited, as well as harm in terms of a lack of accessibility to facilities and services by means other than the private car. However, the acceptance that gypsy traveller sites can be located in the countryside, reduces the weight that I attach to harm in this respect. Thus, I accord substantial weight to the collective harms that result from the development.
43. There are however benefits which are required to be balanced against these harms. There is an identified need for new pitches in the area, no identified alternatives and a lack of a five year supply of sites. These matters carry moderate weight in favour of the appeal scheme.
44. I have had regard to the personal circumstances of the occupants currently residing on the appeal site. I find that there would likely be severe consequences for the individuals involved if they were required to relocate from the site. In light of the Council accepting that there are currently no alternative sites available to the appellant, being unable to occupy the appeal site would make them and their family homeless, likely having to resort to roadside living. I do not find this to be an acceptable alternative and thus I accord the personal circumstances of the appellant significant weight.
45. In addition to this, I am also conscious of the best interests of the children that do, and will, occupy the site. This is a primary consideration and one to which I attach considerable weight.
46. In my view therefore, collectively, the matters in favour of the scheme carry great and decisive weight, sufficient to outweigh the harm to the Green Belt. Accordingly, planning permission should be forthcoming.
47. The Council is currently reviewing the development plan, jointly with a nearby authority. It is expected that this will be adopted in late 2025. This document will be required to assess and provide for the needs of Gypsy Travellers within the district. As such, I consider there to be a reasonable likelihood that within the foreseeable future, circumstances will change and that the provision of more sites, in more suitable locations, will come forward. In such circumstances, I find that it would be appropriate to grant a temporary planning permission, for a period of four years.
48. Should a temporary permission result in the eventual loss of their home, this would represent an interference with the human rights of the occupants of the appeal site. However, I consider that this interference would not be disproportionate, having regard to the legitimate aim of protecting the Green Belt.

Conditions

49. As I have had specific regard to the personal circumstances of the site occupiers, I find that a condition specifying a personal permission is necessary and the permission should be for a temporary period of up to 4 years.
50. I also find it necessary to limit occupation to gypsy travellers more generally. 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. As discussed at the hearing, I will amend this condition so as not to exclude those who have ceased to travel permanently.

51. In the interests of protecting the environment and protecting the character and appearance of the area I find that conditions are necessary requiring details of both foul and surface water drainage to be submitted, in respect of the details of external lighting, as well as the landscaping of the site, and biodiversity net gain. Given that the permission is for a temporary period, details of a scheme to restore the site to its previous condition is also necessary. In light of the scheme being retrospective, I have included these requirements into a single condition, with the appropriate stipulations in respect of non-compliance.
52. I have also included a plans condition to define the extent of the permission.
53. At the hearing, the Council suggested a condition preventing the use of the paddock for any other use. I am conscious that the description of development refers to the change of use to a mixed use for the keeping of horses and stationing of caravans. As such, in the absence of a condition, the caravans could be moved around the site. Given that I have found limited harm on the basis of the caravans being located at the eastern end of the site, I consider that a condition is necessary to require the development to be positioned as shown on the plans.
54. In order to protect the character and appearance of the area, I have included conditions to limit the number of caravans that can be located within the site, to prevent commercial uses taking place and limiting the size of vehicles that can be parked on the site.
55. In the interests of protecting the environment, I have imposed a condition preventing the burning of material, as this was clarified that it follows concern over the burning of any equestrian waste.
56. A condition in respect of the materials of the utility block was suggested. As these are not shown on the approved plans, a condition is necessary in this regard in the interests of the character and appearance of the area.
57. I observed that the access was surfaced behind the edge of the carriageway, and I saw no evidence of material being brought onto the road. As such, I do not consider a condition in respect of the surfacing of the access is required. A condition in respect of a footway crossing was agreed by the Council at the hearing to be unnecessary, as was a condition in respect of kerb and footway reinstatement.

Conclusion

58. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should succeed, and that temporary planning permission should be granted.

Martin Allen

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The use hereby permitted shall be carried on only by the following:
 - Mr Eine and Mrs Katrina Doherty, and
 - any resident dependants,and shall be for a limited period being the period of 4 years from the date of this decision, or the period during which the premises are occupied by them, whichever is the shorter.
- 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) The use 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 60 days of the date of failure to meet any one of the requirements set out in i) to iv) below:
 - i) Within 3 months of the date of this decision a scheme for
 - the means of foul and surface water drainage of the site,
 - proposed and existing external lighting on the boundary of and within the site,
 - tree, hedge and shrub planting, including details of species, plant sizes and proposed numbers and densities,
 - measures to ensure that a biodiversity net gain is achieved, and
 - the restoration of the site to its condition before the development took place, at the end of the period for which planning permission is granted for the use, or the site is occupied by those permitted to do so,(hereafter referred to as the site development scheme) shall have been submitted for the written approval of the local planning authority and the scheme shall include a timetable for its implementation.
 - ii) If within 9 months of the date of this decision the local planning authority refuse to approve the scheme 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.
 - iii) If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.
 - iv) The approved scheme shall have been carried out and completed in accordance with the approved timetable.
 - v) Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter be retained.
 - vi) 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.

- 4) The development hereby permitted shall be carried out in accordance with the following approved plans:
 - 1:2500 scale – Plan 1 Location Plan
 - 1:500 scale – Plan 2 Proposed Site Plan
 - 1:100 scale – Plan 3 Utility Block
 - 1:20 scale – Post and Rail Fence and 2m Timber Panel Fence details
 - 1:100 scale - Plan 5 Stable block plan and elevations
- 5) The caravans shall be sited in accordance with Plan 2 Proposed Site Plan.
- 6) No more than 3 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 one shall be a static caravan) shall be stationed on the site at any time.
- 7) No commercial activities shall take place on the land, including the storage of materials.
- 8) No vehicle over 3.5 tonnes shall be stationed, parked or stored on this site.
- 9) No waste shall be burnt on any part of the site at any time.
- 10) Prior to its construction, full details of the external facing materials of the utility block shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.

APPEARANCES

FOR THE APPELLANT:

Mrs Alison Heine

Appellant's agent

Mr and Mrs Doherty

Appellant and wife of appellant

FOR STRATFORD-ON-AVON DISTRICT COUNCIL:

Mr Stuart Flaherty

Planning Officer

DOCUMENTS SUBMITTED AT THE HEARING

1. Education referral forms
2. Letter from Education services