



Appeal Decision

Inquiry held on 1 – 2 and 21 November 2022

Site visit made on 3 November 2022

by Phillip J G Ware BSc DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 February 2023

Appeal Ref: APP/Y3425/W/3119166

Land to the northeast side of Hilderstone Road, Spot Acre ST15 8RP

- 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 George Clee against the decision of Stafford Borough Council.
 - The application Ref 19/31299/FUL, dated 9 October 2019, was refused by notice dated 4 December 2019.
 - The development proposed is the removal of conditions 1 and 2 of planning permission reference APP/Y3425/W/15/3119166 granted on appeal (15th November 2016) to facilitate the change of use for the stationing of caravans for five gypsy pitches, with utility/day rooms, access road and areas of hardstanding ancillary to that use.
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Procedural matters

1. The description of the development varied between the planning application form, the Council's decision notice, and the appeal form.
2. Several Case Management Conferences were held to discuss procedural matters and the description in the banner heading above was agreed by all parties as being accurate. I am satisfied that this fairly describes the proposal and that no prejudice would be caused by dealing with the appeal on that basis.

Decision

3. The appeal is allowed and planning permission is granted for the removal of conditions 1 and 2 of planning permission reference APP/Y3425/W/15/3119166 granted on appeal (15th November 2016) to facilitate the change of use for the stationing of caravans for five gypsy pitches, with utility/day rooms, access road and areas of hardstanding ancillary to that use on land to the northeast side of Hilderstone Road, Spot Acre ST15 8RP in accordance with the terms of the application, Ref 19/31299/FUL, dated 9 October 2019, subject to the conditions set out in the Annex to this decision.

Application for costs

4. At the Inquiry an application for partial costs was made by Mr George Clee against Stafford Borough Council. This application is the subject of a separate Decision.

Main issues

5. The parties agree that the proposal is inappropriate development in the Green Belt, and that harm to the Green Belt should be afforded substantial weight. On that basis, the issues in dispute are:
- The effect of the development on the openness of the Green Belt and the purposes of including land within it.
 - The weight to be attached to matters argued in favour of the proposal:
 - The provision of and need for gypsy sites within the area.
 - The alleged failure of policy.
 - The accommodation needs and personal circumstances of the site occupants.
 - Human Rights, Public Sector Equality Duty and the Best Interests of the Child.
 - Whether the harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify the development.

Reasons

The site and relevant planning history

6. The appeal site is located in an area of generally undeveloped countryside around 370 metres northwest of Spot Acre, 650 metres west of Crossgate and 2.7km southeast of Meir Heath. There are agricultural fields to the north, with woodland immediately to the south, dense woodland to the east, and Hilderstone Road to the west – from which access is gained. There is some sporadic residential development in the area.
7. The site has been used as a gypsy caravan site since early 2005, and there are a number of relevant planning decisions since that time. These are set out in the General Statement of Common Ground.
8. In particular an appeal decision in 2009 allowed the use of the site for the stationing of caravans for 5 gypsy pitches and related facilities.¹ This was a five year limited period permission and was made personal to a number of named individuals.
9. In 2016 planning and enforcement decisions dealing with two appeals were issued.² These allowed the continuation of the use on a personal basis for a three year period.
10. The purpose of this appeal is to remove the personal and temporary conditions imposed in 2016 and to allow permanent occupation of the site by anyone who is a Gypsy or Traveller. Personal circumstances related to the existing occupiers of the site were also put forward.

¹ APP/Y3425/A/09/2099291

² APP/Y3425/W/15/3119166 and APP/Y3425/C/15/3133219-3133223

The development plan

11. The development plan includes The Plan for Stafford Borough 2011-2031 (adopted 2014). The most important policies are SP7 and C6.
12. Policy SP3 directs the majority of new development to service centres. SP7 deals with land outside service centres and settlement boundaries and provides that, in such areas (including the appeal site), development will only be supported if, amongst other matters, it is in line with national policy (this specifically is stated to apply to development in the Green Belt).
13. Policy C6 states that provision will be made for the delivery of sufficient good quality, appropriately located residential pitches to satisfy local need as set out in the Gypsy and Traveller Accommodation Needs Assessment. It provides that specific sites will be identified through a Site Allocations SPD. This has not in fact happened. The policy also provides a number of criteria for considering proposals.
14. It is useful to note that, in closing submissions, it was accepted for the Council that the policy framework is now very similar to the position at the time of the 2016 appeal decision.

Green Belt

15. As referenced above, the parties accept that, in line with national policy, the proposal is inappropriate development in the Green Belt, and it is clear that such development should not be approved except in very special circumstances. Substantial weight should be given to any harm to the Green Belt – and this includes 'definitional harm.'
16. The parties agree that the proposal would have an effect on the openness of the Green Belt, although they differ as to the extent of the effect. The Council's position is that there would be a significant adverse effect whereas the appellant refers to the extent of screening which is said to greatly reduce any effect.
17. Clearly the use of the site has a modest spatial effect on openness, and this is not contested by the appellant. In relation to the visual dimension, I note that Hilderstone Road is well treed and from most locations the effect on the openness of the area is very limited indeed. However at the entrance the extent of the development is clear and the upper parts of the caravans and structures can be seen. The effect on openness is limited due to the relatively small scale of the development and the extent of natural screening.
18. In terms of safeguarding the countryside from encroachment, it is clear that the use has had and would have a limited effect on this purpose of the Green Belt.
19. Overall, the definitional harm to the Green Belt, to which must be added the limited harm to openness and to one of the purposes of including land in the Green Belt, is a matter to which I give substantial weight. It would conflict with policy SP3 summarised above.

The need for and provision of gypsy sites

20. The situation regarding the general need for and supply of sites for gypsies and travellers is materially different to the position which existed at the time of the

2016 appeal. Unlike the position at that time the Council now accepts that it cannot demonstrate a 5 year supply of land for gypsy and traveller sites.

21. I will return to personal needs later, but as an example of the general position the parties agree that there are no alternatives for the current occupiers of the site. This is the same position as at the 2016 appeal. The parties also agree that any sites which could be considered must be available, affordable, acceptable and suitable.
22. The Gypsy and Traveller Accommodation Assessment (GTAA) (2022), which will be part of the evidence base for the draft Local Plan, sets out the current position. However there are a number of issues raised which leads to the appellant's conclusion that the assessment seriously underestimates the problem.
23. Any alleged deficiencies in the GTAA will doubtless be considered at a future Local Plan examination, but they are of some importance as evidence in this appeal in order to consider the robustness of the Council's position. The key issues raised by the appellant related to the Council's position are:
 - Whether turnover can reasonably be included as a component of supply. I appreciate that the last Inspector considered it reasonable to make some allowance for turnover in the particular circumstances of that appeal. I do not know what evidence was put before him, but in the case of the current appeal there is nothing to guide me as to likely turnover rates and, in the absence of any such evidence, I do not regard this as positive planning to meet an acknowledged need. The Council accepted at the Inquiry that reliance on turnover does not equate to deliverability in terms of national policy.
 - The pitch size and overall capacity of the Council's Glover Street site was discussed. But again I have nothing before me to be able to assess the likely capacity of that site. (What was agreed was that it is not suitable for the current occupiers of the appeal site.)
 - It was stated that there have been no interviews as part of the GTAA process with those in conventional housing. If that is the case, it does seem that this could be a potential issue with the robustness of the figures.
 - It was put that the GTAA allows for outward migration but not inward migration. This reason for this approach was not persuasively explained at the Inquiry, and it does seem an odd approach to adopt.
 - There was a dispute as to whether sites for which details are withheld and which do not have planning permission can be considered as part of potential future supply. At the Inquiry it was stated for the Council that there are two specific sites in this category, but I was told that no details could be given. On that basis, I give them no weight nor do I give any other similar confidential sites any weight.
 - The reliance on windfall sites was argued not to represent positive planning in line with national policy. Whilst it is reasonable to assume that there may be an element of windfall, I do not see how this equates

with the positive approach in national policy – nor with the Council’s own development plan policy. The Council accepted at the Inquiry that windfall sites cannot be considered deliverable in terms of national policy.

24. Overall, the Council’s approach as explained at the Inquiry is, to say the least, optimistic.
25. But even ignoring these matters, which may arguably result in an underestimation, there is a 31 pitch shortfall from 2026/27 to 2039/40. In addition it is unclear if these figures will increase as a result of the judgement in the Smith v SSLUHC decision³.
26. In considering this matter I am aware that the Council’s position is that the need will be addressed by the draft Local Plan – said to be due for adoption in 2024. However, despite previous commitments, there are still no allocations nor evidence of any allocations process underway.
27. The last Inspector, based on the evidence before him, preferred the GTAA approach rather than the appellant’s position, but still found a significant unmet local need, which was an important material consideration in his conclusion. In the current absence of a 5 year supply, I give this matter very great weight. The proposal complies with policy C6 to the limited extent that it bites on proposals for private sites rather than public provision. I obviously appreciate that the site is within the Green Belt, and am aware of the position as set out in Planning Policy for Traveller Sites, but this does not mean that unmet need can or should be ignored.

Policy failure

28. The failure of policy is a matter raised by the appellants in this case.
29. For this to be an issue in its own right, attracting weight, it must be more than an existing unmet need or inability to provide a five year supply of pitches. There must be evidence of a persistent failure of the authority 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.
30. The appellant’s position is that the Council has expressed the intention to address the assessment of need and provide for that need since 2009. But it is submitted that this has not happened.
31. In the 2009 appeal decision the Inspector considered that provision would be made through an Allocations DPD which was, at that time, anticipated to be adopted in 2012. But no allocation was forthcoming.
32. In 2014 the Plan for Stafford Borough provided that specific sites would be provided through a site allocations DPD. However this has not happened.
33. In the 2016 appeal decision the Inspector noted that there was a strong expectation that alternative accommodation (for the site occupiers) would be available within 2-3 years. The Inspector at that time noted the failure of policy but considered that in view of the Council’s progress towards meeting the identified need, the failure of policy did not have serious consequences and

³ Smith v SSLUHC & Ors [2022] EWCA

- warranted only moderate weight. There is still no alternative accommodation available.
34. It is also noteworthy that in 2016 the Council stated that it was able to demonstrate a 5 year supply of sites. The position now is worse and the Council accepts that there is no 5 year supply.
35. The Council's position in submissions is that it is not tenable to assess success or failure when half of the plan period remains, and that the position should only be considered at the end of the period. Frankly this flies in the face of common sense – there would be no point in considering the success of a policy or plan only at the end of the period – when nothing could be done about any failure. Logically the progress of a plan must be assessed throughout its lifetime and, if necessary, action taken.
36. Nor do I consider that reliance on windfall sites – which have in any case had little impact on the position – amounts to positive planning. I have seen no evidence of the constructive and proactive efforts referenced by the Council. Since 2009, and perhaps before, there have been no allocations and nothing to indicate that the Council is attempting to address the acknowledged need.
37. With this background I am unsurprised to note the Council's evidence that "...there has been a failure of policy to fully meet the needs of gypsies and travellers through the current development plan, with the LPA not demonstrating positive planning by relying on windfall sites to meet an identified need." Whilst accepting this position in general, I do not agree with the Council's use of the word "full". The Council's evidence continued that the progress which was stated to be in hand to meet the need reduces the weight to moderate. As explained, I am not aware of any significant progress and the 5 year supply position is in fact getting worse.
38. The Council's failure to deliver sites to meet the acknowledged general need means there is also a failure by the Council to have due regard to its duty under the Public Sector Equality Duty (PSED) set out in s149 of the Equality Act 2010. This is because the Council is required to consider how it could positively contribute to the advancement of equality and good relations, with s149 placing an onus on public authorities not only to avoid discrimination, but also be proactive in promoting equality.
39. Consequently, the persistent and prolonged failure of planning policy to provide sites to meet the immediate and pressing need of the gypsy and traveller community weighs substantially in favour of allowing the appeal.

Other matters and planning balance

40. Various other matters were raised in evidence by the Council, which I will address briefly.
41. The Council, in evidence though not in the reason for refusal or Statement of Case, stated that the site is locationally unsustainable. The discussion focussed on the policy in Planning Policy for Traveller Sites is that new traveller sites should be very strictly limited in "...open countryside that is away from existing settlements..".
42. In this context although some settlements have a relatively dispersed form, I do not agree with the appellant that this site falls within a non-nucleated

- settlement, but rather that it is set in the open countryside that is away from existing settlements. However there was little evidence of the potential consequences of that location in sustainability terms, and this is not a matter which is central to my decision.
43. There was also a suggestion in evidence that the proposal would harm the character and appearance of the area. However that was not a reason for refusal and was accepted by the Council as to be 'so immaterial as to be neutral'. I agree.
44. There was also a suggestion in evidence, though not in the reason for refusal, that the proposal comprised intentional unauthorised development. The appellant made submissions on that suggestion, but it was not pursued further by the Council and is not a matter I need to consider.
45. In overall summary I have given substantial weight to the harm caused by inappropriate development in the Green Belt, including the effect on openness and related to encroachment. However set against that is the very great weight I have given to the need/supply position in the context of the lack of a 5 year supply, with additional substantial weight as a result of the failure of policy.
46. Overall, very special circumstances will not exist unless the harm to the Green Belt by reason of inappropriateness, and any other harm is clearly outweighed by other considerations. I note that Policy E of the Planning Policy For Traveller Sites (PPTS) provides that 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 (my underlining).
47. However, in this case, there is a considerable scale of need, which may be even greater having regard to a recent judgement and the issues related to the GTAA. There is no 5 year supply of sites and a failure to comply with PPTS in relation to site provision. There is a persistent and prolonged failure of the Council's planning policy, and a failure to meet PSED.
48. I therefore conclude that the harm to the Green Belt by reason of inappropriateness, and other harms, is clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify the development.
49. Personal circumstances have been put before me, however, it has not been necessary to examine these in any great detail as I have already concluded that the balance is in favour of allowing the appeal. The site clearly meets the occupiers' needs but no personal condition is necessary, as consideration of personal circumstances could only add to arguments in favour of permission.
50. I have had regard to the human rights of the families in question and the best interests of the children. As I intend to allow the appeal and grant permission there would be no interference with their rights or interests.

Conclusion

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

P. J. G. Ware

Inspector

Annex

Conditions

1. There shall be no more than five pitches on the site and on each of the five pitches hereby approved no more than two caravans shall be stationed at any time, of which only one caravan shall be a static caravan or mobile home.
Reason: In the interests of controlling the scale of the development in terms of the character of the area.
2. No sheds or utility/day buildings, other than those hereby permitted, shall be erected on the site unless details of their size, materials and location have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
Reason: In the interests of controlling the scale of the development in terms of the character of the area.
3. No vehicle over 3.5 tonnes shall be stationed, parked or stored on the site
Reason: In the interests of the amenity of occupiers of the development and nearby residents.

APPEARANCES

FOR MR GEORGE CLEE

Mr Michael Rudd of Counsel, instructed by the Mr Matthew Green	
He called:	
Mr Matthew Green BA(Hons)	Director, Green Planning Studio
(The witness statements listed below were taken as read and not called of cross-examined)	

FOR DORSET COUNCIL

Mr Timothy Leader of Counsel, instructed by Mr John Holmes	
He called:	
Mr David Pickford BSc(Hons) MSc MRTPI	Associate Planner, Pegasus Group

INQUIRY DOCUMENTS

Doc 1	Appellant's opening submissions
Doc 2	Council's opening submissions
Doc 3	Council's letter of notification of the Inquiry
Doc 4	Adult site occupants (2/11/22)
Doc 5	Third Witness statement of Jim Smith junior
Doc 6	Third Witness statement of George Clee
Doc 7	Third Witness statement of William Varey
Doc 8	Third Witness statement of John Varey
Doc 9	Third Witness statement of Jim Smith senior
Doc 10	Council's closing submissions
Doc 11	Appellant's closing submissions
Doc 12	Costs application by the appellant
Doc 13	Council's response to the appellant's costs application
Doc 14	Appellant's response to the Council's costs response