



Appeal Decision

Hearing Held on 7 February 2023

Site visit made on 7 February 2023

by Matthew Jones BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2 March 2023

Appeal Ref: APP/P0119/W/21/3289677

Land at Bristol Road, Frampton Cotterell BS36 2AW

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73A of the Town and Country Planning Act 1990 (the Act) for the development of land carried out without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Mr Hegarty against the decision of South Gloucestershire Council.
- The application Ref P20/23933/RVC, dated 4 December 2020, was refused by notice dated 30 June 2021.
- The application sought planning permission for change of use of land to gypsy and traveller caravan site to facilitate the stationing of 5no. mobile homes and 5no. touring caravans with associated hard-standings and landscaping without complying with a condition attached to planning permission Ref PT16/3680/F, dated 10 April 2017.
- The condition in dispute is No 2 which states that:
The occupation of the site hereby permitted shall be carried on only as follows: Pitch 1: Mr James Hegarty, his wife and, their resident children. Pitch 2: Mr Jimmy Hegarty, his wife and their resident children. Pitch 3: Mr Richard Hegarty, his wife and their resident children. Pitch 4: Mr Connie Hegarty, his wife and their resident children. Pitch 5: Mr John Hegarty, his wife/partner and any future resident children.
- The reason given for the condition is: *The development is inappropriate within the Green Belt and has only been granted planning permission given the personal circumstances of Mr James Hegarty and his family; to accord with Green Belt Policy embodied within the NPPF and Policies CS5 and CS34 of The South Gloucestershire Local Plan : Core Strategy (Adopted) 11th Dec. 2013 and The 'Development in the Green Belt' SPD Adopted June 2007.*

Decision

1. The appeal is allowed and planning permission is granted for the change of use of land to gypsy and traveller caravan site to facilitate the stationing of 5no. mobile homes and 5no. touring caravans with associated hard-standings and landscaping without complying with conditions attached to planning permission Ref PT16/3680/F, dated 10 April 2017, but subject to the conditions in the attached schedule.

Procedural Matter

2. Prior to the Hearing, the Court of Appeal issued a judgement¹ (hereafter Smith) regarding the definition of the term 'gypsies and travellers' in the Planning Policy for Traveller Sites 2015 (PPTS), with specific reference to those who have permanently ceased to pursue nomadic lifestyles. The PPTS definition was found to be unlawfully discriminatory, with its main objective to make it harder

¹ Lisa Smith v SSLUHC & Ors [2022] EWCA Civ 1391

for elderly and disabled ethnic gypsies and travellers to obtain planning permission. I sought the views of the main parties as to the implications of this judgment before and during the Hearing.

Background

3. The site comprises a Gypsy and Traveller site in a paddock at the edge of the settlement of Frampton Cotterill, inside the Bristol/Bath Green Belt. In 2017, under Ref PT16/3680/F, permission was granted by the Council for its change of use to the Gypsy and Traveller site with the stationing of 5no. mobile homes, 5no. touring caravans and associated hard-standings and landscaping.
4. The land has been divided into five pitches, formed of hardstandings with static caravans and day rooms, and partly enclosed by close boarded timber fencing. The pitches are at the rear of the paddock, set back from Bristol Road to the south east, from which the site is accessed through a domestic style gateway with an associated visibility splay.
5. The scheme amounted to inappropriate development in the Green Belt but permission was granted because very special circumstances were deemed to exist. A contributory factor was the personal circumstances of the appellant, Mr Hegarty, and his family. Condition 2 of that permission subsequently restricted the occupation of the site to the Hegarty family.
6. The Hegarty family left in 2019 and the site is currently occupied by members of the O'Driscoll family. The appellant now wishes to vary condition 2 to retain the site as a permanent Gypsy and Traveller caravan site.
7. This would also necessitate the removal of condition 10. This condition requires the use of the site to cease, related materials and equipment to be removed, and the site to be restored to its former condition in the event the Hegarty family moved on.
8. The appeal is accompanied by just a site location plan. At the Hearing the appellant confirmed the intention to reuse the existing, previously approved, site infrastructure in the event I was minded to allow the appeal. I made my assessment on that basis.

Main Issues

9. Given such, I consider the main issues to be:
 - whether or not the development is inappropriate development in the Green Belt;
 - the effect of the development on the openness of the Green Belt;
 - the question of the need for Gypsy / Traveller sites;
 - the personal circumstances of the site occupiers; and,
 - if inappropriate development, 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 necessary to justify the scheme in the Green Belt.

Reasons

Whether or not inappropriate development

10. Paragraph 147 of the National Planning Policy Framework (the Framework) states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Policy CS21 of the Core Strategy (adopted 2013) (CS), amongst other things, states that proposals for sites within the Green Belt will only be acceptable where it can be demonstrated that very special circumstances exist.
11. The Framework sets out several instances where a development would not be inappropriate in the Green Belt. The appellant considers that the development would not be inappropriate under the terms of Paragraph 150 e), which relates to the change in the use of land provided it preserves the openness of the Green Belt and does not conflict with the purposes of including land within it.
12. However, the Framework must be read in conjunction with the PPTS. Whilst the latest iteration of the Framework postdates the PPTS, there is nothing in it to suggest it should supplant the PPTS in policy terms. Policy E of the PPTS is unequivocal that traveller sites in the Green Belt are inappropriate development. As such, the development is inappropriate development.

Openness

13. The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. The openness of the Green Belt has a spatial aspect as well as a visual aspect.
14. It has been suggested that the development does not affect openness as it is simply reusing the existing site infrastructure. However, given that the Hegarty family vacated the site in 2019, that infrastructure now exists in breach of planning control due to condition 10 of Ref PT16/3680/F. It has been explained that there is next to no prospect of the Hegarty family returning. It follows that the development should be assessed against the site as it stood, as open paddock, before it was developed following the 2017 permission.
15. The pitches are expansively proportioned, delineated by fencing which is generally modest in height, and the day rooms within them are small and cut a low profile, as do the static caravans. The site gateway also has a typically domestic scale. Given such, the development has had a limited effect on the spatial aspect of openness. The site relates closely to existing built form, including housing and a highly conspicuous trucking site. As the pitches are also set back from the public highway behind a long, dense hedgerow, there has been a similarly minor effect on the visual aspect of openness.
16. Consequently, whilst the development has led to a degree of encroachment into the countryside and also urban sprawl, I conclude that it has resulted in only limited harm to openness. Nonetheless, the Framework advises that substantial weight should be given to inappropriate development in the Green Belt and any other harm and thus that is the weight I apply in this case.

The need for gypsy / traveller sites

17. The PPTS requires Local Planning Authorities to make their own assessment of the need for traveller sites, to set pitch targets for travellers which address the

likely needs, and to identify a supply of specific deliverable sites sufficient to provide a 5-year supply of sites against their locally set targets.

18. The most recent need assessment published by the Council, a 2017 refresh of the 2013 Gypsy & Traveller Accommodation Assessment (GTAA), found a need for 61 pitches to 2032. During the Hearing the Council provided a copy of a Briefing Note (October 2022) to its members which sets out the Council's strategy to address gypsy and traveller provision.
19. The Note suggests that the current need is 52, but it is not clear if the permissions the Council considers have contributed to addressing the need are personal, temporary or permanent. The Note states that the number of pitches that came forward between 2017-2022 is below the target deemed necessary by the GTAA. At the Hearing the Council also accepted that, given Smith, the real need could possibly be larger than the 61 set out in the GTAA. It was further asserted by the appellant that some of the sites safeguarded by Policy CS21 may no longer be occupied by the applicable persons or at all.
20. The evidence as to the current situation is therefore not sufficiently clear. Given such, and for the benefit of my assessment, I have stood by the GTAA figure of 61, which was the figure accepted in recent appeal decisions nearby². It is common ground in any case that the unmet need is significant. There is no dispute that there is no 5-year supply of sites, the Council has accepted that no suitable, affordable acceptable alternative sites exist at all, and has agreed that these matters attract substantial weight in favour of the appeal.
21. Policy failure has also clearly been a persistent issue in South Gloucestershire, and I am led to believe over a long period approaching three decades. Indeed, earlier policy failure led the Council to be subject to a Direction from the Secretary of State to allocate sites by way of a Development Plan Document. This was intended to be adopted by 2011 but has not come to fruition.
22. Site allocations are now intended to be included within a policy of the emerging South Gloucestershire Local Plan (the eSGLP). Whilst the Briefing Note conveys that the Council is engaging with the provision of gypsy and traveller sites more proactively, it also sets out the practical issues the Council continues to face in doing so, and a wide range of work underpinning the policy approach that has yet to be undertaken. This work is contingent on a further refresh of the GTAA, but I understand that this process has not yet been completed.
23. For these reasons, the eSGLP attracts very little weight, given its stage of preparation. The Briefing Note offers little comfort that things will improve in the short to medium term at least, and it does very little to temper the substantial weight I attribute to the issue of policy failure in this case.

Personal Circumstances

24. The O'Driscoll family group residing at the site consists of three family units occupying respective pitches. It has been confirmed that they meet the PPTS definition of 'gypsies and travellers'. There are twelve children on site, some of whom are very young and/or enrolled in a school nearby. I have no reason to doubt that they are integrated into the school and benefitting from the education they are receiving. It is also clear that, if I were to dismiss the appeal, the most likely outcome for the people at the site would be a roadside

² Appeal Refs APP/P0119/C/20/3264071 and APP/P0119/C/20/3264072

existence. These personal circumstances are clearly compelling, and it is plainly in the best interests of the children for them to remain on site.

25. Furthermore, in the absence of immediately available or suitable alternative accommodation, dismissal of this appeal would amount to a breach of Article 8 of the European Convention on Human Rights in relation to respect for private and family life, and also of Article 1 of the First Protocol in relation to the protection of property, both as incorporated by the Human Rights Act 1998.

Other Considerations

26. I have found that the development would be inappropriate development that would harm openness. The Framework states that inappropriate development in the Green Belt should not be approved except in very special circumstances. It advises that 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.
27. The undisputed need for further sites for Gypsies and Travellers nationally, regionally and sub-regionally attracts significant weight. In South Gloucestershire, the unmet need for sites, the absence of a five-year supply, the limited prospect of a meaningful remedy anytime soon, the persistent record of policy failure, and the immediate unavailability of suitable alternative sites each amount to considerations of substantial weight.
28. The development would bring the site back into authorised use and secure five pitches to address need and supply on a permanent basis. The point was made that the propensity for decision makers to only grant personal permissions for Gypsy and Traveller sites in the Green Belt in South Gloucestershire has been a key factor in contributing to its longstanding policy failure, given that when the occupants leave or pass on, the sites lose their authorised purpose. I have sympathy with this argument, and it is a consideration of significant weight.
29. Approximately 75% of South Gloucestershire is within the Green Belt or otherwise constrained, and logically a high proportion of the remaining land will already be built up. It was agreed between the main parties that this means that, when sites are sought to be allocated, a quantum will invariably be selected within the existing Green Belt. The Council also agreed during the Hearing that the appeal site would be a good candidate for allocation at that stage. This is a consideration to which I also attribute significant weight.
30. The relevant positive aspects of the appeal site deserve further focus. It is at the edge of the settlement, with good access to the range of services and facilities within Frampton Cotterell. The restrained deployment of boundary treatments around the pitches means that they are open, albeit just noticeable, to the extent that there is no impression that the site and its occupants are deliberately isolated from the rest of the community. In fact, the opposite impression is given. This attracts moderate weight, as does the site planning history, and the fact that this site is immediately deliverable.
31. I also attribute significant weight to the personal circumstances of the O'Driscoll family, specifically the benefits of a settled base for the children present on the site, with particular reference to their educational needs.
32. I have balanced the harm to the Green Belt including the loss of openness against these considerations. In doing so I recognise that the PPTS 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. But the word unlikely does not mean never, and it is also common ground that it is not always necessary to rely on personal circumstances when granting permission in the Green Belt.

33. In my view, the other considerations before me are of such magnitude and weight that they combine to form very special circumstances. Indeed, this is before the personal circumstances of the site occupiers are accounted for. They clearly outweigh the harm to the Green Belt by reason of inappropriateness and loss of openness. Consequently, I conclude that the development accords with Policies CS5, CS21 and CS34 of the CS and the Framework insofar as they address inappropriate development within the Green Belt.

Other Matters

34. The site is close to a crossroads where I am told there have been accidents. However, the site access arrangement was accepted by the highway authority in concert with the Council in relation to the 2017 permission. There is no substantive evidence or record of accidents associated with its use since 2017. I am therefore satisfied that the site access is not manifestly unsafe.

Conditions

35. Consequently, the appeal should be allowed, and a new planning permission granted without the disputed conditions but retaining those non-disputed conditions from the previous permission insofar as relevant. I have considered the conditions suggested by the Council and as discussed at the Hearing.
36. A time condition is not required as the development is in situ, A condition is necessary to specify the site location plan in the interest of certainty. Given that this is the only plan before me, a condition is also needed to incorporate the existing site infrastructure in relation to this permission. This can be done through the agreement of a 'Residential Caravan Site & Detailed Landscape Plan'. For the same reasons, conditions will remain to preclude commercial activity, to control lighting and restrict vehicles on the site to those under 3.5 tonnes in weight. In the same terms, a condition is necessary to restrict the number of pitches and caravans on the site to the quantum applied for.
37. To secure the site as a gypsy and traveller site in land use terms it is essential that its occupants are required to meet the PPTS definition, albeit expanded to incorporate those who have permanently ceased to travel in line with the Smith judgment. As I have found the development to be acceptable on a permanent basis, there is no reasonable requirement for the land to be restored to its former condition at a later stage. However, to ensure that drainage infrastructure is retained on site to an acceptable specification, a foul and surface water drainage condition does need to be reimposed.

Conclusion

38. For the reasons outlined above, and taking all other matters raised into account, I conclude that the appeal should be allowed.

Matthew Jones
INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Dr Angus Murdoch

Agent

FOR THE LOCAL PLANNING AUTHORITY:

Mr Roger Hemming

Senior Planning Officer

INTERESTED PERSONS

Mr Michael Oates

Local Resident

Mrs Sally Oates

Local Resident

DOCUMENTS SUBMITTED DURING THE HEARING

1. Briefing Note to Members (October 2022)

Schedule of Conditions

- 1) The development hereby permitted shall be carried out in accordance with the following approved plan: TDA.2028.03.
- 2) Within three months of the date of this decision, a 'Residential Caravan Site & Detailed Landscape Plan' shall be submitted to the Local Planning Authority. It shall include details of: (i) the layout of the 5 pitches (ii) areas for vehicular parking and turning, (iii) all soft and hard landscaping (iv) a 5-Year Landscape Maintenance Scheme, and (v) all means of enclosure. The development shall be carried out and retained in accordance with the details so approved. The soft landscaping shall be implemented in the first available planting season following this decision and thereafter maintained in accordance with the 5-Year Landscape Maintenance Scheme.
- 3) No commercial activities shall take place on the land the subject of this consent, including the storage of materials.
- 4) Details of any external lighting to be installed shall be submitted to and approved in writing by the Local Planning authority. The lighting shall be installed in accordance with the details so approved.
- 5) No vehicle over 3.5 tonnes shall be stationed, parked or stored on the land the subject of this consent.
- 6) The visibility splay of 2.4m set back by 120m to the north nearside carriageway edge shall be maintained at all times with no obstruction within the splay above 0.9m in height. The first 8 metres of the access shall be retained in a bound surface material.
- 7) There shall be no more than 5 pitches on the land the subject of this consent and, within the individual pitches hereby approved, no more than two caravans (as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 as amended) shall be stationed at any time, of which only one shall be a static caravan.
- 8) 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.
- 9) Within three months of the date of this decision, a surface and foul water drainage scheme for flood prevention; pollution control and environmental protection shall have been submitted to and approved by the Local Planning Authority. The development shall proceed in accordance with the approved drainage scheme which shall be retained as approved.