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## Appeal Decisions

Site visit made on 8 February 2023

**by Andy Harwood CMS MSc MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 26 April 2023**

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### **Appeal A Ref: APP/K0425/C/21/3283090**

#### **Land at 5 Pendles Paddocks, Marlow Road, Stokenchurch, Buckinghamshire HP14 3UW**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Luxury Caravans Limited against an enforcement notice issued by Buckinghamshire Council.
  - The notice was issued on 5 August 2021.
  - The breach of planning control as alleged in the notice is without planning permission, the erection of a detached building.
  - The requirements of the notice are to:
    - 1) Demolish the building (outlined in blue on the attached plan);
    - 2) Remove from the Land (shown in red on the attached plan), all materials and debris resulting from carrying out step 1 of this Notice.
  - The period for compliance with the requirements is: 3 months.
  - The appeal is proceeding on the grounds set out in section 174(2)(a), (e) and (f) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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### **Appeal B Ref: APP/K0425/W/21/3280865**

#### **5 Pendles Paddocks, Marlow Road, Stokenchurch HP14 3UW**

- 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 Luxury Caravans Ltd against the decision of Buckinghamshire Council.
  - The application Ref 21/06095/FUL, dated 8 April 2021, was refused by notice dated 25 June 2021.
  - The development proposed is described as the "construction of building for Class E(d)/E(f)/E(g) use, incorporating leisure and fitness use for residents and guests of Pendle Paddock."
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### **Appeal A Decision**

1. Appeal A is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the erection of a detached building at land at 5 Pendles Paddocks, Marlow Road, Stokenchurch, Buckinghamshire HP14 3UW as shown on the plan attached to the notice and subject to the following condition:
  - 1) The development hereby permitted shall only be used for purposes ancillary to the residential occupation of the Pendles Paddock Gypsy and Traveller site.

## **Appeal B Decision**

2. The appeal is allowed and planning permission is granted for construction of a building for Class E(d)/E(f)/E(g) use, incorporating leisure and fitness use for residents and guests of Pendle Paddock at Land at 5 Pendles Paddocks, Marlow Road Stokenchurch HP14 3UW in accordance with the terms of the application, Ref 21/06095/FUL, dated 8 April 2021, subject to the following condition:
  - 1) The development hereby permitted shall only be used for purposes ancillary to the residential occupation of the Pendles Paddock Gypsy and Traveller site.

## **Preliminary Matters**

3. I have taken the description of the development in Appeal B from the planning application form as I am obliged to do. The description on the decision notice is different but it is not clear how that has come about or whether the change was agreed by the appellant. Reference to the classes from Schedule 2 of the Use Classes Order<sup>1</sup> in both versions of the descriptions in my view from the evidence submitted, are however mis-leading.
4. The original supporting statement submitted with the planning application and other documents such as the Parking statement<sup>1</sup> refer to the proposals being "only to accommodate a use for residents of the site and their bone fide guests". The stated purposes on the application form are Part A, Class E(d) for "indoor sport, recreation or fitness"; E(f) for "medical or health services, principally for visiting members of the public...."; E(g) for "an office", "research and development" or "any industrial process". The Council's description also included Part B, Class F.1(a) for "the provision of education". However, whilst the building is proposed for those types of general activities, it is clear from the submissions that the building is to be used only for residents and some guests rather than members of the public. It is not proposed to involve a separate, materially different use of part of the site and as such is a general building to be used ancillary to that existing use.

## **Appeal A Ground (e)**

5. To succeed on this ground, it is necessary for the appellant to demonstrate that copies of the notice were not served as required by s172 of the Act. Section 172(2) in particular requires that a copy of an enforcement notice shall be served: (a) on the owner and on the occupier of the land to which it relates; and (b) on any other person having an interest in the land, being an interest which, in the opinion of the authority, is materially affected by the notice. However, even if copies were not served as required, by reason of s176(5) of the Act, I can disregard that fact if neither the appellant nor the person who required service have not been substantially prejudiced by that failure.
6. The appellant company states that the address used for service on them was incorrect and was a previous address registered with Companies House. It is not stated whether or not the copy served at that address was forwarded to them at their current registered address. Further copies of the notice were served at the site address on the owners and occupiers.

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<sup>1</sup> The Town and Country Planning (Use Classes) Order 1987

7. The notice was issued on 5 August 2021 and those with a relevant interest therefore had until 1 October to submit the appeal. The appeal forms are dated 16 September 2021. Between service and lodging of the appeal, the appellant company sought advice and instructed a professional to deal with the case on their behalf. The case was then submitted well before the 1 October deadline. Any defects in service did not apparently cause any problem in submitting the appeal or preparing the case. I have not been made aware of any other person who should have been served with a copy or made aware of the notice in case they wished to appeal.
8. It has not therefore been explained by the appellant why any lack of service upon anyone has caused any prejudice to them or any other party. As such the appeal on ground (e) fails.

## **Appeal A Ground (a) and Appeal B**

### *Main Issues*

9. The appeal site is in the Green Belt. The National Planning Policy Framework (the Framework) states that the construction of new buildings should be considered as inappropriate in the Green Belt. There are some exceptions to this. One of the exceptions, contained in paragraph 149(d) of the Framework, is the replacement of a building, provided the new building is in the same use and not materially larger than the one it replaces. Another exception which is proffered by the appellant as being relevant in this case is the "limited infilling or the partial or complete redevelopment of previously developed land" as set out in paragraph 149(g) of the Framework. That exception is qualified as development that would not have a greater impact on the openness of the Green Belt than the existing development or would not cause substantial harm to the openness of the Green Belt.
10. Policy DM42 of the Wycombe District Local Plan, adopted August 2019 (LP) states that development in the Green Belt is inappropriate unless, amongst other things, it is development classified by the Framework as not inappropriate and then subject to a number of further criteria [as set out in paragraph b) i. to v.]. It also confirms a similar approach as the Framework whereby inappropriate development will be refused unless there are very special circumstances.
11. The first main issue is whether the development is inappropriate development within the Green Belt having regard to the framework and relevant policies within the LP including the effect of the proposal on the openness of the Green Belt. The second main issue is the need for the development for the occupiers of the site including any resident children. The final main issue is, if the development is 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 required to justify the proposal.

### *Reasons – Whether inappropriate including openness*

12. There is no dispute that the appeal site is a lawful gypsy and travellers' site. This includes a substantial number of static caravans which are positioned within plots partly sub-divided by fencing. The caravans are positioned along the western side of the site which is at a lower level than the carriageway of

the B482 to the west but which is substantially higher than the M40 which is close to the eastern boundary of the appeal site.

13. The building is a large, approximately 'L' shaped, flat-roofed structure which has been partially constructed between caravan plots and close to the western boundary of the appeal site. The structure as confirmed by the plans that were submitted with respect to Appeal B, show a building that is over 3m in height for its full extent, around 27.5m at its longest part with the shorter part being 12.6m, with the widest part at the base being approximately 15m and the narrower part nearly 8.5m wide.
14. As a general principle it is reasonable to consider the current building as a replacement for what previously existed. However, I have been given no details about the dimensions of the previous building that the current building has been built to replace or the circumstances about when the previous structure was removed. The appellant acknowledges that the previous building was of a "smaller dimension" but no precise measurements are given. I can see from the base-map submitted with the planning application that the footprint of the previous building appears significantly smaller than the present building. Even if there has not been a change to the ancillary nature of the building from the previous one, from the evidence provided it would appear to be substantially larger. Given that the building is materially larger than the building that it has replaced, it cannot comply with the exception to being inappropriate development within paragraph 149(d) of the Framework.
15. The building takes up a greater amount of space on the ground. Consequently, it also takes up a greater volume of space above the ground as well. When I was on site, the bulk of the structure is very noticeable and where the ground level slopes down towards the eastern part of the building, the amount of under-build to keep the internal floor level, emphasises this bulk.
16. The effects upon openness can be considered to have a visual and spatial quality. The appeal site is well screened from the west and east by both vegetation including a tall band of trees including evergreen and deciduous species on both boundaries as well as high, solid timber fences. The building cannot readily be seen outside of the site but even though it is surrounded by the fences and caravans within the adjoining plots, it is prominent within the site. Although it is seen primarily by the people who may be entitled to use the facilities provided within it, this does nevertheless lead to a greater amount of development on the site that will be noticeable by them and visitors. As such it appears from information provided that the site has become more urbanised and that the building has resulted in a loss of openness.
17. The building is materially larger than the one it replaced and also has a greater impact upon openness of the site and therefore the GB. None of the exceptions from paragraph 149 of the Framework are applicable and in relation to the first main issue, the development is therefore inappropriate development within the GB having regard to the framework and LP Policy DM42. There is limited harm to openness but nevertheless I am required by the Framework to give substantial weight to any GB harm.

#### *Needs of the residents*

18. I have been provided with very little detail about the numbers of occupants of the site or the number of children or any specific educational needs. However,

there are a substantial number of static units on the site and very few amenities that would allow for community uses or even for playing outside other than in areas where vehicles circulate and park. The site can clearly accommodate a substantial number of families. The appellant has referred to their status as part of the Gypsy, Roma and Traveller (GTR) community and the Council throughout the submitted documents does not dispute this.

19. When I visited I noticed that the site is also affected significantly by the noise from the very close proximity of the M40 along the eastern side. Whilst my visit was only a snapshot in time, it seems very clear that this is a very busy road and despite the high fencing around the site, the noise permeates into the site which affects the external areas.
20. The appeal site is located in the rural area that is detached from the nearest built-up part of Stokenchurch. I could see from travelling through the village that it has a range of facilities although the site is a substantial distance from where I saw most of these. The Council's highway consultee describes the location as being relatively remote from the closest settlements of Stokenchurch, Ibstone and Cadmore End. The footpaths leading towards the nearest part of Stokenchurch do not lead directly from the site and they start close to the bridge over the M40. To walk into the village would require the initial navigation over the uneven grass verges and there is no street-lighting to assist safety other than directly next to the site entrance. The Council has specifically referred to a community centre with Stokenchurch although I am not told where it is or what facilities it provides. The other settlements are even more distant and poorly connected to the site.
21. The building would be used for sports and fitness training, including for boxing. I saw that the even though it is not completed, punch bags were hanging from the ceiling. It would also provide a useful space for various needs of the community within the lawful gypsy site including for the education of children. The Council acknowledges that whilst also drawing attention to schools being available in the wider area. Stokenchurch includes primary and nursery education facilities with secondary and further education being within nearby towns including High Wycombe and Marlow. These facilities are a substantial distance away from this site however. This facility would provide a useful sheltered facility for a variety of purposes. Use would be away from the site traffic and the disturbance of the adjoining roads as well as being easily accessible by those who live on the site, particularly those who are too young to drive to facilities elsewhere and for those for whom walking would not be sufficiently safe particularly outside of daylight hours.
22. The appellant has provided the document "Improving the Education Outcomes for Gypsy, Traveller and Roma Pupil" produced by the Traveller Movement in February 2015. This refers to the poor education attainment, high dropout rates as well highest rates of any group in terms of exclusions. The appellant refers to various government pilot programmes since 2021 aimed at re-balancing these amongst other matters. Other documents referred to but which the Council doesn't comment upon refer to the inadequate access to services as being a factor that contributes to poor health within the GTR community.
23. This site includes a considerable number of plots in a small enclave remote from other facilities, occupied by families within the GTR community whose

needs will vary over time. However, even though evidence about existing needs is limited, it is reasonable in my view to accept that there will generally be a significant number of families, many with younger people and children on the site as well as adults who may benefit from having the building in close proximity for formal and informal community purposes. This will help in terms of assisting in overcoming educational disparity of children on the site as well as the health and wellbeing of other residents. As such, in relation to this main issue, there is a significant need for the development for the occupiers of the site including any resident children. The Planning Policy for Traveller Sites refers when planning for GTR sites to the need to promote healthy lifestyles and play areas for children.

*Overall planning balance and very special circumstances*

24. National planning policy attaches great importance to Green Belts. Therefore, when considering any planning application substantial weight should be given to any harm to the Green Belt. The development is inappropriate in the Green Belt.
25. Article 3(1) of the United Nations Convention on the Rights of the Child provides that the best interests of the child shall be a primary consideration in all actions by public authorities concerning children. The building within the site will enable children to be educated at all ages informally and more formally for reasons set out above. I attach considerable weight to the improvements that the building will make to the education of a significant number of children at the large permanent site.
26. In exercising my function on behalf of a public authority, I am required to have due regard to the Public Sector Equality Duty (PSED) contained in the Equality Act 2010, which sets out the need to eliminate unlawful discrimination, harassment and victimisation and to advance equality of opportunity. The GTR community are an ethnic minority and race constitutes a relevant protected characteristic for the purposes of PSED. Given the remote location of the site from other community facilities and lack of such facilities on the site, the development would advance the equality of opportunity for residents now and in the future. I consider that this should also be given considerable weight in favour of the proposal.
27. The substantial weight against the development due to the Green Belt harm is clearly outweighed by these other positive benefits of the development. As such, the very special circumstances necessary to justify the development have therefore been demonstrated. As such, the development complies with LP Policy DM42 and the Framework.

**Conditions**

28. The Council has suggested a planning condition requiring the development is built in accordance with the submitted plans unless they agree to changes. The building is a long way towards being completed with the walls and roof erected. Some of the apertures remain open with few doors and windows installed. Given this advanced stage towards completion, I consider a condition relating to this is unnecessary.
29. The Council's highway experts have suggested other conditions. The first would require that the building is used only for ancillary purposes to the

properties within the site. Whilst use beyond ancillary purposes may well be a breach of planning control, given the way in which the application was made with respect to the references to Use Classes, it could be open to interpretation as to whether the approval would permit a building for general public use within those classes. To overcome this ambiguity, I consider that it is necessary to attach a condition and I have simplified this to require that the use is limited to purposes that are ancillary to the use of the site. I agree that a general community and education use could lead to increased traffic into and out of a junction with Marlow Road which has limited visibility on exiting. However, given the imposition of this condition, a further condition regarding parking is unnecessary because the use will not result in additional vehicles due to the ancillary nature of the use.

### **Conclusions**

30. For the reasons given above, I conclude in respect of both appeals, the development complies with the development plan as a whole.
31. Appeal A succeeds on ground (a). I shall grant planning permission for the erection of a detached building as described in the notice. The appeal on ground (f) does not therefore fall to be considered.
32. Appeal B also succeeds.

*Andy Harwood*

INSPECTOR