



Appeal Decision

Site visit made on 16 May 2023

by Graham Chamberlain BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 May 2023

Appeal Ref: APP/M1595/W/22/3300422

Land at the western end of Fort William Road, Vange, Essex, SS16 5JX

- 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 M Ward against the decision of Thurrock Borough Council.
 - The application Ref 21/01781/FUL, dated 15 October 2021, was refused by notice dated 10 December 2021.
 - The development proposed is described as 'change of use of land to residential use for the stationing of 1 No. residential static caravan and dayroom, storage of hardcore and upgrading of existing access. Retention of use of land for storage of 1 No. touring caravan and standing of field shelter'.
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Decision

1. The appeal is allowed, and planning permission is temporarily granted for the change of use of land to a single residential pitch and upgrading of existing access, in accordance with the terms of the application, Ref: 21/01781/FUL, dated 15 October 2021, subject to the conditions set out in the attached schedule.

Preliminary Matters

2. During my site visit I observed that the appeal site is currently an operational pitch with the mobile home occupied.
3. What has occurred on site has some significant differences to the scheme detailed on the drawings. The protection zone for the Site of Special Scientific Interest (SSSI) has been given over to a hard-core base and is being used as a small storage yard. The parking area shown on the plans to the front of the mobile home is a patio that links this caravan with a utility building. The utility building is not, however, as shown on the drawings and a dog kennel has also been erected. There was no field shelter on site to 'retain'. Much of the site has also been enclosed by close boarded fencing.
4. I have based my assessment of the proposal on the submitted drawings, as this is the scheme before me. Throughout my decision I have referred to the effects that the proposal would have, rather than those the existing development is having, because of the discrepancies between the submitted drawings and what has taken place on site.
5. Within his submissions the appellant has confirmed that he has withdrawn the proposed day room from the application and intends to use a small mobile utility unit. I have accepted this change as no party would be prejudiced by this alteration. As a result, the scheme before me involves the change of use of the site to a single residential pitch and the construction of an access track.

The change of use would facilitate the stationing of a mobile home on the site and for a touring caravan to be kept there between periods of travelling as well as a mobile utility unit. The description in my formal decision reflects this.

Main Issues

6. The planning application form states that the method of foul drainage is unknown. As a result, the Council's second reason for refusal outlines a concern that foul drainage from the appeal site may not drain to a public sewer, and that this may lead to pollution of the water environment. However, the appellant's agent has stated that Anglian Water have confirmed that the appeal site can connect to a public sewer. The Council has not addressed this point in a statement or otherwise disputed it. Accordingly, the submissions before me indicate that there would be no conflict with Policy PMD1 of the LDF¹ and therefore I have not considered this matter any further as a main issue.
7. The parties agree that the appeal scheme would be inappropriate development in the Green Belt. This is because the appeal scheme is not any of the types of development listed as an exception in Policy PMD6 of the LDF. Moreover, Paragraph 16 of the Planning Policy for Traveller Sites (PPTS) confirms that traveller sites are inappropriate development. When applying Paragraph 150 of the more recent National Planning Policy Framework (the 'Framework'), it is apparent the proposed change of use would not preserve the openness of the Green Belt. As a result, the main issues in this appeal are:
 - The effect of the proposed development on the openness and purposes of the Green Belt;
 - Whether there has been intentional unauthorised development; and
 - If the proposal would be inappropriate development in the Green Belt, whether the 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 it.

Reasons

The effect on the openness and purposes of the Green Belt

8. Aerial photographs demonstrate that the appeal site encompasses roughly half of a small paddock that was previously given over to grass and contained a small field shelter. Consequently, the appeal site was generally free from development and rural and open in appearance before the pitch was established. This would have been all the more so when viewed in combination with the ancient woodland to the immediate north of the appeal site.
9. The proposed pitch would incorporate extensive areas of hard standing and fencing, a mobile home, a mobile utility unit, a garden and vehicles such as a touring caravan. The proposal would also generate residential activity such as regular comings and goings. The proposal would therefore harmfully erode the openness of the Green Belt by introducing residential development and paraphernalia onto land that was largely an undeveloped paddock. For these reasons it would not safeguard the countryside from encroachment and would therefore undermine one of the five purposes of the Green Belt.

¹ Thurrock Local Development Framework Core Strategy and Policies for the Management of Development 2015

10. That said, the appeal site is a contained parcel of land located between residential development and a large site granted approval for thirty-one custom built houses. This area is a redundant garden nursery and contains the remnants of this use including storage containers and other paraphernalia. The appeal site therefore has the appearance of an infill plot at the end of a small residential cul-de-sac rather than a strident incursion into open countryside.
11. Moreover, there is a discernible cluster of residential development along Bells Hill Road. The appeal scheme would relate well to this cluster of development and appear recessive due to the modest size of the mobile home relative to nearby properties
12. As a result, the appeal scheme would spatially encroach into the countryside but the visual impact of doing so would be limited due to the contained nature of the site. Moreover, the spatial impact would also be notably tempered by the presence of development on three sides and the scheme's modest size relative to this. Overall, the proposal would have a limited adverse impact on the openness and purposes of the Green Belt.
13. In conclusion, the Framework advises that openness is an essential characteristic of the Green Belt, the fundamental aim of which is to keep land permanently open. The harmful loss of openness that would be caused by the appeal scheme would be at odds with this fundamental aim. The proposal would also undermine the purpose of the Green Belt to check unrestricted sprawl. Nevertheless, for the reasons given the adverse impacts of the proposal on the openness and purposes of the Green Belt would be limited.

Other harm

14. The establishment of a pitch at the appeal site without planning permission amounts to intentional unauthorised development. As such, the 2015 ministerial statement is relevant². The works have resulted in extensive areas of hard standing being laid, and fences and gates being constructed. Even an extensive patio has been laid and the mobile home has been positioned on a brick base, as has the mobile utility unit. As such, some physical damage to the land has occurred and this may prove difficult to remediate. Indeed, the construction of a yard area between the mobile home and the SSSI, described on the plans as a protection zone, is egregious. The mobile home could easily be taken off the site as could any vehicles, but removing the built features and returning the site to a paddock would be more difficult. By way of mitigation, the appellant had limited options in respect of accommodation and has sought to regularise the situation through a planning application.
15. Nevertheless, the works undertaken have gone well beyond what is necessary to establish a temporary home pending the outcome of the application. Overall, the undertaking of intentional unauthorised development adds moderate additional weight as a material consideration against the proposal.

Other considerations

16. The PPTS states that local planning authorities should set pitch targets to address the likely accommodation needs of Gypsies and Travellers in their area that meet the PPTS definition. It also states that local planning authorities

² Green Belt Protection and Intentional Unauthorised Development 2015

- should identify and update annually a supply of specific deliverable sites sufficient to provide five years' worth of supply against their locally set target.
17. Policy CSTP3 of the LDF sets a target of 87 additional pitches for the period 2006-2021. The policy then goes on to explain that the Council will refresh its Gypsy and Traveller Accommodation Assessment (GTAA) to assess the evidence of need for the period from 2021-2026/7 and shall identify further pitch provision to meet any such need through site specific allocations. The 2018 GTAA estimates a need between 2016 and 2033 of 10 permanent pitches for households which meet the PPTS definition, 37 pitches for those that do not but wish to live in a caravan and 38 pitches for those whose status against the definition is unknown.
 18. The Council seem to be relying on the 10-pitch figure, with an allowance for some need from 'unknowns', as its locally set target. However, this figure has not been independently tested and I am not aware of it being subject to public consultation. This is important, as it would provide Gypsies and Travellers with an opportunity to challenge the findings of Opinion Research Services (ORS), the authors of the GTAA, so that ORS are not the sole arbiters of who meets the definition. There may for example, be instances where need has not been accurately recorded.
 19. Therefore, I am not satisfied the Council has a robust locally set target against which the supply of specific deliverable sites can be measured. Nevertheless, even if I were to accept that the findings of the GTAA can function as a locally set target, the Council has confirmed that it is not currently able to identify a supply of sites/pitches to meet an ongoing five-year supply.
 20. The failure to demonstrate a five-year supply of pitches should be considered in the context that the need could be greater than that set out in the GTAA. In this respect, there are around 118 occupied pitches in the Borough, but ORS were only able to interview 51 households (43%). This has resulted in a situation where the Gypsy and Traveller status of a high number of occupants is 'unknown'. As a result, some of these households may require a specific Gypsy and Traveller pitch pursuant to the PPTS as opposed to Paragraph 62 of the National Planning Policy Framework (the 'Framework').
 21. ORS suggest that when applying national average data, 10% of the 'unknowns' are likely to meet the PPTS definition. However, ORS found from its own survey work that 16% of those in the Borough that were interviewed met the PPTS definition and 23% across Essex. Furthermore, the appellant submits that ORS now use a figure of 30% or more in any event, and this is not disputed by the Council. The 10% figure therefore seems low. The additional need from unknowns based on 10% meeting the definition was 4 pitches so a need based on 30% would be 12 pitches. Notwithstanding this, many of the 'unknowns' were on temporary or tolerated sites, which are more likely to be nomadic Gypsies and Travellers. The need may consequently be higher.
 22. Moreover, recent case law³ has confirmed that the exclusion of those who have ceased to travel on account of old age or disability from the planning definition of a Gypsy and Traveller in the PPTS indirectly discriminates against elderly and disabled Gypsies and Travellers in an unjustified way. As a result, the discrimination that occurs on account of the definition is unlawful.

³ Lisa Smith v. Secretary of State for Levelling Up, Housing & Communities [2022] EWCA Civ 1391

23. Consequently, there is considerable doubt whether the findings in the GTAA should be taken as an accurate reflection of need, as they may be based on discrimination. Put another way, the need could be higher if the definition in the PPTS had not been discriminatory and factored in those that have ceased to travel due to old age or disability. Indeed, the judgement referred to a drop of almost 75% in pitch provision because of the change in the PPTS definition in 2015. As a result, the indications are that if discrimination is not to occur then unmet need from 'unknowns' and those found not to meet the PPTS definition should be reinvestigated.
24. Accordingly, the need could be notably higher than that identified in the GTAA. The appellant suggests, with some justification, that need between 2016 -2021 could have been as high as 38 pitches but with only 7 approved in that time.
25. The mismatch between need and supply is further evidenced by the appellant's submission that there is no alternative accommodation available for nomadic Gypsies and Travellers, which is not something the Council has challenged. For example, there is nothing before me to suggest there is space at Council owned sites. I also understand that recently approved pitches have been for personal permissions and would therefore be generally unavailable. Bricks and mortar housing is unlikely to be an option.
26. The target of 87 additional pitches between 2006-2021 was based on a revoked regional strategy. It has not been formally replaced with a new target based on up to date and tested evidence. Policy CSTP3 sets out an intention to allocate pitches in a Site-Specific Allocations Development Plan Document but work on this was suspended some time ago due to the preparation of a new local plan. There is no evidence before me setting out what progress the Council has made in identifying sites that can be allocated for new pitches and whether such sites would be outside the Green Belt. Moreover, the timetable for the adoption of the local plan has persistently slipped.
27. As a result, the indications are that there has been a failure of policy. Nevertheless, the Council are working towards the adoption of a new local plan in the next couple of years and a new GTAA is anticipated shortly. As a result, some progress is being made.
28. That said, in the interim Gypsies and Travellers (who have the protected characteristic of race under s149(7) of the Equality Act 2010) are put in a very difficult position in seeking to identify homes. This perpetuates inequality of opportunity in respect of housing. I need to consider such a matter with reference to the duty I have under Section 149 of the Equality Act 2010 to give due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and those who do not. This includes minimising the disadvantages connected to that characteristic. The equality implications weigh in favour of the proposal.
29. In the context set out above, the proposed pitch would modestly help to address the shortfall in pitches and equality implications flowing from this. It is therefore an important factor in favour of the proposal.
30. Paragraph 13 of the PPTS states that traveller sites should be sustainable economically, socially and environmentally. The approval of the proposed pitch would provide a settled base which would enable future occupants the ability to balance a traditional travelling lifestyle with the practical realities of modern

living. It would also facilitate peaceful co-existence with the local community because the residents of the pitch could become positively involved in local life. In this way integration could gradually take place over time through incidental communication.

31. In addition, the pitch would provide a stable base from which future occupants could access health and education and would provide quick and convenient entree to the A13 and thus the national road network. This would facilitate the traveller way of life. The pitch would also provide good living conditions and thus foster health and wellbeing.
32. The wider sustainability benefits advocated in the PPTS that would be secured by providing a pitch at the appeal site weighs moderately in favour of the proposal, especially as it would not be away from, or dominate, the nearest settlement or even the cluster of dwellings along Bells Hill Road.
33. Furthermore, it is of note that the Council has not sustained any allegation regarding a conflict with criteria (i) to (x) in Policy CSTP3. In particular, there is no suggestion the proposal would harm the character and appearance of the area, highway safety or residential amenity. The pitch is also within walking and cycling distance of several facilities including public transport, a hospital and a school. The absence of a policy conflict in these respects is indicative of the limited impact of the proposal.
34. Despite the limited evidence provided, there is no dispute that the appellant leads a nomadic habit of life and therefore meets the definition in the PPTS. He previously lived at his father's site, but the temporary permission expired in 2014. It is tolerated by the Council, but this situation could change. It is unclear what alternatives the appellant has explored, but there is no dispute between the Council and appellant as to the absence of alternative pitches. As a result, the appellant is in accommodation need. It is unclear where he would go if the appeal were dismissed.
35. The appellant has also made the point that he is a talented boxer and is recovering from surgery following an injury. He submits that he needs a settled base to aid the recovery. However, no medical evidence has been provided to corroborate this. It is essential to provide such in the interests of transparency if this is a point to be given more than very limited weight.

Whether there would be very special circumstances

36. Policy PMD6 of the LDF explains that development in the Green Belt will be assessed in accordance with the provisions of the Framework. The Framework states inappropriate development in the Green Belt should not be approved except in very special circumstances. The Framework confirms 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.
37. The appeal scheme would be inappropriate development that would, by definition, harm the Green Belt. It would also result in limited harm to the openness and purposes of the Green Belt. Paragraph 144 of the Framework requires substantial weight to be given to any harm to the Green Belt. In addition, the intentional unauthorised development carries moderate weight against the proposal.

38. Balanced against this, it is apparent that the Council are currently unable to demonstrate a five-year supply of sites and the shortfall could be greater than suggested. There has also been a policy failure. This has resulted in a shortage of accommodation meaning the appellant currently has no alternatives. The provision of a pitch would address the accommodation needs of the appellant, ensure that he doesn't need to leave his current home and facilitate a traditional way of life. The pitch would also have several sustainability benefits, but this is to be expected from a well-planned proposal.
39. However, the PPTS specifically advises that unmet need and personal circumstances are unlikely to establish very special circumstances. It also indicates the preference for a strategic planned approach to pitch provision in the Green Belt. Accordingly, and as things stand, the benefits of the proposal do not outweigh the substantial weight I must give to the cumulative harm identified above.
40. Nevertheless, the PPTS states that if a local planning authority cannot demonstrate an adequate supply of deliverable sites, then this should be a significant material consideration when considering applications for the grant of temporary planning permission. A specified exception to this is when a site is in the Green Belt though. That said, a temporary permission would reduce the harm to the Green Belt. It would also enable the Council to review the need and supply of pitches, which could include the adequacy of the appeal site in the long term.
41. The Council has indicated a period of five years in their list of suggested conditions. This would be reasonable given the lack of alternatives. There is also a realistic prospect circumstances would be different at the end of this period because site allocations could be in place through the adoption of the new local plan.
42. A temporary permission would be a proportionate response that balances the qualified Article 8 Human Rights of the appellant for respect of private and family life and home, with the proper planning of the area and its economic well-being, including the protection of the environment.
43. Protecting the Green Belt is a matter of great importance to the Government, and I have considered the proposal with this in mind. However, in this instance, the temporary approval of the proposal for five years would reduce the harm to the point where the other considerations identified would outweigh it. Accordingly, the very special circumstances necessary to justify the development on a temporary basis have been demonstrated and therefore a conflict with Policies CSSP4 and PMD6 of the LDF, and Paragraph 148 of the Framework, would not occur.

Other Matters

44. Several other appeal decisions have been referred to including the recent permeant grant of a pitch in the Borough (APP/M1595/W/20/3255502). I have considered these decisions albeit without the full details before me. That said, the appeal turns on the specific circumstances of the case as they currently stand and the evidence before me. It is on that basis that I have arrived at my conclusions.

45. The appeal site is located within a 'zone of influence' placed around the Essex Coast sites as established in the Essex Coast Recreational Disturbance Avoidance and Mitigation Strategy (Essex RAMS). Natural England are of the view that population growth resulting from new residential development within this zone would likely result in an increase in harmful recreational disturbance at the Essex Coast sites. This opinion is supported by the evidence summarised in the Essex RAMS.
46. The appeal site is located very close to the Langdon Hills Country Park and therefore it is unlikely future occupants would regularly travel further afield for recreation, especially dog walking. Nevertheless, when following a precautionary approach, I cannot discount the risk that the proposal, in combination with other plans and projects, would be likely to have a significant adverse effect on the habitats of the Essex Coast. Hence, an appropriate assessment, in accordance with the Habitat Regulations⁴, is required to consider the implications of the proposal on the Essex Coast sites in view of their conservation objectives.
47. Essex RAMS was prepared in consultation with Natural England (NE) (the Statutory Nature Conservation Body), who recommended a strategic approach to mitigation. The RAMS strategy explains that the Essex Coast sites have been designated because they include habitats that support rare bird species. Their overarching conservation objectives can be summarised as avoiding a deterioration of habitats and minimising bird disturbance, thereby ensuring the integrity of the sites is maintained.
48. The appellant has confirmed a willingness to provide a financial contribution in line with the methodology in the Essex RAMS. The contribution would be pooled with others and used for access management and monitoring at the Essex Coast sites in line with the Essex RAMS. This approach is endorsed by NE.
49. The appellant has in fact paid the contribution to the Council. This approach is problematic as there is no link between the payment and the planning permission with the corresponding lack of transparency. There is also no obligation on the Council to spend the money in the way envisaged and in a particular timescale. Nevertheless, the approach seems to be long standing and the Council are signed up to the RAMS strategy. As a responsible public body, it will transfer the funds to Chelmsford Borough Council, which is the organisation responsible for administering the mitigation strategy. On balance, there is sufficient certainty that the mitigation would occur. Accordingly, the proposal would not adversely affect the integrity of the Essex Coast sites, the conditions of which need not deteriorate as a result of the proposal.

Conditions

50. Although the development that has occurred has some significant differences to the submitted drawings, it has nevertheless commenced. As a result, a commencement condition is not necessary. However, arranging the pitch in accordance with the drawings, with some further detail and clarification provided, would have a lesser impact on the Green Belt and the adjoining SSSI. Moreover, in the interests of living conditions and biodiversity it is necessary to secure details of bin storage, a mobile utility building, external

⁴ See Regulation 63 of The Conservation of Habitats and Species Regulations 2017 (as amended).

lighting, outdoor amenity space, a protection zone next to the SSSI and foul drainage. This would be achieved through a condition requiring adherence to a site development scheme.

51. The proposal is acceptable because it would contribute to meeting the accommodation needs of the appellant. It is therefore necessary to limit occupation to the appellant so long as he is following a nomadic habit of life. In so doing I have not relied on the planning definition of a Gypsy or Traveller in Annex 1 of the PPTS due to the discrimination flowing from this discussed earlier.
52. As only one pitch is proposed it is necessary to confirm this in the interests of living conditions and minimising the impact on the Green Belt. It is necessary in the interests of safeguarding the character and appearance of the area and the living conditions of neighbours to limit the size of vehicles and the extent of external lighting and prevent commercial activity and use of generators. For the same reason it is necessary to remove permitted development rights for fencing and walls.
53. Given the temporary nature of the proposal it is unnecessary to secure details of soft landscaping and its protection. Similarly, given the modest size of the proposal it is unnecessary to limit construction hours.

Conclusion

54. As very special circumstances have been demonstrated, the proposal adheres to the development plan. There are no other considerations which outweigh this finding. Accordingly, for the reasons given, the appeal is allowed.

Graham Chamberlain
INSPECTOR

Schedule of Conditions

- 1) The use hereby permitted shall be carried on only by the following: Mr Martin Ward and his resident dependants, and shall be for a limited period, being the period of 5 years from the date of this decision, or the period during which the premises are occupied by them, whichever is the shorter.
- 2) When the premises cease to be occupied those named in condition 1) above, or at the end of 5 years, whichever shall first occur, the use hereby permitted shall cease and all caravans, buildings, structures, materials and equipment brought on to the land, or works undertaken to it in connection with the use shall be removed and the land restored to its condition before the development took place.
- 3) 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.
- 4) There shall be no more than one pitch within the site defined as the red line area on the site location plan. On the pitch hereby approved no more than two caravans shall be stationed at any one time, of which no more than one shall be a mobile home or static caravan as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968.
- 5) No vehicles over 3.5 tonnes shall be stationed, stored or parked on the site and no commercial activities shall take place on the land, including the storage of materials, plant or waste.
- 6) 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 three months 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, and notwithstanding the submitted details, a Site Development Scheme, hereafter referred to as the 'Scheme', for details of:
 - (a) the internal layout of the site including details of the location and orientation of caravans and areas for vehicle access, parking and turning, bin storage and collection, outdoor amenity space and a protection zone with the Site of Special Scientific Interest;
 - (b) external lighting;
 - (c) all boundary treatments and hard standing;

(d) any mobile utility building.

(e) foul drainage

shall have been submitted for the written approval of the Local Planning Authority and the said Scheme shall include a timetable for its implementation.

- ii) If within 11 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.

Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter be retained in the approved form for the duration of the permission.

- 7) No external lighting shall be put in place or operated on the site at any time other than that which has been previously submitted to and approved in writing by the Local Planning Authority as part of the Site Development Scheme.
- 8) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any other order revoking and re-enacting that order with or without modifications), no walls, fences, hard standings or other means of enclosure other than those shown on the approved Site Development Scheme shall be erected on the site without a further grant of planning permission.
- 9) No generators shall be stored or used on the land.

End of Schedule