
Appeal Decisions

Hearing held on 16 February 2023

Site visit made on 16 February 2023

by Timothy C King BA(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 June 2023

Appeal A Ref: APP/H1515/W/21/3284393

Land off Eagle Lane, Kelvedon Hatch, Brentwood, Essex CM15 0DH

- 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 Tom Sweeney against the decision of Brentwood Borough Council.
 - The application Ref 21/00142/FUL, dated 28 January 2021, was refused by notice dated 6 April 2021.
 - The development proposed is described as *'the use of land for the stationing of caravans for residential purposes, together with the formation of hardstanding and utility/day room ancillary to that use.'*
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Appeal B Ref: APP/H1515/W/21/3284395

Land off Eagle Lane, Kelvedon Hatch, Brentwood, Essex CM15 0DH

- 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 Tom Sweeney against the decision of Brentwood Borough Council.
 - The application Ref 21/00493/FUL, dated 19 March 2021, was refused by notice dated 10 May 2021.
 - The development proposed is described as *'Erection of two dwellings with vehicular access and boundary treatments.'*
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Decisions

1. Appeal A is dismissed.
2. Appeal B is dismissed.

Costs Application

3. An application for an award of costs was made by Brentwood Borough Council against Mr Tom Sweeney. This application is the subject of a separate decision.

Preliminary Matters and Background

4. In terms of the site's history a previous proposal to erect a detached 4-bed dwelling on the site was refused by the Council and unsuccessfully appealed in 2014. In context, the Inspector noted that the site is located outside of the village boundary, that there was residential development around the appeal site, it was densely landscaped and provided a link between the rural area to
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the north and the established village and residential areas to the south and beyond. As such, the Inspector concluded that this triangularly shaped piece of land was not an infill site. The relevance of this I shall discuss later in this decision letter.

5. When the planning applications the subject of these appeals were submitted each was accompanied by an Arboricultural report which had been compiled by specialist consultants. The report mentions that the site's trees were surveyed in October 2020, their value assessed and recommendations put forward in accordance with the respective proposals for development.
6. In the first instance the whole site is covered by a Tree Preservation Order (TPO), which had been confirmed in 1985, and was termed an area consisting of oak, birch and ash trees. The 2020 survey identified ten trees, some of which are situated on adjoining land but overhang the site. The trees were largely assessed as being of good physiological condition and four were identified as category A, two category B, and four category C specimens. None were recommended for removal.
7. At my site visit I observed that the site had been largely cleared of vegetation, representing a change from the site's condition witnessed by the Inspector in 2014, and I also note that injunctive relief was granted in 2020 which, amongst other things, was sought to prohibit violation of the TPO. Whilst this is not a determinative factor in my decisions the Council's witness at the Hearing did indicate that protected trees had been removed and a replanting Order was being considered. However, it was not explained what form this would likely take or the extent of such.

Appeal A

Main Issues

8. The site lies within the Metropolitan Green Belt. The main issues are:
 - 1) Whether the proposal would be inappropriate development in the Green Belt and, if so, the effect on the openness of the Green Belt;
 - 2) National policy, and the objectives of the development plan in respect of gypsy and traveller accommodation.
 - 3) Whether the harm 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

Inappropriate development and openness

9. All development in the Green Belt, be it uses of land or operational development, is inappropriate for the purposes of the National Planning Policy Framework (the Framework) unless it accords with the exceptions listed in paragraphs 149 and 150 of the document. In this particular instance, and as the site cannot be considered as previously developed land (PDL), the only

possible exception would be paragraph 149 exception (e), termed as 'limited infilling in villages.'

10. There is no definition of such within the Framework, nor have I been drawn towards any definition within the Brentwood local plan (LP), adopted in 2022. However, the generally accepted definition is one of infilling a small gap in an otherwise built up frontage. Irrespective of the previous Inspector finding that the site lies outside the village boundary I examine below the concept of limited infilling.
11. In both *R (Tate) v Northumberland County Council* [2018] EWCA Civ 1519 and *Wood v SSCLG* [2015] EWCA Civ 195 it was held that whether or not a proposed development constituted limited infilling in a village for the purposes of the Framework was a question of planning judgement for the Inspector in the light of the specific facts. This would obviously include the location of the site itself, also its relationship to other existing development adjoining it and adjacent to it.
12. Accordingly, there is no precedent that could be set by such a development as it is entirely contextual. Nonetheless, infill proposals are typically concerned with the size of the plot rather than the size of the intended dwelling(s) or, as in this case, mobile homes. That said, I would consider the word 'limited' to require consideration of both the scale and form of the development and has to be interpreted in the context of the overall aim of Green Belt policy which is to preserve its openness. This implies minimising the loss of significant open gaps through development.
13. The appellant, in his representations, makes the rather sweeping statement that the proposal '*...clearly constitutes infilling...*', and that the previous Inspector's reasoning was wrong on this point. The crucial word which the appellant has omitted to mention here is 'limited'.
14. When moving eastwards along School Road towards the appeal site its north side is heavily verdured whereas off its south side are a series of detached dwellings of differing designs, sizes and heights. All, though, are commonly set back significantly from the footway and are, in the main, bounded by hedgerow. This gives the immediate area a semi-rural character. Close to School Road's junction with Eagle Lane, which is effectively a track that tapers out to the south, the appeal site's access point is shown. Although, as mentioned, there has been some clearance within the site, it is still screened to a significant degree by trees as is both the dwelling, Enderley, on the opposite side of Eagle Lane and The Spinney, a dwelling set within a substantial curtilage which both abuts the site and the tree-lined School Road. There exists two additional dwellings set back within large plots beyond this point, but School Road now takes on an increasingly rural feel.
15. There are a series of modern dwellings, known as Roding Drive, beyond the site's eastern boundary, which has been largely cleared of vegetation, but this has done little to diminish the appeal site's open value in its contextual setting. Besides, if left, trees felled could soon replenish. Accordingly, the site makes a recognised contribution to the Green Belt locality.
16. At the Hearing the Council witness indicated that the Roding Drive dwellings existed at the time of the previous Inspector's site visit, and I noted at my site

visit that, travelling westwards, School Road opens out into a village settlement with associated facilities. Given my findings, I am satisfied that the previous Inspector was correct to consider the site as being outside the village. Even if it did fall within the boundary I consider that the proposed mobile homes bear little relationship to the surrounding form of development and the site's shape and size serve to reinforce my view that the site cannot be considered as a small gap in an otherwise built-up frontage. Exception (e) does not, therefore, apply here.

17. The Framework says that inappropriate development within the Green Belt, which is by definition harmful thereto, should not be approved except where very special circumstances can be demonstrated.
18. The Framework states that an essential characteristic of Green Belts is their openness and that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land within them permanently open.
19. Openness in terms of the Green Belt, which is recognised as relating to the absence of built form, can have a spatial as well as a visual aspect, although the Supreme Court has held that a consideration of openness is essentially a matter for the decision maker on a case by case basis.
20. The proposal would result in the introduction of two caravans/mobile homes being placed on the land, a utility/day room, a substantial area of hardstanding and also the siting of two touring caravans. I must therefore agree with the previous Inspector's view that the site's development would add a building of mass and volume that would alter the openness of this area. I also consider that any screening to the site, be it existing or proposed, would not ameliorate the harm to the Green Belt's openness.
21. The proposal would obviously adversely impact on the openness of the Green Belt, and I must conclude that the proposal would be harmful to the Green Belt, contrary to both the Framework's advice and also policy MG02 of the Brenwood Local Plan (LP). This is a matter to which I ascribe substantial weight.

National policy and the development plan

22. National policy is contained in the government's Planning Policy for Traveller Sites, 2015 (PPTS) which states that applications should be assessed and determined in accordance with the presumption in favour of sustainable development.
23. Policy B of the PPTS says that local planning authorities, in producing their Local Plan, should identify and update annually, a supply of specific deliverable traveller sites, sufficient to provide five years' worth of sites against their locally set targets. In this context 'deliverable' means sites that are available now, offering a suitable location for the development.
24. In the above connection, Policy H and paragraph 24 of the PPTS says that Councils should, amongst other things, consider the level of need for additional gypsy and traveller accommodation, the availability of alternative accommodation and also personal circumstances.

25. Policy E reiterates the matter of harm to the Green Belt resulting from inappropriate development therein, and says that such development should not be approved, except in very special circumstances. It goes on to say that, subject to the best interests of the child, personal circumstances and unmet need are unlikely to clearly outweigh harm to the Green Belt and any other harm so as to establish very special circumstances.
26. The Council's most recent Gypsy and Traveller Accommodation Assessment (GTAA) was produced in 2017, and relied on research carried out in 2016. This was a jointly commissioned GTAA methodology prepared for the Essex local authorities. Given the time that has elapsed the appellant's representations as to its current reliability are perhaps understandable, but I do note that during the consultation process leading to the adoption of the new Local Plan in 2022 the Council contacted the Brentwood Gypsy and Traveller Support Group to discuss their needs and concerns. It is said that this helped develop relevant policy in the Plan.
27. In turning to the Local Plan LP policy HP08 refers to safeguarding permitted gypsy and traveller sites within the Brentwood borough council area and the explanatory text to policy HP09, concerned with the sub-division of existing allocated or authorised pitches and plots indicates that during the Plan period (2016–2033) there may be a demonstrable need for additional pitches on these sites to meet the changing needs of the existing households. Further, it is mentioned that the sub-division of existing sites to provide more pitches could be a suitable way to increase provision without the need to consider the allocation of additional sites under review, thereby safeguarding Green Belt land. In this regard LP policy HP10 which is concerned with gypsy and traveller sites on windfall sites such as this again stresses that very special circumstances will need to be demonstrated for proposed gypsy accommodation in the Green Belt.
28. Although the Council's Five Year Housing Land Supply Statement from April 2022 indicates that the required 5-year supply of deliverable land for gypsy and traveller accommodation is met the appellant considers otherwise. Instead, he has identified certain inadequacies within the GTAA's methodology and has concluded, on the basis of estimated need, that by 2026 planning permission will be required for a further 61 pitches. This contrasts sharply with the Council's estimated need of 13 pitches for the Plan period (2016-2033).
29. In view of the disparity between the main parties as to the Council wide provision of gypsy accommodation and the appellant's view that there is considerable unmet need the Council has cited the findings of an Inspector in a very recent decision letter involving Brentwood Borough Council, from February 2023. This concerned appeals involving gypsy and traveller accommodation; the main references being *APP/H1515/C/20/3248911* and *APP/H1515/W/20/3248930*. Here, the Inspector found agreement between the parties in that if reliance was placed on the definition in the PPTS then the Council could identify sufficient sites for 'policy gypsies'.
30. The situation changes though for the worse in light of the recent judgement in the case of *Lisa Smith v SSLUHC and others* [2022] EWCA Civ 1391 which

found the definition to be discriminatory, but there has been no new policy announcement by the government on the implications of such. Nonetheless, with reference to the current appeal I am satisfied that the appellant and his family reasonably satisfy the PPTS gypsy definition.

31. In commenting that the Council does not have a five year supply of sites, the Inspector makes the point that this is through no fault of its own and there has been no failure of policy, nor general failure of the Public Sector Equality Duty.
32. In terms of any alternative sites available the Council did not convincingly demonstrate that there are suitable such sites within the Borough to which the appellant's family could go, and it appears likely that this situation will not change in the near future.

Other Considerations

Personal circumstances and Human Rights

33. The appellant has raised both these matters and I shall deal with them with reference to case law authority.
34. Article 8 of the European Convention on Human Rights, enshrined in UK law through the Human Rights Act 1998, provides that everyone has the right to respect for his private and family life, his home and correspondence. In this regard there shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary, amongst other things, for the protection of the rights and freedoms of others.
35. Accordingly, if Article 8 is engaged, then interference with those rights can be justified by the Council if it is a legitimate aim, in accordance with the law and necessary in the public interest.
36. The appellant, Tom Sweeney and his wife, Bernadette have four children , three of which are of school age. His sister, Theresa Lane, and her four children have lived with Tom's family since she was widowed. Three of her children are also of school age and it is understood that her youngest daughter has special educational and medical needs. Both Mr Sweeney and Mrs Lane have provided witness statements as to their personal circumstances.
37. Mrs Lane mentions that they currently live at Springfield Farm in the Aylesbury area, having previously lived at a site in Romford. She indicates that both families are doubling up on a single pitch with friends, and mentions that it is overcrowded. Both indicate that if the appeal is allowed and planning permission granted, the two families will relocate to the appeal site.
38. The Council, though, has produced evidence to show that Mr Sweeney has freehold title to Springfield Farm and is also of the understanding that Mr Sweeney benefits from a planning permission granted for gypsy accommodation on a site at Upminster, near Romford. The Council holds evidence to suggest that Mr Sweeney is a named occupier, amongst others, of the site. Accordingly, the Council does not accept that he is not in the position of having nowhere to live.

39. In the circumstances I can understand the wish to live as an extended family group. Whilst, though, I acknowledge the need for a settled base and the stability this can bring to the family's health needs and the children's education I am not necessarily convinced that there is a particular need to live at the appeal site. Indeed, from the evidence presented I consider this to be more of an aspiration.
40. Nonetheless, Article 3(1) of the United Nations Conventions 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.
41. In 2013, in the High Court judgement of *Stevens v SSCLG* [2013] EWHC 792 (Admin) it was held that where the Article 8 rights are those of children, their best interests are a primary consideration. Once identified, although a primary consideration, the best interests of the children were not determinative of the planning issue, but no other consideration was more important or to be given greater weight and those best interests had to be kept at the forefront of the decision maker's mind.
42. Importantly, it was held that the best interests of the children were not only not determinative, neither were they paramount, the judge noting that Article 3 says "*a primary consideration*" rather than "*the primary consideration*". Nor should they be considered temporally or logically first.
43. In the case the planning appeal Inspector, in her assessment, had referred to the children's benefit as carrying moderate weight. However, the court decided that, after examining all the material considerations, she was not giving the children's best interests inherently less weight than the visual harm to which the development had given rise. She was, therefore, fully entitled, after that analysis, to conclude that the dismissal of the appeal against the refusal of planning permission would not have a disproportionate impact on the family.
44. Also in 2013, the Court of Appeal heard the case of *Collins v SSCLG* [2013] EWCA Civ 1193 where it was held that whether the best interests of the children had been taken properly into account in the overall exercise was a question of substance, to be answered by the detailed reasoning of the decision letter as a whole. It was acknowledged that the Secretary of State had, in substance, taken the view that the best interests of the children coincided with those of their families as a whole and lay in remaining on the site, but that the children's best interests and the other factors in favour of granting planning permission were outweighed by the harm that would be caused.
45. If the appellants or intended occupiers are living on the site it should be regarded as their home. However, in the current case, the site is not being occupied for habitable purposes. It is therefore misleading to indicate that a refusal of planning permission would lead to the loss of a family home(s) for the appellant, his wife and their children, and I consider that this reduces the weight to be afforded to both Article 8 and the best interests of the children.
46. From the representations, the family's current living arrangements would appear cramped, but that does not mean that planning restrictions and constraints to which other persons are subject should be set aside.

47. As things stand, therefore, from the evidence presented to me, dismissal of the appeal would be unlikely to make any of the prospective occupiers immediately homeless, would not unduly compromise the right of respect for the appellant's private and family life, and nor do the best interests of the child outweigh the harm caused in this particular instance which I have identified. It would, though, deprive the intended occupants of the possibility of establishing a home on the appeal site but, as mentioned, I consider this to be an aspiration.

Planning Balance

48. The appellant has produced various documents in support of his case, including a number of past appeal decisions relating to other local authorities and also court judgements to which I have had regard. Whilst the Framework in its various iterations has remained largely consistent in its advice on development within the Green Belt, local policies on such may differ to some limited degree from Council to Council. Moreover, direct parallels between different cases are not easily drawn as each will have its own individual circumstances. Accordingly, I have balanced my assessment on the particular impacts and merits that arise.
49. The protection of Green Belts is an important aim of local and national planning policies, and is therefore a legitimate objective in the public interest. Paragraph 148 of the Framework indicates that the decision maker should ensure that substantial weight is given to any harm to the Green Belt. In this particular instance I have found that the proposal would be both inappropriate development within, also adversely impacting on the Green Belt's openness. Accordingly, I attach substantial weight to the harm that would result.
50. The very special circumstances that must be demonstrated will not exist unless the potential harm to the Green Belt by reason of inappropriateness and any other harm resulting is clearly outweighed by other considerations. I have given significant weight to what is an apparent unmet need of gypsy and traveller accommodation in the Borough, but this does not outweigh the resultant impact on the Green Belt. From the evidence provided I am not convinced that the appellant's personal circumstances are such as to be a determinative factor in this appeal and neither do I consider that the children involved would necessarily have their best interests safeguarded by relocating to the appeal site.
51. In addition, given the advice in Policy E of the PPTS, the respective aims of LP policies HP08 and HP09 to safeguard permitted sites and also potentially sub-divide existing pitches or plots to intensify the degree of occupation, plus requirement 2 of LP policy HP10 for sites within the Green Belt, I have concluded that the very special circumstances necessary to outweigh the fundamental policy objection have not been demonstrated.

Conclusion

52. For the above reasons, and having had regard to all matters raised, I conclude that this appeal should not succeed.

Appeal B

Main Issues

53. Leaving aside policy, both locally and nationally regarding gypsy and traveller site provision as it relates to Appeal A, the main issues are largely the same for Appeal B, but it also does include the effect on local character, and also the effect on the living conditions at 'The Spinney', School Road and that at nos 33 and 35 Roding Drive.

Reasons

Openness

54. Much of my findings as to inappropriate development in the Green Belt, and harm to its openness equally apply here. Admittedly, the submitted site layout plan shows less hardstanding than that for the Appeal A scheme, but this is significantly offset by the dwellings' two-storey height.
55. Accordingly, I similarly conclude that the proposal would adversely impact on the openness of the Green Belt, and I must again conclude that the proposal would be harmful to the Green Belt, contrary to both the Framework's advice and also LP policy MG02. This is a matter to which I ascribe substantial weight.

Character and living conditions of neighbouring occupiers

56. Given the nearby existing dwellings, the Green Belt setting aside, I do not consider that the character of the area would be significantly affected by the proposal, although the dwellings' design appears somewhat pedestrian. At my site visit I noted the respective proximity and positioning of the three neighbouring dwellings cited. In considering the relative orientations and windows of the proposed and the existing dwellings I am satisfied that there would not be any significant impact on the existing occupiers. In fact, I am of the view that this particular issue has not been properly justified by the Council.

Other Considerations

Spatial strategy

57. LP Policy MG01 explains the Council's Spatial Strategy and seeks to direct new housing development to sit within the Central Brentwood and South Brentwood Growth Corridors. The appeal site falls some distance outside of both these and is also Green Belt land.
58. Accordingly, the proposal is in conflict with one of the Council's strategic objectives.

Five Year Housing Land Supply

59. The Council refers to its Five Year Housing Supply Site Schedule of April 2022 and that, on the basis of the five-year housing requirement and the forecasted housing supply, the Council can demonstrate a suitable supply of deliverable sites for housing. This equates to 8.3 years with no 20% buffer applied or, alternatively 6.9 years with such a buffer. The appellant disagrees and considers the Schedule to be out of date.
60. Nonetheless, and irrespective of the above, paragraph 11d) of the Framework indicates that, given the Green Belt location, the tilted balance will not be engaged. Further, I am mindful that the LP was only adopted in March 2022.

Planning Balance

61. My comments in paragraph 49 are directly applicable here, and I afford substantial weight to the harm that would result to the Green Belt. As with Appeal A this is contrary to both the Framework's advice and also LP policy MG02. This is a matter to which I ascribe substantial weight.
62. Turning to the applications as originally made I note that the scheme for the stationing of the two mobile homes was submitted some eight weeks prior to that for the two dwellings. However, I have also noted comments in the Witness Statements of both Mr Sweeney and Mrs Lane, both of which say that they could not live in a house. Whilst it seems clear from the evidence that the appellant's main objective is therefore to secure planning permission for the mobile homes proposed it would appear that Appeal B is a speculative submission to which the personal circumstances discussed under Appeal A would not realistically apply.
63. As is the case with Appeal A the very special circumstances that must be demonstrated will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting, is clearly outweighed by other considerations. However, notwithstanding that the tilted balance is not engaged here, no very special circumstances necessary to outweigh the fundamental policy objection have been demonstrated.

Conclusion and Conditions

64. For the above reasons, and having had regard to all matters raised, the appeal is dismissed.

Timothy C King

INSPECTOR

APPEARANCES

For the Appellant

Matthew Green (GPS Ltd)	Agent for the appellant
Jade Waistnidge (GPS Ltd)	
Tom Sweeney	Appellant
Theresa Lane	Appellant's sister

For the Council

Carole Vint
Sian Griffiths
Katie Parsons

Other Interested Parties

Chrissy Gelderbloem	Ward Councillor
Richard North	Kelvedon Hatch Parish Council
Mark Lynch	Consultant for local residents
Hugh Gorton	
Tom Pine	
Richard Cumming	
Solomon Hayden	
Howard Carter	
Jim Browning	
Mary Connelly	

Documents produced at the Hearing

Council's notification letters of appeal and the Hearing event.