



Appeal Decision

Hearing held on 4 April 2023

Site visit made on 4 April 2023

by Bhupinder Thandi BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 June 2023

Appeal Ref: APP/X3405/W/21/3286256

Land off Colliery Road, Brereton, Rugeley, Staffordshire, WS15 1QR

- 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 Rocky Lee against the decision of Cannock Chase District Council.
 - The application Ref CH/21/0083, dated 20 February 2021, was refused by notice dated 26 May 2021.
 - The development is the change of use of land to mixed use for stabling/keeping of horses (existing) and as a residential caravan site for one gypsy family with two caravans, including no more than one static caravan/mobile home.
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Decision

1. The appeal is allowed and planning permission is granted for the change of use of land to mixed use for stabling/keeping of horses (existing) and as a residential caravan site for one gypsy family with two caravans, including no more than one static caravan/mobile home at Land off Colliery Road, Brereton, Rugeley, Staffordshire, WS15 1QR, in accordance with the application CH/21/0083, dated 20 February 2021, subject to the conditions set out in the schedule to this Decision.

Preliminary Matter

2. From the information before me planning permission has been granted for the construction of a stable and associated hardstanding which has been implemented. I have borne this in mind when coming to my decision.

Main Issues

3. The main issues are:
 - 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 effect of the development upon the Cannock Chase Area of Outstanding Natural Beauty (AONB);
 - The effect of the development on the Cannock Chase Special Area of Conservation (SAC);
 - Whether or not the development is located within an appropriate location having regard to access to services and facilities; and

- 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 development.

Reasons

Whether the proposal is inappropriate development in the Green Belt

4. 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. The Framework states that one of the essential characteristics of the Green Belt is its openness. Openness is the absence of development notwithstanding the degree of visibility of the land in question from the public realm. Openness has both spatial and visual aspects.
5. Policy E of the Planning policy for traveller sites (PPTS) states that traveller sites, either temporary or permanent in the Green Belt are inappropriate development. It is accepted by both main parties that the proposal would be inappropriate development in the Green Belt and based on the evidence before me I can only draw the same conclusion.
6. As such, it represents inappropriate development within the Green Belt as set out in paragraphs 147 and 148 of the Framework and the PPTS.

The effect of the development upon the openness of the Green Belt and the character and appearance of the AONB.

7. The appeal site comprises an irregular shaped parcel of land and accommodates a mobile home and a brick stable building positioned along the roadside with ancillary structures and paraphernalia. The site includes a vehicular access off Colliery Road, demarked by brick piers and a gate, that leads to an extensive area of hard surfacing. Neighbouring the site are fields used by the appellant for the commercial rearing of horses.
8. The site lies within a pleasant gently undulating rural landscape. Whilst there is planting and fencing along the boundary given the surrounding topography the site is visible from the road and a Public Right of Way.
9. The Cannock Chase AONB has a varied landscape including mixed pastoral and arable farmland. Its heathland and woodland are largely intact providing a sense of tranquillity and wildness. The AONB is also home to a number of rare and protected wildlife species.
10. The AONB is a statutory national landscape designation and local authorities have a duty to have regard to the purpose of conserving and enhancing their natural beauty. Paragraph 176 of the Framework sets out that great weight should be given to conserving and enhancing landscape and scenic beauty in AONBs, which have the highest status of protection in relation to these issues. It goes on to state that the scale and extent of development within such designated areas should be limited.
11. The Council advise that the site is located in a transition area between heathland and woodland characterised by a gently rolling, low-lying landscape with a regular pattern of small to medium sized, hedged fields and mixed farmland with extensive areas of grazing land and pony paddocks.

12. Due to its position in the landscape and close to the roadside the development is visible from the public realm and the screening offered by the fencing does not disguise the visual impact of the development to a great extent. The brick piers and gates also draw the eye on account of their height and position at the entrance along the roadside. In addition, the mobile home, stable and various structures and paraphernalia dispersed over a large area of the site have a cumulative impact and give the impression of a developed space.
13. The development is most apparent when travelling along Colliery Road towards Brereton but given the absence of a footpath it is unlikely that many people would choose to walk close to the site along the road. Therefore, most views are likely to be fleeting experienced from vehicles passing the site. Whilst a Public Right of Way extends along part of the site its route, intervening trees and hedges and topography localise views to a small area of the path.
14. I acknowledge that the existing field pattern would remain and some of the equine associated paraphernalia including horse boxes would not be present all year round due to the appellant visiting fairs. However, the introduction of a mobile home, domestic structures and extensive hardstanding has harmed the rural character of the AONB by diminishing the natural landscape.
15. Whilst conditions relating to the number of caravans, site layout, vehicles and landscaping would assist in mitigating its visual impact, the development results in an impact upon openness in both visual and spatial terms contrary to the aims and objectives of the Framework and the PPTS.
16. Overall, the proposal would cause harm in the local context to the scenic beauty of the local landscape within the AONB contrary to the aims of the Framework and Policy CP 14 of the Cannock Chase Local Plan Part 1 (2014) (LP) which, amongst other things, seeks to protect, conserve and enhance the District's landscape character.

Effect on the Cannock Chase SAC

17. The appeal site lies within the Cannock Chase SAC Zone of Influence. The SAC is a European site and is principally an area of lowland heathland and the most extensive such habitat in the Midlands. The SAC contains the main British population of the hybrid bilberry, a plant of restricted occurrence; and important populations of butterflies and beetles. Also found within the SAC are the European Nightjar and five species of bats.
18. As the appeal site is in close proximity to the SAC, and residential development is of a type that is likely to result in recreational visits to the protected habitat and the creation of new paths, path widening, erosion and nutrient enrichment it is necessary for me, as the competent authority for the purposes of the Habitat Regulations¹, to conduct an Appropriate Assessment in relation to the effect of the development on the integrity of the SAC.
19. The Cannock Chase SAC Partnership has agreed Strategic Access Management and Monitoring Measures (SAMMM) with Natural England which requires a mitigation payment per residential dwelling from all new development within a 15km radius.

¹ Conservation of Habitats and Species Regulations 2017 (as amended)

20. The appellant has submitted a signed UU which commits him to a financial contribution towards measures outlined in the SAMMM. I am satisfied that the contribution would sufficiently mitigate the development's impact. As such, whilst the development would have a likely significant effect on the integrity of the SAC it would be adequately mitigated through monies in the UU.

Appropriate location with regard to access to services and facilities

21. The site is located within open countryside, but sporadic development extends along Colliery Road in the form of dwellings. The nearest settlement is Brereton located approximately 1km to the northeast. Whilst the site lies approximately 1km from the fringe of Brereton, it is evident that services and facilities reasonably necessary are located further into the town and in Rugeley to the north. The towns have a number of services and facilities to meet the day to day needs of future occupants, larger order goods, health services, education and employment opportunities.
22. The Council contend that the development is isolated. However, Court of Appeal case *Braintree DC v SSCLG, Greyread Ltd & Granville Developments Ltd* [2018] EWCA Civ 610 considered the word "isolated", albeit in the context of paragraph 55 of the previous version of the Framework. The judgement concluded that the term isolated should be understood in its plain meaning ie physically separated or remote, and that adding a second limb to the paragraph relating to accessibility to services and facilities only serves to make the policy more onerous than intended. Furthermore, no such restriction is implied in its text. In other words, the term isolated should be taken to mean physically remote or separate only, in the sense of being isolated from other dwellings or settlements.
23. Taking into account the proximity of nearby properties and the distance to Brereton, in my judgement, the site is not isolated in the context of paragraph 80 of the Framework.
24. Colliery Road, on the whole, is devoid of a footpath and streetlighting making walking and cycling to and from the site impractical and undesirable. Therefore, occupiers likely use a private vehicle for trips to Brereton and Rugeley. This, however, is the case for other residents in the area.
25. The PPTS does not refer to accessibility to services and facilities by foot and public transport as one of its aims. The more general aim in the PPTS is the provision of suitable accommodation from which gypsies and travellers can access education, welfare and employment opportunities. It is also recognised in the Framework, at paragraph 105, that transport solutions will vary between urban and rural areas. As such, there will be a tension and a balance to be struck between the desirability of supporting sustainable rural development and maximising sustainable transport opportunities.
26. Taking into consideration the relatively short distance between the site and nearby services and facilities and the aims of the PPTS I do not find that the accessibility of facilities and services in this case render the site unsuitable as a gypsy and traveller site.

Other considerations

27. The PPTS sets out that local planning authorities should use a robust evidence base to establish the accommodation needs to inform the preparation of local

plans and make planning decisions. At paragraph 10, it states that local plans should identify and update annually 5 years' worth of deliverable sites for gypsies and travellers.

28. The Council published a Gypsy and Traveller Accommodation Assessment (GTAA) in 2019 which sets out a minimum requirement of 29 pitches for those falling within the definition set out in the PPTS and undetermined households.
29. The Council accept that they have not delivered a sufficient number of pitches and cannot demonstrate a 5-year supply of pitches for gypsies and travellers. Therefore, there is an unmet need. Whilst a new Local Plan is emerging the Council accept that it does not plan for new gypsy and traveller sites either public or private. As such, I attach significant weight to this matter.
30. It was established at the hearing that there are no available alternative sites, and large parts of the district fall within Green Belt and AONB a further constraint in relation to this matter.
31. The appellant is a Romany Gypsy and resides on the site and has done so since 2021. He explained that he breeds and rears horses on the neighbouring fields and travels to fairs, usually between April and October, trading horses. I give weight, albeit moderate, to the economic benefits of the development in the context of the AONB.
32. The development is occupied by the appellant, his partner and their five children. His oldest two children are 19 and 20, respectively. Of the remaining 3 one is home-schooled, and the others attend local schools. The appellant's second oldest child is expecting her first child shortly.
33. Whilst I have not been made aware of any particular personal circumstances for a settled base in respect of the second oldest child the interests of the children would, in my view, be best served by having a settled base due to their educational needs. If the appeal were to be dismissed I was told there would be no other option but to exist 'roadside' with his children.
34. In respect of the appellant's grandchild the Declaration of the Rights of the Child states "the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth".
35. Similarly, Article 24 of the Convention on the Rights of the Child states that parties shall take appropriate measures "to ensure appropriate pre-natal and post-natal health care for mothers".
36. Therefore, although the child has not yet been born, in my opinion its best interests are something that should be a consideration to which significant weight is given. I consider the child would benefit from a settled base in their early life so as to experience consistent health care. Consequently, the benefit to the unborn child carries significant weight in favour of the appellant's case.
37. Taking account of all these factors, I give significant weight to the personal circumstances of the appellant's expectant daughter, her unborn child, and the 3 school-aged children on site.

Planning Balance

38. The proposal would be inappropriate development within the Green Belt, which is by definition harmful to the Green Belt. There would also be a loss of openness. In accordance with the Framework, I give substantial weight to this harm.
39. In addition, I have found conflict with the Framework and LP Policy CP14 which seek to protect the character and appearance of the AONB. The Framework is clear that great weight should be given to conserving and enhancing landscape and scenic beauty in the AONB. These matters together also attract significant weight.
40. The PPTS states that subject to the best interests of a child, personal circumstances and unmet demand are unlikely to clearly outweigh harm to the Green Belt and any other harm so as to establish very special circumstances. This of course does not mean these matters should be attributed no weight in the balancing exercise, but rather the weight they would receive would not be great enough, of itself, to outweigh the Green Belt harms.
41. I acknowledge that there is an unmet need for gypsy and traveller pitches in the district and an absence of a five-year supply of deliverable sites. However, as the site is located within the Green Belt and AONB I give the Council's lack of adequate provision moderate weight in the balance.
42. The personal circumstances of the child dependants and unborn child are a primary consideration. I have also taken into consideration the interference with their human rights if they were required to leave the site and take up a roadside existence given the lack of alternatives. This is of substantial weight in favour of the development.
43. In my judgement there is ongoing harm to the Green Belt and AONB arising from the development that does not justify an unfettered permission. However, the best interests of the appellant's daughter and her unborn child and the school aged children are of such significant weight that justify a permission personal to the appellant and his children. Therefore, based on the merits of the case before me and the overall planning balance a personal permission is justified.
44. It would not be appropriate to grant planning permission on a permanent basis as in the event that the appellant and his family moved off the site there is no certainty that the personal circumstances of the new occupants would be such so as to justify use of the site leading to a continuation of the harm.

Conditions

45. I have considered these in relation to the contents of both the Framework and Planning Practice Guidance.
46. It is necessary to specify the approved plans in the interests of certainty. Since the conclusions of this decision are that only a personal permission is justified a condition restricting the occupancy of the site to the appellant, his partner and their children is necessary.

47. A condition for the land to be restored to its previous condition has been imposed in the event that the appellant no longer occupies the site in order to prevent permanent harm to the Green Belt and AONB.
48. Conditions relating to the number of caravans, site layout, commercial vehicles and activities and soft landscaping have been imposed to ensure the satisfactory appearance of the development.

Conclusion

49. For the reasons set out above the appeal succeeds.

B Thandi

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr Rocky Lee Appellant

Philip Brown Philip Brown Associates

FOR THE LOCAL PLANNING AUTHORITY:

Claire Faulkner

Schedule of Conditions

- 1) The occupation of the site hereby permitted shall be carried on only by the following and their resident dependants: Rocky Lee and Anita Lee.
- 2) Within 3 months of the date of this decision a scheme of landscaping shall have been submitted to the local planning authority. Once approved in writing the scheme shall be carried out in accordance with the details within 6 months. Any trees or plants which within a period of 5 years from the completion of the landscaping scheme die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.
- 3) Within 23 months of the date of this decision details shall be submitted to the local planning authority of the intended restoration when/if the land ceases to be occupied by those named, together with a timetable for its implementation and when they leave they shall restore the land in accordance with the approved scheme and timetable.
- 4) The development hereby permitted shall be carried out in accordance with the following approved plans: Site Layout Plan Scale 1:500.
- 5) No more than 2 caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 as amended (of which no more than 1 shall be a static caravan) shall be stationed on the site at any time.
- 6) No commercial activities, except for the breeding and keeping of horses, shall take place on the land, including the storage of materials.
- 7) No vehicle over 3.5 tonnes shall be stationed, parked or stored on this site.