



Appeal Decision

Site visit made on 20 June 2023

by G Pannell BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21st July 2023

Appeal Ref: APP/M1595/W/23/3318205

The field at Mill Lane, Fobbing, SS17 9HS

- 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 W Ray against the decision of Thurrock Borough Council.
 - The application Ref 22/01074/FUL, dated 26 July 2022, was refused by notice dated 5 December 2022.
 - The development proposed is Change of use of land to a gypsy and traveller caravan site consisting of one pitch and associated development.
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Decision

1. The appeal is allowed and planning permission is granted for change of use of land to a gypsy and traveller caravan site consisting of one pitch and associated development at The field at Mill Lane, Fobbing, SS17 9HS in accordance with the terms of the application, Ref 22/01074/FUL, dated 26 July 2022, and the plans submitted with it, subject to the conditions set out in the attached schedule.

Main Issues

2. 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 Thurrock Local Development Framework, Core Strategy and Policies for Management of Development, 2015 (CS).
3. 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
 - protected species; and
 - 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

Openness and purposes of the Green Belt

4. The appeal site is situated in the Metropolitan Green Belt. Policy PMD6 of the CS states that the Council will maintain, protect and enhance the open character of the Green Belt in Thurrock in accordance with the provisions of the National Planning Policy Framework (the Framework), whilst policy CSSP4 sets out the Council's strategic approach to sustaining the Green Belt, promoting opportunities to enhance it.
5. The appeal site is a large parcel of land which is adjacent to a Public Right of Way, from which the site is visible. The introduction of a single static caravan and driveway, as well as residential occupation of the site is likely to lead to the introduction of garden furniture, washing lines or play equipment and other domestic paraphernalia associated with its use. This would have a visual impact and would result in a loss of openness. Although the area is visible from public vantage points, the scale of the proposal means that the impact would be modest but would not preserve the openness of the Green Belt.
6. The proposal would also result in urbanisation and encroachment into previously undeveloped land, with the introduction of the driveway and hardstanding for the siting of the caravan, contrary to paragraph 138 of the Framework which identifies the five purposes of the Green Belt, and of which c) is to assist in safeguarding the countryside from encroachment.
7. Paragraph 16 of the Planning Policy for Traveller Sites (PPTS) confirms that traveller sites are inappropriate development in the Green Belt. When applying Paragraph 150 of the more recent Framework, it is apparent the proposed change of use would not preserve the openness of the Green Belt.
8. Accordingly, the proposal is inappropriate development in the Green Belt which paragraph 147 of the Framework states is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Paragraph 148 of the Framework states that in considering a planning application substantial weight should be given to any harm to the Green Belt.

Protected species

9. As seen at the time of my visit the site is a mix of closely cropped grassland and hardstanding and as such has little ecological potential. Furthermore, the proposed development is away from the more densely planted boundaries and on this basis it would have a limited impact upon any protected species that may make use of those areas, such as foraging/commuting bats and badgers who may be living on or near to the site.
10. The land on the opposite side of Mill Lane is designated as a Biodiversity Site of Local Interest, but the appeal site is sufficiently separated from it to ensure that the proposal would not affect the ecological potential of the designated site.

11. The presence of a protected species is a material consideration when a development proposal is being considered which would be likely to result in harm to the species or its habitat. It is important that developments likely to affect biodiversity contain adequate, up-to-date information to effectively evaluate the impacts. This should include relevant site (field) surveys and desk-based studies to inform the baseline position. However, surveys should only be required where there is a reasonable likelihood of species being present.
12. In this instance there is limited evidence of the presence of protected species and the Council notes that the site has limited ecological potential and has confirmed it no longer wishes to defend this reason for refusal. Therefore, on the specific circumstances of this case, I am content that it would be possible for harm arising from the development to be mitigated by the installation of ecological enhancement and/or mitigation measures as necessary to be secured by condition.
13. In conclusion, I have insufficient evidence to show the scheme would result in an unacceptable impact to protected species. The development would be in accordance with policies CSTP19 and PMD7 of the CS which together require development proposals to incorporate biodiversity or geological features into the design as far as possible to contribute positively to the overall biodiversity in the Borough.

Other Matters

14. I have had regard to all of the other matters raised by local interested parties, including the nature of the existing road network and the ability of refuse vehicles being able to access the site, the impact of increased traffic movements associated with the proposed development. Also, the concerns surrounding water pressure and local drainage and the impact on neighbours. However, there is no substantive evidence before me that there would be harm in respect of these matters, and no objection has been raised by the Council or statutory consultees in particular with regard of highway matters. Therefore, none of the matters raised provide a compelling reason why planning permission should not be granted.

Thames Estuary and Marshes Special Protection Area

15. The appeal scheme proposes a net increase of one unit on a site that lies within the Zone of Influence of the Thames Estuary and Marshes Special Protection Area (SPA).
16. The Conservation of Habitat and Species Regulations 2017 (the Regulations) require that the competent authority must ensure that there are no significant adverse effects from the proposed development, either alone or in combination with other projects, that would adversely affect the integrity of the SPA. The effects arising from the proposal need to be considered in combination with other development in the area and adopting a precautionary approach.
17. Since the development is for a single pitch, the number of additional recreational visitors would be limited and the likely effects on SPA from the proposed development alone may not be significant. However, in combination with other developments it is likely that the proposal would have significant effects on the designated site.

18. Given my findings, the Regulations place a duty on the competent authority to undertake an appropriate assessment of the implications of the appeal scheme in view of the site's conservation objectives.
19. The site is within the zone of influence where new residential development is likely to result in recreational pressure, which would, both alone and in combination with other development within the zone of influence, have a likely significant effect on the interest features of the aforementioned site. Therefore, I consider that the development would have an adverse effect on the integrity of the site, but regard can be had to whether these adverse effects can be mitigated.
20. The Essex Coast Recreational Disturbance Avoidance and Mitigation Strategy (RAMS) sets out a strategic approach to mitigation by several councils across the wider area. It details mitigation measures that would be funded by financial contributions at a specified tariff per dwelling. Since these include a range of habitat-based measures such as education, communication and monitoring, and have been endorsed by Natural England, I am satisfied that the measures would adequately overcome any adverse effects of the proposal on the SPA.
21. The appellants have indicated that they have made a per dwelling contribution of £156.76 to fund the Essex Coast RAMS. The Council have confirmed receipt of the payment. This approach can be problematic as there is no obligation on the Council to spend the money as envisaged and in a particular timescale. However, the evidence before me indicates that as a responsible public body it will transfer the funds to Chelmsford City Council, which is the organisation responsible for administering the mitigation strategy. Therefore, I am satisfied that the mitigation measures have been secured and would be used for their intended purpose.
22. The contributions would be necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development, in accordance with Regulation 122 of the Community Infrastructure Levy Regulations. As such, the contributions toward the mitigation schemes would count as mitigation toward maintaining the integrity of the sites.

Other considerations

23. As set out above, the development constitutes inappropriate development in the Green Belt. I have found it to result in modest harm in terms of loss of openness to the Green Belt. Substantial weight should be given to any harm to the Green Belt. Very special circumstances will not exist unless the harm to the Green Belt is clearly outweighed by other considerations.

Need for Gypsy and Traveller Sites

24. It is common ground that the Council cannot demonstrate an up to date 5 year supply of deliverable sites. Evidence has been provided in the form of two other recent appeal decisions in Thurrock¹ where the Inspectors in both of these appeals noted that the lack of supply had endured for a considerable period and could be an unmet need for at least 78 pitches. There has been slow progress to meet the demand with only 7 pitches having been approved between 2016-2021.

¹ APP/M1595/W/20/3255502 and APP/M1595/W/22/3300422

25. It is clear that there has been a failure of policy with the timescale for the adoption of a new Local Plan having slipped several times, having been first anticipated in 2018 and now suggested to be on course for adoption in 2026.
26. This means that unmet need can only be met through windfall sites coming forward with no possibility of securing a supply of plan led sites until at least 2026. The Council also accepted in the previous appeal that the allocation of sites will be on land that is currently within the Green Belt.
27. Under the Public Sector Equality Duty (PSED) set out in s149 of the Equality Act 2010, I need to consider how the modest increase in the supply of sites arising from the development could positively contribute to the advancement of equality and good relations, with s149 placing an onus on public authorities to avoid discrimination and being proactive in promoting equality. The equality implications arising from the development are, as such, an important factor in favour of the proposal. As such I consider that need for Gypsy and Traveller sites carries considerable weight.
28. In accordance with the PPTS, in these circumstances, lack of supply should be a significant material consideration in relation to a planning decision when considering the grant of a temporary planning permission. However, the PPTS makes it clear that this does not apply to sites within, amongst other things, the Green Belt. It also does not say that the lack of supply is a significant material consideration when considering permanent schemes.

Personal Circumstances

29. Evidence has been supplied by the appellant to demonstrate a nomadic habit of life and the Council has not taken an alternative view or suggested the submissions are inconsistent or inaccurate. Accordingly, there is no dispute that the proposed occupiers are Gypsies and Travellers.
30. The appellant and his family are, as Romany Gypsies, an ethnic minority, and thus have the protected characteristic of race under s149(7) of the Equality Act 2010 and so, as required by section 149(1) of the Equality Act 2010, the public sector equality duty is applicable.
31. There is therefore a need to have due regard to eliminating discrimination, advancing equality of opportunity and fostering good relations. The appeal scheme would support the traditional way of life of families that have a protected characteristic and facilitate the establishment of a settled base for the appellant's family whilst they continued to pursue a nomadic lifestyle for economic purposes.
32. The appeal site would be occupied by the appellant, his wife and two children. The family have been residing in temporary locations whilst seeking to establish a permanent base. They are seeking to remain in the local area in order to maintain connections with family who are based locally.
33. Article 1 of the First Protocol sets out that a person is entitled to the peaceful enjoyment of his possessions and that no one shall be deprived of his possessions except in the public interest. Article 8 of the Human Rights Act states that everyone has the right to respect for his private and family life and his home.

34. Dismissing the appeal would represent an interference with the home and family life of the proposed occupiers, such that both Articles would be engaged. There is also a positive obligation imposed by Article 8 to facilitate the gypsy way of life.
35. Aside from the best interests of the children, I attach moderate weight to the other personal circumstances as a factor in favour of the scheme noting that Policy E of the PPTS sets out that subject to the best interest of the child, personal circumstances and unmet need are unlikely to clearly outweigh the harm to the Green Belt and any other harm so as to establish very special circumstances.

Best Interests of the children

36. Where Article 8 rights are those of children, as in this case, they must also be seen in the context of Article 3 of the United Nations Convention on the Rights of the Child. This requires a child's best interests to be a primary consideration. More particularly, case law identifies that, although a primary consideration, the best interests of a child are not a determinative planning issue, but no consideration must initially be regarded as more important or, in advance of the subsequent assessment of the individual circumstances, be given greater weight.
37. The Planning Practice Guidance advises that decision-makers need to consider whether children's best interests are relevant to any planning issue under consideration. In doing so, it similarly advises they will want to ensure the approach is proportionate. Decision-makers need to consider the case before them, and need to be mindful that the best interests of a particular child will not always outweigh other considerations including those that impact negatively on the environment or the wider community.
38. The appeal site would provide a settled base for 2 children, and their best interests need to be carefully considered. I accept that the best interests of the children would, in principle, be served by a permanent and secure home, whilst having regard to the fact that their educational needs are currently being met by a school in the local area. Whilst this can be maintained through the appellant's current arrangement living with family members on a nearby site, there is uncertainty that this situation will continue in the future.
39. If the appeal is dismissed, then the family would continue living in temporary locations, leading to a degree of uncertainty which could impact upon the children's welfare if they had to move from their current location. Instead, an enduring settled base would enable certainty in terms of access to education, healthcare and generally supporting the children's welfare by, for example, attending clubs, making friends and being close to family.
40. The merits of the case presented are such that I afford the benefits, of this development to the best interests of the children, significant weight.

Green Belt Balance

41. I have identified that the scheme would be inappropriate development in the Green Belt as defined by the Framework and result in harm to the openness of the area. It would, by definition, be harmful to the Green Belt, harm which the Framework indicates should be given substantial weight. Very special circumstances will not exist unless the harm to the Green Belt is clearly outweighed by other considerations.
42. There are several points in favour of the proposal. The Council are unable to meet the accommodation needs of the appellant, who are ethnic Gypsies and Travellers. The appeal scheme would support the traditional way of life of a family that has a protected characteristic.
43. The appeal scheme would facilitate the establishment of a settled base for the appellants' family whilst they continued to pursue a nomadic lifestyle for economic purposes. This would allow cultural traditions to be balanced with the practicalities of modern living thereby, advancing equality of opportunity. The unmet need for pitches also indicates inequality in housing opportunities and the proposal would help to offset this in a modest way.
44. These are important points in achieving the social sustainability sought by Paragraph 13 of the PPTS. It does not automatically follow that the appeal should be permitted because the PSED is relevant. Nonetheless, the equality implications weigh notably in favour of permitting pitches at the appeal site because dismissing the appeal would perpetuate the disadvantages currently endured.
45. The accommodation needs and personal circumstances of the intended occupiers are together, significant points in favour of the proposals. Furthermore, the best interests of 2 children is a primary consideration. All would benefit considerably from a settled base from which to gain stability and an education. I have attached moderate weight to the accommodation needs and personal circumstances of the appellant, and significant weight to the best interests of the children.
46. I have had regard to the recent findings of the Inspector² whereby they considered that the overwhelming scale of the need and persistent, prolonged and acute failure of policy, when coupled with the failure to meet the PSED and the likelihood that future allocations taking place on land allocated as Green Belt, that very special circumstances existed, which justified that development.
47. The Council have also now confirmed that it is unable to demonstrate a supply of sites, and that the identified need will not be addressed through policy allocations until 2026 at the earliest. The Council also accepts that the appellants are now under pressure to move on from their temporary accommodation and there is likelihood that they will need to resort to roadside pitches due to a lack of available sites and this would have an impact on the appellant's children. This potential impact upon the best interests of the children is a new development brought about during the course of the appeal.

² APP/M1595/W/20/3255502

48. Therefore, while the Council's decision was made on the basis of the applicable considerations at the time, the evidence that has been submitted in the intervening period has led the Council to reconsider its position and conclude that Very Special Circumstances exist to outweigh the limited harm identified to the Green Belt.
49. Therefore, having taken account all the other considerations outlined above, they outweigh the substantial weight which must be given to Green Belt harm. Consequently, I consider that there are very special circumstances necessary to justify inappropriate development in the Green Belt and is therefore in accordance with policies PMD6 and CCS4 of the LP.

Conditions

50. As well as the standard implementation condition, I have imposed a condition to ensure that the proposal is carried out in accordance with the approved plan to provide certainty.
51. As there is no foretelling as to whether any future occupiers might be forced to cease travelling permanently during the anticipated lifetime of the permission, imposing a condition linked to Annex A of the PPTS would be liable to result in unlawful discrimination, with members of the family being unable to live on this site. I shall therefore grant planning permission subject to a condition which restricts occupation to Gypsies and Travellers, defined so as to not exclude those who have ceased travelling permanently.
52. To limit the visual impact the number of caravans and the size of vehicles to be kept at the site are to be restricted. For similar reasons details of landscaping, bin storage and any external lighting are also required to be submitted, agreed and implemented. In order to ensure appropriate foul and surface water drainage is provided on the site details are also required.
53. I have also found it necessary to impose a condition requiring the submission of an ecological enhancement and mitigation plan for any protected species which may use the site for foraging.

Conclusion

54. The proposal adheres to the development plan and there are no other considerations which outweigh this finding. For the above reasons, and having had regard to all other matters raised, I conclude that the appeal should be allowed.

G Pannell

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans:
 - Proposed Site 3893-07-3
 - Location Plan 3893-07-4
 - Plans 3893-07-1
- 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 1 pitch on the site and on the pitch hereby approved no more than 2 caravans, shall be stationed at any time, of which no more than 1 caravan shall be a static caravan.
- 5) The site shall not be occupied until details of a scheme for the means of foul and surface water drainage of the site; soft landscaping to include details of species, plant sizes, proposed numbers and densities; boundary treatment, refuse arrangements, external lighting, shall have been submitted to and approved in writing by the local planning authority. These details shall include an implementation programme. The development shall be carried out in accordance with the approved details.
- 6) All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following any additional caravans being brought onto the site; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.
- 7) The site shall not be occupied until details of a post development, habitat creation and enhancements plan has been submitted and approved in writing by the local planning authority. These details shall include an implementation programme. These measures shall thereafter be retained.
- 8) No vehicle over 3.5 tonnes shall be stationed, parked or stored on this site.
- 9) No commercial activities shall take place on the land, including the storage of materials.