



Appeal Decisions

Hearing held on 6 December 2022

Site visit made on 6 December 2022

by Timothy C King BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1 September 2023

Appeal A: APP/K0425/C/21/3274007

Land at 128 Heath End Road, Flackwell Heath, High Wycombe, Buckinghamshire HP10 9EW

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Gerrard Anthony O'Connor against an enforcement notice issued by Buckinghamshire Council.
 - The enforcement notice was issued on 31 March 2021.
 - The breach of planning control as alleged in the notice is: Without planning permission the installation of entrance gate exceeding 1m in height adjacent to the highway.
 - The requirements of the notice are:
 - 1) Remove the gate (outlined in blue on the attached plan) from the Land.
 - The period for compliance with the requirements is within three months of this notice taking effect.
 - The appeal is proceeding on the grounds set out in section 174(2) (a) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a) and the prescribed fee has been paid, an application for planning permission is deemed to have been made under section 177(5) of the Act as amended, and falls to be considered.
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Appeal B: APP/K0425/W/21/3278232

128 Heath End Road, Flackwell Heath, High Wycombe HP10 9EW

- 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 G O'Connor against the decision of Buckinghamshire Council.
 - The application Ref 20/05702/FUL, dated 31 January 2020, was refused by notice dated 5 February 2021.
 - The development proposal is "*Erection of retaining wall, excavation works and engineering operations altering ground levels (part-retrospective).*"
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Appeal C: APP/K0425/W/21/3283528

128 Heath End Road, Flackwell Heath, High Wycombe HP10 9EW

- 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 G O'Connor against the decision of Buckinghamshire Council.
 - The application Ref 21/06743/FUL, dated 1 June 2021, was refused by notice dated 23 September 2021.
 - The development proposal is described as "*Extension to existing Gypsy/Traveller to allow for the siting of 5 additional mobile homes.*"
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This decision is issued in accordance with section 56 (2) of the Planning and Compulsory Purchase Act 2004 as amended and supersedes that issued on 5 June 2023.

Formal Decisions

Appeal A

1. The appeal is allowed, the enforcement notice is quashed, and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act (as amended) for the development already carried out, namely the erection of the installation of an entrance gate exceeding 1m in height adjacent to the highway on land at 128 Heath End Road referred to in the notice.

Appeal B

2. The appeal is dismissed.

Appeal C

3. The appeal is dismissed.

Background

4. The site is in permitted use as a caravan site for gypsy and traveller purposes. It has a frontage to Heath End Road, from which it is set back by about 4m behind a footway and wide grassed verge. From its entrance the site slopes gently uphill, northwards.
5. The trees around the site's boundaries are all covered by a Tree Preservation Order (TPO) which was confirmed in 2014.
6. The site lies just within the Metropolitan Green Belt.
7. In 2014 planning permission was granted on appeal (*K0425/A/12/2183066*) for the change of use of a former horticultural nursery site to provide for gypsy and traveller accommodation involving the stationing of 2 mobile homes, two touring caravans and the erection of a day/utility room at the site. A condition imposed on this permission which limited the number of caravans to that applied for was later relaxed by way of a subsequent planning permission (ref 15/06045/VCDN) granted in 2017 which increased the maximum number of caravans at the site to six, of which no more than three should be statics.
8. In August 2019 the Council served a Temporary Stop Notice regarding unauthorised excavation works and engineering operations to alter ground levels and also the laying of hardstanding. A part retrospective planning application was subsequently made in an attempt to regularise the planning position and an application was also made for five additional mobile homes. Both these were refused permission and are now the subject of Appeals B and C respectively
9. An enforcement notice was also issued against the unauthorised installation of a front gate to the property, which is now the subject of Appeal A.

Preliminary Matters

10. The description on the application form relating to the development now the subject of Appeal B is incomplete in that it refers only to the installation of a retaining wall. Given the associated excavations and groundworks I have instead used the description as titled on the Council's decision notice as this better focusses on the extent of the development involved.
11. The appellant makes reference to a proposed utility/day room which was intended to be sited towards the northern end of the site. This was included in the original permission granted on appeal, but was also the subject of a stand-alone planning permission (ref 14/07763/FUL) granted in 2015. At my site visit I noted that the day room has yet to be built. As mentioned, the original permission was the subject of a s73 application whereby a parallel planning permission was generated which relaxed a condition as to the number of caravans on the site. No day room was shown on the newly approved site layout drawing, although a 'timber shed' structure is annotated on the drawing close to the boundary at the north west of the site.
12. Although the appellant is of the view that the previously approved day room could still be erected it would appear that permission ref 14/07763/FUL has expired unimplemented. To now erect the day room structure onto the land as part of the original permission, when the number of caravans at the site have been increased in accordance with permission ref 15/06045/VCDN, tends to suggest that elements of the two permissions would be combined. Besides, the site layout plan approved as part of the original permission shows features which have not been introduced into the site's layout as exists. Further, details were submitted and approved in 2014 regarding tree protection and landscaping – a conditional requirement of the original permission – which, amongst other things, recommended supervised excavations and the installation of protective barriers and fencing. It would seem apparent that such measures were never carried out.
13. The above factors would suggest that the current planning position needs to be clarified and, as part of this, the legality of erecting the day room would need to be properly explored. I make this point with reference to the layout plans (both existing and proposed) in relation to Appeal C, as both show the day room, despite the fact that there is no building in situ in the location shown.

Appeal A on ground (a) – the deemed planning application (DPA)

Main Issue

14. The Council does not consider that the gate impacts adversely on the Green Belt and, given its contextual setting and the relative scale of the development, I agree with this approach. In the circumstances the main issue is the effect of the development on the character and appearance of the surrounding area.

Reasons

15. The Council indicates that the sliding, solid gate, which is over 1m in height and marks the site's entrance, was installed without planning permission in April 2020. It is set within an established hedgerow and the Council's sole objection is that it is untypical of the surrounding area. At my site visit I walked eastwards along this stretch of Heath End Road and witnessed other

high gates, and for that matter high walls, fronting the curtilages of other dwellings.

16. Policy DM35 of the Wycombe District Local Plan (LP) is concerned with design quality and says that all development is required to improve the character of the area. Admittedly, the gate at issue is of a form untypical of the immediate local area, and it does little to improve local character. However, it fronts a gypsy site which itself is generally uncharacteristic of the locality and the gate serves a functional purpose to satisfy the requirements of the site's occupants. Further, as mentioned, it is set back from the highway at the head of a driveway which cuts through the footway and grassed verge strip and its prominence is tempered due to it being sandwiched between the tall hedgerow runs on either side. In this context I am satisfied that the development has not resulted in any significant harm to the surrounding area. On this basis the objectives of LP policy DM35 would not be compromised by permitting the gate's retention as the character and appearance of the surrounding area is not impacted upon to any particular significance.
17. On this matter I have had regard to the representations made by interested parties but these have not affected my conclusions.
18. For the reasons stated, and having had regard to all matters raised, I conclude that the appeal should succeed on ground (a) and planning permission will be granted.

Appeal B

Main Issues

19. These are:

- 1) Whether or not the works constitute inappropriate development in the Green Belt for the purposes of the National Planning Policy Framework and, if it is, the effect on the openness of the Green Belt;
- 2) Any other harm, with particular regard to the impact on the site's trees and also biodiversity; and
- 3) If it is inappropriate development, 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

20. 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. 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.
21. The appellant considers that the works carried out constitute an engineering operation, which is one of the exceptions mentioned in the latter. However,

such works can only be considered as not 'inappropriate' if it can be seen to preserve the openness of the Green Belt and do not conflict with the purposes of including land within it. These purposes are set out in paragraph 138 of the Framework; one of which is to assist in safeguarding the countryside from encroachment.

22. 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.
23. 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.
24. The earthworks already carried out and the proposed retaining wall are to facilitate the accommodation of additional mobile homes on the land which would cause further encroachment into the Green Belt.
25. Notwithstanding the intensification of the residential use of the land the excavation works and proposed retaining wall would similarly impact on and be deleterious to the Green Belt's openness. The fact that the site is screened from Heath End Road does not ameliorate such identified harm to which I afford substantial weight.

Trees and Biodiversity

26. At my site visit I noted that a significant area of land towards the north of the site has been excavated of its earth and levelled, and that the ground works have taken place in close proximity to the site's protected trees (T1 – T6) and it is clear that a number of their roots have been bared.
27. It is intended that the excavation be completed and a perimeter retaining wall be built against the earth banks to a maximum height of 2.4m so as to allow additional static caravans/mobile homes to be positioned within this area of the site. The wall would pass under the canopies of the trees and it would be within the Root Protection Area of T1, a Category A English Oak tree. Trees T2, T3, T4 and T6 have been classified as Category B trees.
28. The Appellant commissioned specialist consultants to inspect and report on the impact that the excavation works have had on the trees. Accordingly, the consultants produced an Arboricultural report to this effect. However, the report explains the limitations of the survey in that only an external visual inspection, assisted by a hand rake, took place and the trees were only inspected from ground level. Indeed, the report makes the point that a visual inspection means no guarantee can be given as to the structural integrity or safety of a tree, or of its internal condition.
29. Nevertheless, the report identifies that all the trees have suffered root severance, and it also confirms that many roots have been exposed. In addition a group of three cherry trees (G1), also subject to the TPO, have had the east sides of its Root Protection Area severed approximately 1m from the trunks. The report mentions that T1 had a number of epicormic growths on its trunk which also showed some barbed wire occlusion. In addition, the consultant notes that T5 has suffered significant rootplate damage to the point where it is unstable and should be removed. Indeed, in its representations the

Council considers that two trees have since been removed. Also, at the time of the survey there was evidence that T2, T5 and T6 had suffered crown scorch damage due to a bonfire previously held at the site.

30. The report then deals with the proposed erection of the retaining wall, and makes recommendations as to laying of its foundations and the adjustment of its alignment to ensure that its construction would not require any additional excavation closer to the trees than the degree of encroachment that has already occurred. Nonetheless, there is no methodology statement before me directly applicable to the circumstances identified which demonstrates the extent of and associated details of the remedial works necessary so as to make good, as far as is possible, the damage to the trees highlighted.
31. In this connection, protection measures involving barriers and fencing are also key but, given the current position which has suggested a clear disregard of the details approved in 2014 regarding tree protection as a conditional requirement of the original permission, I am not persuaded that even if I was allowing the appeal and granting planning permission such matters should be left to be addressed by way of imposing a further planning condition.
32. Accordingly, in the interests of certainty, this outstanding matter should have been dealt with at the application stage by way of firm proposals and, given what has transpired, it was clearly wrong for the covering letter, sent to the Council when the application was submitted, to say that *"No substantial digging is required...and as such no roots would be harmed as result of the development."*
33. Irrespective of the harm that has resulted the letter did not itself justify the proposal. Indeed, the Arboricultural report, submitted some eleven months later, only serves to highlight the problem.
34. The Council also raised an objection as to the development's impact on biodiversity, indicating that the appellant had failed to demonstrate that there would be no resultant negative impact on such. Although the appellant, in his representations, said that evidence would be produced on this issue to support his case I have seen nothing compelling in this regard. Nevertheless, as I am dismissing this appeal on other substantive matters it is not necessary that I consider this matter further.
35. With the obvious need for mitigation works to be employed for re-establishing ground levels in an attempt to safeguard the trees the Council takes the reasonable view that the introduction of additional mobile homes could prevent mitigation measures taking place. I have seen no firm proposals based on fact that would suggest otherwise.
36. I therefore consider that the excavation works already carried out have been harmful to the site's protected trees and, in the absence of details otherwise, I further consider that the proposed retaining wall would exacerbate the situation. Accordingly, the development is in material conflict with the objectives and requirements of LP policies CP8, CP9, DM32, DM34, and DM42.

Planning Balance

37. Paragraph 148 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 harm on both main issues identified and, fundamentally, the harm

to the Green Belt is a matter to which I attach substantial weight. 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.

38. No very special circumstances necessary to outweigh the fundamental policy objection have been demonstrated and, I must conclude, do not exist to support this appeal.

Conclusion

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

Appeal C

Main Issues

40. The main issues here are largely similar to those for Appeal B, but also includes national policy, and the objectives of the development plan in respect of gypsy and traveller accommodation. The Council has also raised concerns as to whether there is sufficient space available to adequately provide for on-site car parking so as not to give rise to vehicles parking outside the site.

Reasons

National policy and the development plan

41. 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.
42. 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.
43. In the above connection, Policy H of the PPTS says that Councils should, amongst other things, consider the level of need for additional gypsy and traveller accommodation and the availability of alternative accommodation.
44. The Council relies on the Aylesbury Vale, Chiltern, South Bucks and Wycombe District Councils - Gypsy, Traveller and Travelling Showpeople Accommodation Assessment (February 2017) (the GTAA), which it considers to be the most reliable assessment currently available. Within the Wycombe District, it appears there may be a need for up to 7 pitches.
45. The Council has indicated that the Wycombe District Local Local Plan (LP), adopted in 2019, has a strategy to meet GTAA needs and criteria based policies for assessing planning applications for new pitches. LP policy DM26 sets out broad criteria to assess new traveller sites, or intensification of existing sites, that come forward through the planning process. It says that these will only be allowed where, amongst other things, the site is not in the Green Belt.

46. Proposals for such development will be required to relate well to an existing settlement with access to services and should not be isolated in the countryside. Both main parties agree that this is an accessible site, in proximity to local services and facilities but, nonetheless, given its Green Belt location, the policy is firmly prohibitive of the site's intensification of use.
47. The appellant, in his Supplementary Statement, contends that the GTAA is out of date and considers that the Council has an unmet need of at least 35 pitches, with an immediate need for a further 28 pitches. At the Hearing the Council, for its part, produced a Summary of Assessed Need/Supply but, during questions, its witness was somewhat guarded as to any significant degree of unmet need in the Buckinghamshire Council area citing instead the findings of the Inspector who examined the Wycombe District Local Plan prior to its adoption in 2019.
48. In terms of any alternative sites available the Council indicated that there are no sites within its control that are immediately available and this position is unlikely to change in the near future.
49. From the evidence it would seem likely that the 2017 GTAA represents an underestimation of need and that need in the area has risen since the GTAA was published. Although I appreciate that the Council is in the process of preparing a new GTAA in order to support a new development plan it was confirmed that, this is at a very early stage.
50. In the absence of a comprehensive update I must conclude, on the evidence available, that there is unmet need throughout the Council's administrative area. The site's Green Belt location aside, this is a matter to which I ascribe considerable weight.
51. In terms of national Green Belt policy residential development therein is considered as inappropriate development within the Green Belt for the purposes of the Framework. I, therefore, turn now to the proposal's effect on the openness of the Green Belt.

Openness

52. Given my findings as to the impact on the Green Belt's openness from the excavation works and intended retaining wall which the appellant considered necessary to facilitate the proposed additional mobile homes I have to similarly conclude here that further encroachment into the Green Belt with development considered as 'inappropriate' therein is harmful and unacceptable. Such development is also in material conflict with LP policies CP8 and DM42.

Trees

53. When planning permission was originally granted the approved site layout plan drawing no. TPP 03 (based on WYC/03/PL/01A), which represented an amended site arrangement, showed the two mobile homes sited within the southern half of the site. In paragraph 6 of the Inspector's report to the Secretary of State he indicates that the amendments differ from the layout for which the Council refused planning permission in that they address the landscape reasons for refusal. He states, in part, accordingly:

"In particular.... they re-organise the layout of the site so that the day room and caravans are not in the root protection areas or beneath the canopies of retained trees and the parking and amenity areas are clearly defined."

54. Having had regard to the previous Inspector's comments, and my findings as to the identified significant harm that has been caused to the wellbeing of the protected trees I must conclude that the proposal represents a retrograde step and also directly conflicts with the aims of LP policy DM34.

On-site parking

55. If I was allowing this appeal and granting planning permission for the additional mobile homes then I am of the opinion that this is a matter that could be dealt with by planning condition. However, as I am dismissing this appeal for other substantive issues it is not necessary that I address this matter further.

Other considerations

Personal circumstances and Human Rights

56. There is a positive duty by virtue of Article 8 of the Human Rights Act to facilitate the traditional and nomadic way of the life of travellers.
57. I have received a list of persons who it is intended would occupy the additional caravans proposed. However, this is not a retrospective proposal in that no one is required to leave their home by reason of the appeal being disallowed. Nonetheless, I have had due regard to the personal circumstances in this instance and also the Rights of the Child given the intention that several children would occupy the additional caravans. My decision, though, to refuse planning permission is justified given the harm to the Green Belt and also the damage to the site's protected trees.

Planning Balance

58. I have given considerable weight to the absence of an up-to-date GTAA and the apparent unmet need for gypsy and traveller sites throughout the Council's area. However, this must be balanced with the harm to the Green Belt and also that the proposed siting of the additional caravans would seemingly impede, if not prevent, remedial measures being carried out in response to the earthworks already carried out and the resultant damage to the trees. This issue is now a matter to be resolved between the two main parties.
59. In essence, I consider that five additional mobile homes at the site would somewhat crowd the site, exacerbating the situation, and I attach substantial weight to the totality of the harm caused.
60. In terms of the Green Belt location the intensification of the existing use is in material conflict with LP policy DM26.
61. As is the case with Appeal B 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, no very special circumstances necessary to outweigh the fundamental policy objection have here been demonstrated.

Conclusion

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

Timothy C King

INSPECTOR

APPEARANCES

For the Appellant

Timothy Jones Counsel for the appellant

Brian Woods (WS Planning & Architecture) Agent for the Appellant

Gerrard O' Connor Appellant

For the Council

Heather Smith

Maria Whyte

Stephanie Penney

Helen Harding

Sally Clark

Emily Brown

Other Interested Parties

Patrick Murphy

Eileen Murphy

Documents produced at the Hearing

1. Council's notification letters of appeal and the Hearing event.
2. Paper, showing a Summary of Assessed Need/Supply in the Buckinghamshire Council administrative area