



Appeal Decision

Site visit made on 14 September 2023

by D Hartley BA (Hons) MTP MBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 September 2023

Appeal Ref: APP/E3715/W/22/3309858

Land adjacent to Rosefields, Hinckley Road, Wolvey LE10 3HQ

- 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 Daryl Taylor against the decision of Rugby Borough Council.
 - The application Ref R22/0226, dated 14 March 2022, was refused by notice dated 23 June 2022.
 - The development proposed is described as change of use of the land for the siting of one residential Gypsy pitch.
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Decision

1. The appeal is allowed and planning permission is granted for change of use of the land for the siting of one residential Gypsy pitch at land adjacent to Rosefields, Hinckley Road, Wolvey, LE10 3HQ, in accordance with the terms of the application Ref R22/0226, dated 14 March 2022, subject to the conditions set out in the attached schedule.

Main Issues

2. The appeal site falls within land designated as Green Belt. The main issues are: -
 - whether the proposal is inappropriate development in the Green Belt including its effect on the openness and purposes of Green Belt, and
 - whether any 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

Planning history, site and proposal

3. The evidence indicates that temporary planning permission has been approved for residential use of the site twice since 2014¹. I am not certain of the circumstances which led to the grant of temporary planning permission in 2014, but the most recent three years temporary planning permission in 2018 related to the provision of a Gypsy and Traveller pitch on the site for the appellant who is an undisputed Traveller. In granting temporary planning permission in 2018, the evidence is that the local planning authority (LPA) considered that the personal circumstances of the appellant, and unmet Gypsy

¹ R14/1383 and R18/0553

and Traveller pitch need, clearly outweighed the harm caused to the Green Belt.

4. The appeal site falls within land designated as Green Belt. It is set back from Hinckley Road and positioned behind a paddock and between residential properties known as 'Rosemere' and 'Rosedene'. Existing and mature coniferous boundary landscaping is positioned on the eastern boundary of the site. The site is located within walking distance of the settlement of Wolvey which is designated in the development plan as a main rural settlement. There is a footpath on the western side of Hinckley Road leading to the settlement of Wolvey.
5. In respect of the 2018 planning permission, it is not clear from the evidence that is before me if use of the land for residential purposes ceased and all equipment and materials on the land were removed at the end of the temporary period in accordance with an imposed planning condition. Given this uncertainty, I have determined the appeal based on a proposal for a material change of use of the land rather than as a proposal for a continuation of an existing use.
6. The appellant is seeking permanent planning permission for a 'Gypsy pitch' on the site. The submitted layout plan, as it relates to the red edged site location plan, proposes a mobile home, timber gates and an internal access road in stone chippings. On my site visit, I was able to see that other structures and buildings were on the appeal site. I do not know if these buildings and structures are lawful. For the avoidance of doubt, I have determined the appeal based on the submitted layout plan. I was able to see on my site visit that the site continues to be in residential use even though the temporary planning permission has expired.

Whether inappropriate development in the Green Belt

7. While temporary planning permission was granted for the same development on the site in 2018, this was subject to condition 3 which required that at the end of the three years the use should cease, and materials and equipment brought onto the land in connection with that use be removed. It is therefore necessary that I determine this appeal based on an appeal site which does not include a mobile home. In other words, it is necessary that I determine the appeal based on an appeal site which is more open in relative terms.
8. The Government's Planning Policy for Traveller Sites 2015 (PPTS) states, at paragraph 16 (Policy E), that Traveller sites (temporary or permanent) in the Green Belt are inappropriate development. Paragraph 4 of the National Planning Policy Framework 2023 (the Framework) states that '*the Framework should be read in conjunction with the Government's planning policy for traveller sites*' where it is '*relevant*' to do so. In this case, the PPTS makes it explicitly clear that Traveller sites in the Green Belt are inappropriate development. Consequently, and, in this regard, I do not find that it is relevant to also consider the exceptions as stated in paragraphs 149 and 150 of the Framework.
9. Notwithstanding the above, and while the appellant acknowledges that the proposal does not meet any of the development exceptions in paragraph 149 of the Framework, he nonetheless asserts that the proposal would not be inappropriate development in the Green Belt when assessed against paragraph

150(e) of the Framework. Paragraph 150(e) of the Framework states that *'material changes in the use of land (such as changes of use for outdoor sport or recreation, or for cemeteries and burial grounds)' are not inappropriate in the Green Belt 'provided they preserve its openness and do not conflict with the purposes of including land within it'.*

10. Even if it were relevant and necessary to also assess the proposal against paragraphs 149 and 150 of the Framework, as distinct from solely the PPTS, owing to the position and scale of the proposed mobile home, and associated domestic paraphernalia and parked vehicles, I do not find that the proposal would preserve the openness of the Green Belt and there would be conflict with one of the purposes of including land within the Green Belt, i.e. safeguarding the countryside from encroachment. I deal with this in detail below, but, for the avoidance of doubt, the proposal would not meet any of the exceptions as detailed in paragraphs 149 and 150 of the Framework.
11. Paragraphs 147 and 148 of the Framework state that inappropriate development is, by definition, harmful to the Green Belt and that substantial weight should be given to any harm caused to it. This is a matter therefore that weighs against allowing the appeal and, in this regard, I find that there is conflict with the PPTS, the Framework and policy GP2 of the adopted 2019 Rugby Borough Local Plan 2011-2031 (LP) which seek to protect the Green Belt from inappropriate development.

Effect on the openness and purposes of the Green Belt

12. The siting of the proposed mobile home would result in some harm to the openness of the site in spatial terms. The parking of vehicles associated with residential use of the site, while an intermittent use, coupled with associated domestic paraphernalia, would exacerbate this adverse impact. However, given the position of the mobile home, and its single storey height, coupled with the mature landscaping to the rear, I find that there would be limited harm caused to the visual openness of the Green Belt. Overall, and because the proposed development would be set well back from the main road and positioned between two dwellinghouses, I find that limited and localised harm would be caused to the openness of the Green Belt.
13. I do not disagree with the main parties that the proposal would not conflict with four of the purposes of the Green Belt as stated in paragraph 138 (a), (b), (d) and (e). The point of contention between the main parties relates to the effect of the development on one of the purposes of the Green Belt, i.e., safeguarding the countryside from encroachment.
14. There is no doubt that the proposal would change the otherwise more open and rural character of the appeal site prior to residential use taking place on it. It would have the effect of departing from the sporadic nature of linear development in the locality with open and green spaces separating residential properties. To the extent that the proposal would seek to urbanise this semi-rural environment, I therefore find that there would be some conflict with the Green Belt purpose as stated in paragraph 138 (c) of the Framework. However, this conflict would not be very significant given the position and height of the proposed development and the relatively small size of the plot behind an existing paddock.

Other Considerations

Gypsy and Traveller pitch need, provision and supply

15. In respect of the LP, the evidence of the need for Gypsy and Traveller pitches in the area is drawn from the Council's Gypsy and Traveller Accommodation Assessment Study 2017 (2017 GTAA). Policy DS2 of the LP requires the provision of 61 Gypsy and Traveller pitches between 2017 and 2032. This is based on the PPTS definition of Gypsies and Travellers at annex 1. This definition has been found by the Court of Appeal to be discriminatory² in so far that it does not consider those Gypsies and Travellers who on grounds of their own or family's dependants' educational or health needs or old age have ceased to travel permanently.
16. Given the above, the need for Gypsy and Traveller pitches in the area is likely to be greater than envisaged in the 2017 GTAA. Indeed, given the passage of time between lodging this appeal and its determination, I sought clarification from the LPA about the most up to date position in respect of need. A new GTAA was published in 2022 (2022 GTAA) and this indeed indicates that when '*ethnic need*' is added to '*PPTS definition need*', the need is much greater than what was stated when the LP was prepared.
17. The evidence is that between 1 April 2017 and 31 March 2021 there was a shortfall of 8 pitches against the requirement in policy DS2 of the LP. According to the Planning Committee report, for the five-year period 1 April 2021 to 31 March 2026, the annualised requirement equates to an unmet need for an additional 16.6 permanent Gypsy and Traveller pitches. Together with the existing undersupply from the period of 1 April 2017 to 31 March 2021 of 8 pitches, a total of 24.6 pitches are required over the next five years.
18. The LP strategy is such that Gypsy and Traveller pitch need is to be provided by way of the determination of planning applications and the adoption of a Gypsy and Traveller Site Allocations Development Plan Document (SADPD). There is evidence that the preparation of the latter document has been delayed, although the evidence is that it has reached the 'issues and options' stage. The LPA states, in its Local Development Scheme dated December 2022, that adoption of the SADPD is expected in September 2024.
19. The evidence is that in recent years very few planning permissions have been approved to address Gypsy and Traveller pitch need in the area. I find that until the SADPD is adopted, and land allocated to meet the pitch requirements of the Gypsy and Traveller community, identified need will not be adequately met. Furthermore, the LP does not consider all need as expressed in the 2022 GTAA and, in this regard, I do not find that the evidence demonstrates that the LP suitably plans and meets the need for Gypsy and Traveller pitches in the area.
20. There is no dispute between the main parties that the LPA cannot demonstrate a deliverable five-year supply of Gypsy and Traveller sites. Paragraph 27 of the PPTS states '*if a local planning authority cannot demonstrate an up-to-date five-year supply of deliverable sites, this should be a significant material consideration in any subsequent planning decision when considering applications for the grant of temporary planning permission*'. However, as the

² Smith v SSLUHC & Ors (2022) EWCA

appeal site is in Green Belt, this should be read alongside Policy E, paragraph 16, of the PPTS which states '*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*'.

21. I deal with the latter as part of my planning balance below. However, and notwithstanding the fact that the site falls within the Green Belt, the lack of a five-year supply of deliverable Gypsy and Traveller sites, and unmet need, are matters to which I afford very positive weight in favour of the proposal.

Alternative sites

22. The Council does not provide any contrary evidence to that provided in the Planning Committee report which is that '*it is considered that there are no suitable, available and affordable alternative sites for the proposed development within the borough*'. Furthermore, I have no reason to doubt the appellant's claim that he has been unable to find a suitable existing and alternative Gypsy and Traveller pitch. The apparent lack of existing alternative Gypsy and Traveller pitches in the area is a matter which weighs in favour of the proposal.
23. However, it is necessary that I emphasise that policy DS2 of the LP is a criteria-based policy for the consideration of allocations and planning applications. I am not certain, on the evidence that is available to me, if the appellant has considered the possibility of acquiring and seeking planning permission on a site which is perhaps less sensitive (e.g., away from the Green Belt) and which would potentially also accord with the detailed requirements of such a policy. Even if such a site were to exist, some time would be needed to secure planning permission and then to ensure that the necessary site infrastructure was in place.

Personal circumstances of the appellant

24. Article 8 of the European Convention on Human Rights as incorporated into the Human Rights Act 1998 (HRA) states that everyone has a right to respect for private and family life, their home and correspondence. This is a qualified right, whereby interference may be justified in the public interest, but the concept of proportionality is crucial.
25. Furthermore, in exercising my function on behalf of a public authority, I have had due regard to the Public Sector Equality Duty (PSED) contained in the Equality Act 2010, which sets out the need to eliminate unlawful discrimination, harassment and victimisation and to advance equality of opportunity. The Act recognises that race constitutes a relevant protected characteristic for the purposes of PSED. Romany Gypsies and Irish Travellers are ethnic minorities and thus have the protected characteristic of race.
26. It is clear that a settled base has allowed the appellant to register with the local General Practitioner and, owing to his health condition, to acceptably self-isolate for a prolonged period during the Covid-19 pandemic.
27. I have no reason to doubt the appellant's claim that his health has deteriorated during the period of self-isolation. In this regard, and, in the absence of an alternative Gypsy and Traveller site being available now, a refusal of planning permission would have the potential to force a roadside existence. In the

context of the appellant's health condition, I find that this would likely have adverse consequences.

Planning Balance and Conclusion

28. I have found that the proposal would amount to inappropriate development in the Green Belt. In this respect, the development would not accord with policy GP2 of the LP, the PPTS and the Framework which seek to protect the Green Belt from inappropriate development. This is a matter to which I afford very substantial adverse weight in decision making terms. Some limited and localised harm would be caused to the openness of the Green Belt and there would be some, albeit limited, conflict with one of its purposes.
29. Weighed against the above is the fact that the LPA cannot demonstrate a five-year supply of deliverable Gypsy and Traveller sites, the unmet need for Gypsy and Traveller sites in the borough, the undisputed lack of existing alternative Gypsy and Traveller sites and the personal circumstances of the appellant. Collectively, these considerations are not sufficiently weighty to justify the permanent grant of planning permission given the clear harm that would be caused to the Green Belt.
30. I have considered whether there is, however, justification to grant temporary planning permission for the development. This has indeed been previously contemplated by the LPA who granted temporary planning permission in 2018. The evidence is that the most recent grant of temporary planning permission was based on similar considerations, albeit that the appellant's current poor health was not a matter that was weighed in the planning balance. The evidence is that while there may have been some slippage, the SADPD is currently scheduled to be adopted in September 2024. However, even the LPA accepts that there may be further slippage in so far that as part of the Issues and Options consultation and call for sites undertaken in Autumn 2022, no potential sites were received and the LPA *'is considering how to proceed with the DPD, and this is likely to require adjustment to the programme set out in the Local Development Scheme'*.
31. Even if the anticipated SADPD adoption timescale was met, which looks very unlikely, further time would still be needed to secure planning permission(s) on alternative sites and to ensure that the necessary infrastructure was in place to ensure residential use of them.
32. While the appeal site is in Green Belt, and I have found clear conflict with the PPTS and policy GP2 of the LP, it at least remains a possibility that the site could be allocated as a Gypsy and Traveller site as part of the forthcoming SADPD. Indeed paragraph 4.24 of the reasoned justification to policy DS2 of the LP states *'if the assessment of site options to meet the need for Gypsy and Traveller accommodation indicates the need to release land from the Green Belt to allow for the expansion of existing sites or the creation of new sites, the Council will consider whether there are exceptional circumstances to justify this via a partial review of the Local Plan including policy DS2 to be published alongside the DPD'*. As the need for Gypsy and Traveller accommodation is greater in the 2022 GTAA, when compared to the 2017 GTAA, it is likely that more Gypsy and Traveller pitches will need to be provided in the area.
33. In this case, I find, on balance, that there is justification for granting temporary planning permission for three years. Despite the views expressed by the Parish

Council that only a twelve month temporary planning permission would be justified, I find that three years would be reasonable as this would afford appropriate time for the LPA to address need through the development plan review process, including the allocation of Gypsy and Traveller pitches and/or a partial review of the LP, and, if necessary, to ensure that suitable alternative Gypsy and Traveller pitches are provided for residential occupation following the grant of planning permission and the provision of any necessary on-site infrastructure.

34. In reaching the above conclusion, I have had regard to the fact that a refusal of planning permission could, in turn, render the appellant homeless. In this regard, there would be significant interference with his rights as expressed in the HRA. I acknowledge that Traveller sites are inappropriate in the development in Green Belt whether they are permanent or temporary. Nonetheless, a temporary planning permission would not cause the same degree of long-term harm to the openness and one of the purposes of the Green Belt, as would be the case from the grant of permanent planning permission. Furthermore, and accepting that it would be for the LPA to decide whether it was expedient to taken enforcement action if planning permission were to be refused, issuing a temporary planning permission would ensure that the appellant was not made homeless or indeed had to possibly contemplate a roadside existence.
35. While it is not my role to pre-judge the outcome of the SADPD and/or development plan review process in terms of the allocation of Gypsy and Traveller pitches and/or the removal of land from the Green Belt, it is noteworthy that the proposal constitutes a small Gypsy and Travellers site, which is acknowledged as being needed in the 2017 GTAA, and that while the proposal conflicts with Green Belt policy, the LPA do not find any conflict with the detailed criteria in policy DS2 of the LP.
36. Considering the above, coupled with the possibility of some parts of the Green Belt being released for Gypsy and Traveller pitch purposes, the personal circumstances of the appellant, unmet Gypsy and Traveller need, and a lack of alternative available Gypsy and Traveller pitches, I conclude that the harm caused to the Green Belt by reason of inappropriateness, and the limited harm caused to its openness and one of its purposes, is clearly outweighed by the identified other considerations, so as to amount to the very special circumstances necessary to justify the development on a three year temporary planning permission basis.
37. I recognise that the Planning Practice Guidance (PPG) states that it will rarely be justifiable to grant more than one temporary planning permission, but, in this case, there is clear rationale and justification to grant a further temporary planning permission on the site. Subject to the necessary conditions as detailed below, I conclude, on balance, that the appeal should be allowed.

Conditions

38. The conditions set out in the accompanying schedule are based on those suggested by the Council. Where necessary, I have amended the wording of the suggested conditions, in the interests of precision and clarity, and to comply with advice in the PPG.

39. For the avoidance of doubt, and in the interests of certainty, it is necessary that the development is carried out in accordance with the submitted drawings.
40. Planning permission is justified on a temporary basis, in part owing to the personal circumstances of the appellant who is a Traveller. Given my on-balance conclusion, including the personal circumstances of the appellant, it is necessary to impose a personal condition alongside a three-year temporary planning permission condition. In this context, it is not necessary to impose the Council's suggested condition relating to the occupation of the site by persons other than Gypsies and Travellers.
41. In the interests of the character and appearance of the area and the openness of the Green Belt, it is necessary to include conditions relating the number of pitches and caravans on the site and controls in respect of the parking of large vehicles and commercial activities. In the interests of the living conditions of the occupiers of neighbouring residential properties, it is necessary to impose a condition relating to the provision of generators on the site.
42. The Council has suggested that I impose a condition which prohibits the erection of outbuildings and structures on the site. This is not a necessary condition as most structures and outbuildings would need express planning permission. It is noteworthy that it may be possible to provide sanitary facilities on the site in accordance with a condition on a site license and that this would be permitted development in respect of Class B of Part 5 of Schedule 2 of the Town and Country Planning (General Permitted Development) England Order 2015 (as amended). I find that it would be unreasonable to effectively negate the benefits of this permitted development right. In this case, I do not find that there is clear justification for removing the said permitted development right having regard to paragraph 54 of the Framework.

D Hartley

INSPECTOR

Schedule of Conditions

1)The development hereby permitted shall be carried out in accordance with the following approved plans: Red Edged Site Location Plan Drawing No. B18/01/L01A and Block Plan Drawing No. B18/01/BLE01.

2)When the premises cease to be occupied by Mr Daryl Taylor, or at the end of three years whichever shall first occur, the use hereby permitted shall cease and all materials and equipment brought on to the premises in connection with the use shall be removed.

3)There shall be no more than 1 pitch on the site and not more than 1 static caravan or touring caravan, as defined in the Caravan Sites and Control of Developments Act 1960 and Caravan Sites Act 1968 as amended, stationed on the site at any one time.

4)No commercial activities shall take place on the land including the storage of materials and, other than 1 horsebox, no vehicle over 3.5 tonnes shall be stationed, parked or stored on the land.

5)No external generators shall be used unless and until details of their enclosure and siting are submitted to and approved in writing by the local planning authority. Generators shall not be installed on the site other than in accordance with approved details.