



Appeal Decision

Hearing Held on 14 November 2023

Site visit made on 14 November 2023

by Jonathan Edwards BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 November 2023

Appeal Ref: APP/P1805/W/23/3325331

Mintola Corral, Batemans Lane, Wythall, Birmingham B47 6NG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (the Act) against a refusal to grant planning permission.
 - The appeal is made by Mr Martin Doherty against the decision of Bromsgrove District Council.
 - The application Ref 22/01042/FUL, dated 29 July 2022, was refused by notice dated 4 April 2023.
 - The development proposed is described as "the use of land for the stationing of caravans for residential purposes and the erection of a dayrooms and laying of hardstanding ancillary to that use".
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Decision

1. The appeal is allowed and planning permission is granted for the material change of use of land for the stationing of caravans for residential purposes and the erection of dayrooms and laying of hardstanding ancillary to that use at Mintola Corral, Batemans Lane, Wythall, Birmingham B47 6NG in accordance with the terms of the application, Ref 22/01042/FUL, dated 29 July 2022, subject to the conditions set out in the schedule at the end of this decision.

Preliminary Matters

2. The description of development in the header is taken from the application form. At the hearing, the parties agreed to the description of development in the decision above. This clarifies the proposal includes a material change in the use of the land and the erection of 2 dayroom buildings.
3. On my visit I saw a static and a touring caravan on the site and I have been advised the residential use has commenced. Also, I saw a gate and hard surface at the access off Batemans Lane and loose bound surfacing across most of the site, seemingly in accordance with details on the appeal plans. Therefore, the development has begun. Even so, my assessment is based on the submitted drawings.
4. The appellant's agent has confirmed the development would provide accommodation for Gypsies and Travellers and the Council has assessed the proposal accordingly. I have considered the appeal on the same basis.
5. I allowed time after the close of the hearing for the appellant to submit a completed unilateral undertaking under the provisions of section 106 of the Act. An undertaking (the UU) dated 23 November 2023 has been submitted and the Council has had an opportunity to provide comments on it. The UU

contains planning obligations that would surrender and relinquish an existing planning permission for the change of use of the appeal site to equestrian use and erection of stables and the use of the site for the storage of 1 caravan as covered by a certificate of lawful use. These obligations take effect if the appeal were allowed and planning permission is granted.

Main Issues

6. It is agreed between the Council and the appellant that the proposal would include inappropriate development in the Green Belt. In light of the provisions of paragraph 16 of the Planning Policy For Traveller Sites 2015 (PPTS), I find no reason to disagree with the parties on this matter. Given this context, the main issues are:-
- the effect of the development on openness and on the purposes of Green Belt policy;
 - its effect on the character and appearance of the area; 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

Effect on openness and purposes of Green Belt policy.

7. The appeal site is a fairly narrow but deep plot that stretches between Batemans Lane and the A435 Hollywood Bypass. Prior to the aforementioned residential use and associated works it was largely laid to grass with a caravan and a small range of stables close to the rear boundary with the A435. The parties agreed at the hearing that the previous condition of the site is the appropriate baseline for assessing the effects on openness.
8. The development would introduce 2 mobile homes, 2 touring caravans, 2 dayroom buildings as well as associated vehicle parking and domestic paraphernalia onto the site. These features would have a volume and so they would reduce the spatial openness of the plot. However, the hardstanding at ground level has no meaningful effect on spatial openness.
9. The narrow width of the plot frontage and the screening effect of nearby trees and hedgerows means the development would only be visible from a short stretch of Batemans Lane. Also, the caravans and dayroom towards the front of the site would obstruct views from the lane of the features towards the rear. The development would not be clearly seen from the A435 due to roadside vegetation. A bund on land outside the plot and close to the boundary would obstruct views from private property to the south. There are views into the site from private land to the north but nonetheless the development's effect on visual openness would be fairly localised.
10. Having regard to the nature, extent and visibility of the development, I find the proposal would overall cause a moderate level of harm to the openness of the Green Belt. In these respects, it would go against the fundamental aim of Green Belt policy to keep land permanently open.
11. Also, the development would represent an encroachment into countryside. As such, it would be contrary to the purpose of Green Belt policy as set out at

paragraph 138(c) of the National Planning Policy Framework (the Framework) to assist in safeguarding the countryside from encroachment.

Character and appearance

12. Batemans Lane has a rural feel as it is narrow, without roadside pavements or street lights and lined by hedgerows and trees. There are also views from the lane of undeveloped paddocks and fields. At the same time, there are vehicular accesses off the road that allow views of buildings and areas of hardstanding. Roadside signage indicates that at least some of these properties are used for business purposes. This includes The Paddocks, which adjoins the appeal site and that contains buildings plus a hard-surfaced vehicular access and parking area, which are visible from the road. Local properties tend to be at least partially screened by vegetation but nonetheless they influence the character of Batemans Lane and dilute its sense of rurality.
13. Through the loss of a largely open field, the development has and would erode the countryside feel to the site itself. The significant extent of hard surfacing exacerbates this harmful effect by undermining the natural qualities of the plot. In these regards the development would not recognise the intrinsic character or beauty of the countryside.
14. Even so, the development would not be markedly at odds with its context given the nearby buildings and features on The Paddocks as well as the other properties on Batemans Lane. Also, the development would not be prominent and there is scope to include planting on the site to soften the visual effects from the limited vantage points where it would be visible.
15. Overall, I conclude the development would be detrimental to the rural aspects that add to the character and appearance of the area. In these regards, it would not accord with policy BDP19 of the Bromsgrove District Local Plan 2017 (BDP), which seeks to ensure development enhances the character and distinctiveness of an area. However, the harm would be tempered by the limited visual effects of the scheme and the existing influence of nearby properties on the area.

Other concerns raised.

16. Interested parties have raised other objections to the proposal. There is no indication that allowing the appeal would lead to similar developments nearby. Even if further proposals for Gypsy and Traveller sites come forward, these would need to be considered on their own merits and in light of circumstances at the time. Such schemes are not bound to be determined in the same way as this appeal and so granting planning permission would not set a precedent.
17. The site lies close to the built up extent of Wythall that contains primary and secondary schools, shops, medical and recreation facilities. Batemans Lane has no pavements but the various accesses between the site and Silver Street allow safe refuges in the event that pedestrians meet vehicles on the road. The lane is also unlit but it is a short distance from the site to Silver Street where there are pavements and street lights. Overall, the local highway network is conducive to walking. As such, the development would be in a suitable location having regard to accessibility to services and the potential to travel to and from the site by means other than the private car.

18. From the access, there is appropriate visibility in both directions along the road. The carriageway is narrow but the development is likely to generate limited traffic movements given that it would provide for only 2 households. As such, the proposal would not unacceptably prejudice highway safety.
19. None of the above factors justify refusing planning permission. Therefore, they do not affect my overall assessment.

Considerations in support of the development.

20. BDP policy BDP11 states that if additional sites for Gypsy and Travellers' accommodation are required, land will be identified through a local plan review. The preceding paragraph to the policy highlights a potential need for permanent pitches after 2019/20.
21. A Gypsy and Traveller and Travelling Showperson Accommodation Assessment Final Report 2021 (GTAA) provides the Council's latest analysis and conclusions on the need and supply of pitches. This reinforces the indication in the BDP that there is a need for additional pitches over and above current supply. Table 6.4 of the GTAA states that for the 5 year period from 2021/22 to 2025/26 there is a shortfall of 17 pitches when having regard to identified cultural needs.
22. In terms of new sources of supply, the GTAA refers to turnover of pitches on a housing association owned site at Houndsfield Lane in Wythall. Even if the Council's predictions on turnover rates are accepted, this would only provide 6 newly vacated pitches over a 5 year period. A private site on Ash Lane in Alvechurch has planning permission for 3 pitches and is noted as being vacant. However, occupancy on this site is restricted to specific persons by planning condition and so it is not generally available.
23. Therefore, the evidence strongly indicates a current unmet need for more Gypsy and Traveller pitches that will not be addressed through the existing supply of sites. The appeal proposal would help address this shortfall in supply and would offer the opportunity for new privately owned accommodation as an alternative to the housing association owned site. In these regards, the development would meet the aims set out under paragraph 4 of the PPTS to provide more private Gypsy and Traveller sites.
24. Moreover, the Council's review of the BDP has been delayed and its representatives were unable to advise of a timetable for the review process. As such, no land has been identified in the development plan to address the recognised need for more Gypsy and Traveller sites. The Inspector for the Ash Lane planning appeal (reference number APP/P1805/W/18/3205163) noted a similar situation existed in June 2019. The evidence demonstrates a persistent failure of the Council to put into place policies or other measures to meet a long-standing unmet need for new sites.
25. Furthermore, it is likely that any new Gypsy and Traveller sites would be located in the Green Belt given its extensive coverage in the district. Given this context, it appears that the unmet need for additional accommodation will continue for an unspecified time period unless new pitches are allowed in the Green Belt. This factor adds support to the appeal scheme.

Green Belt balance

26. The Framework and the PPTS state that inappropriate development is by definition harmful to the Green Belt and should not be approved except in very special circumstances. These will not exist unless the potential harm to the Green Belt by reason of inappropriateness and any other harm as a result of the proposal is clearly outweighed by other considerations.
27. BDP policy BDP4 is generally consistent with the Framework in identifying the types of new buildings that are not inappropriate development in the Green Belt. However, it is different to the Framework as it fails to define situations when the change of use of land is not inappropriate development. Also, the policy does not refer to the possibility of granting planning permission in very special circumstances. Even so, it is incumbent upon me to carry out a Green Belt balancing exercise as the Council's refusal reason states that very special circumstances do not exist.
28. The Framework dictates that substantial weight should be given to any harm to the Green Belt. In this instance, there would be harm by reason of inappropriateness, loss of openness and failing to safeguard the countryside from encroachment. In addition, there would be a minor detrimental effect on the character and appearance of the area to which I attach limited weight.
29. The scheme's benefit in helping to reduce the unmet need for pitches attracts significant weight. The PPTS states that unmet need is unlikely to clearly outweigh harm to the Green Belt and any other harm so as to establish very special circumstances. However, in this case there is the additional failure of the Council to have in place measures to assist in the provision of Gypsy and Traveller's sites, despite the recognised need. Also, from the evidence it is highly likely that any new sites would need to be in the Green Belt. Such factors add compelling and considerable support for allowing the development.
30. Overall, I conclude the total harm caused by the proposal would be clearly outweighed by other factors. As such, very special circumstances exist to justify allowing the scheme. In these respects, the development would accord with the Framework's and PPTS's policies on Green Belt. Also, there is sufficient justification to allow the appeal despite any conflict with BDP policy BDP4.

Other Matters

31. The appellant has advanced a case based on the personal circumstances of the intended occupants of the development. However, such factors are not determinative in my assessment of the appeal. It follows that conditions limiting the occupation of the site to named individuals or for a temporary period are not required to make the development acceptable in planning terms.
32. Also, I have found the development should be allowed despite the planning obligations as set out in the UU. Accordingly, the planning obligations are unnecessary and so I have given them no positive consideration in my assessment.

Conditions.

33. A list of suggested conditions has been provided by the Council and was discussed at the hearing. Where appropriate, I have amended the wording for precision reasons and to reflect that the appeal development has commenced.

34. In the interests of clarity and to ensure the development is carried out as shown, I impose a condition that lists the approved drawings. A condition is required to ensure the provision of appropriate surface water drainage to serve the development. Biodiversity enhancement measures are also required to ensure the site's value in this regard is retained. Hard and soft landscaping works are needed to ensure the visual effects of the scheme are not unduly harmful to the character and appearance of the area. As discussed at the hearing, I have combined these matters into a single condition.
35. To ensure a satisfactory appearance, a condition on the materials to be used in the construction of the dayrooms is included. To avoid a harmful visual effect at night time a condition on external lighting is also required.
36. In the interests of highway safety, a condition is imposed that requires the retention of the access, parking and vehicular turning areas as shown on the approved plans. A condition that limits the number of pitches and caravans is needed to minimise the effect of the proposal on Green Belt openness and on the character and appearance of the area.
37. It is necessary and fundamental to the acceptability of the development for a condition to be imposed that ensures it is occupied by Gypsies and Travellers, even though such a condition has not been suggested by the Council. The Court of Appeal in *Lisa Smith v SSLUHC [2022] EWCA Civ 1391* held that the exclusion of Gypsy and Travellers who have ceased to travel permanently is discriminatory and has no legitimate aim. Therefore, I impose a condition that restricts occupation to Gypsies and Travellers, defined so as to not exclude those who have ceased travelling permanently.

Conclusion

38. For the above reasons, I conclude the appeal should be allowed.

Jonathan Edwards

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Matthew Green

Aimey Pullicino

Patrick Doherty

FOR THE LOCAL PLANNING AUTHORITY:

Sarah Hazlewood

Principal Planning Officer

Gemma Hawkesford

Principal Strategic Planning Officer

Michael Bullock

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LIST OF DOCUMENTS SUBMITTED AT THE HEARING:

1. Undated and unsigned planning obligation by way of unilateral undertaking by Martin Doherty.
2. Proposed site plan numbered 22_1224 003 rev P03.
3. Witness Statement of Aimey Pullicino dated 14 November 2023
4. Witness Statement of Patrick Doherty dated 14 November 2023

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans: Site Location Plan Drg No 001 Rev P02, Proposed Site Plan Drg No 003 Rev P03, Proposed Dayroom – Plans and Elevations Drg no 005 Rev P02 and Proposed Refuse Store – Plans and Elevations Drg no 006 Rev P01.
- 2) The use hereby permitted shall cease and all caravans, structures, equipment and materials brought onto the land for the purposes of such use shall be removed within 28 days of the date of failure to meet any one of the requirements set out in (i) to (iv) below:
 - (i) Within 3 months of the date of this decision a scheme for (a) surface water drainage of the site; (b) biodiversity enhancement and (c) hard and soft landscaping of the site (hereafter referred to as the site development scheme) shall have been submitted for the written approval of the local planning authority and the scheme shall include a timetable for its implementation.
 - (ii) If within 11 months of the date of this decision the local planning authority refuse to approve the site development scheme or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
 - (iii) If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted site development scheme shall have been approved by the Secretary of State.
 - (iv) The approved site development scheme shall have been carried out and completed in accordance with the approved timetable.

Upon implementation of the approved site development scheme specified in this condition, that scheme shall thereafter be maintained and retained. In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

- 3) No works on the construction of the dayroom buildings hereby permitted shall commence until details of the colour and finish of the materials to be used externally on the walls and roofs of the dayrooms have been submitted to and approved in writing by the local planning authority. The dayrooms shall be constructed in accordance with the approved details.

- 4) No external lighting associated with the change of use hereby permitted shall be installed on the site unless details have first been submitted to and approved in writing by the local planning authority.
- 5) The access, turning area and parking facilities shown on the approved plans shall be retained and only used for the parking and manoeuvring of vehicles whilst the development hereby allowed is occupied.
- 6) There shall be no more than 2 pitches on the site and no more than 2 caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968, shall be stationed on each of the pitches at any one time, of which no more than 1 shall be a static caravan or mobile home.
- 7) The development hereby approved 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.