

Appeal Decision

Site visit made on 21 August 2023

by Grahame Kean B.A. (Hons), MRTPI, MIPROW, Solicitor HCA

an Inspector appointed by the Secretary of State for Housing, Communities and Local Government

Decision date: 1 December 2023

Appeal Ref: APP/W05320/C/21/3284476

Land to The North of The Old Coal Yard, Chesterton Fen Road, Milton, Cambridge, CB4 1TU

- 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 Nelson Charles Arthur James O'Connor against an enforcement notice issued by South Cambridgeshire District Council.
 - The notice was issued on 8 September 2021.
 - The breach of planning control as alleged in the notice is: without planning permission:
 - (i) Material Change of Use from Agricultural Land to a Caravan Site
 - (ii) Operational Development to enable the use of the land as a caravan site, consisting of the laying of hardcore, gravel and concrete kerbing.
 - The requirements of the notice are:
 - (i) Cease the use of the land as a caravan site.
 - (ii) Remove all caravans from the land.
 - (iii) Remove all hardcore, gravel and kerbing from the land.
 - The period for compliance with the requirements is: within three months following the date this notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) (f) and (g) of the Town and Country Planning Act 1990 as amended (the Act).
-

Summary of Decision

1. The appeal succeeds in part and the enforcement notice is upheld as varied in the terms set out below in the Formal Decision.

Ground (a) and the deemed application for planning permission

Preliminary matters and main issues

2. The Appellant considers the main considerations to be those related to the Green Belt (GB) and flood risk issues. The Council does not mention flood risk as an issue beyond stating that the site is in Flood Zone 2. The weight attached to a proposal without undue flood risk concerns, is dealt with separately below.
 3. The main issues in dispute are:
 - whether the development is in an acceptable location in principle;
 - its effect on the character and appearance of the site and surrounding area;
 - whether the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations, including to meet unmet need for additional caravan sites, in particular, of the gypsy and traveller community.
-

Whether a suitable location in principle

4. The site is in the GB. The effect of paragraph 150(e) of the National Planning Policy Framework (NPPF) is that that material changes in the use of land (which appear capable of including the use of land for the siting of caravans) would be inappropriate development in the GB unless openness is preserved and there is no conflict with the purposes of including land within it.
5. Paragraph 137 of (NPPF) states that the essential characteristics of the GB are their permanence and openness. Openness has a spatial aspect as well as visual and can mean the absence of development in spatial terms, making openness susceptible to harm even when development is not readily visible from the public realm. In spatial terms the proposal would have a major impact on the openness of the GB compared to the pre-existing condition of the open field (which in planning terms was an agricultural use). Furthermore, in visual amenity terms, the serried ranks of caravans are prominent and intrusive elements in terms of their scale and bulk. The harm to openness is significant.
6. The appeal site is in Chesterton Fen, on the edge of a large built up area on the outskirts of Cambridge and close to Cambridge North rail station. It sits between the River Cam and the Cambridge to Ely railway line, accessed by a long cul-de-sac road. Immediately to the south are several high-density caravan sites. The A14 is to the north and beyond that Milton village. Chesterton Fen Road, a long cul-de-sac, provides access into the site. The site itself is a large open field where similar open fields lie to the east, north and northeast.
7. Among the purposes of including land as GB are to check the unrestricted sprawl of large built-up areas and to assist in safeguarding the countryside from encroachment (NPPF, paragraph 138). I have no doubt that the unauthorised use of the site as I saw it conflicts with these purposes.
8. Paragraph 147 states that inappropriate development is, by definition, harmful to the GB and should not be approved except in very special circumstances.
9. The appellant recognises in terms that the development is inappropriate development in the GB and causes actual harm to the openness of the Green Belt and appearance of the countryside. Paragraph 144 advises that substantial weight should be given to any harm to the GB.
10. In addition Policy E of Planning Policy for Traveller Sites 2015 (PPTS) is clear that traveller sites in the GB are inappropriate development. The use alleged refers to a caravan site, not necessarily one that is used by travellers, albeit that when I inspected, it appeared to be substantially occupied, and the appellant regards its use as necessary to accommodate the gypsy and traveller community. That said, no evidence was submitted on which I could confirm or otherwise the status of occupants or any intended future occupants of the site.
11. It has been judicially observed (*Kingston upon Thames RLBC v Secretary of State for Levelling Up, Housing and Communities* [2023] EWHC 2055 (Admin)) that residential use generally does not fall within NPPF paragraph 150(e). Whether or not that interpretation is likely to be followed in subsequent cases, the position here is that the use as a caravan site would fall foul of paragraph 150(e) anyway for the reasons given above, and inasmuch as it is a traveller site, it is also judged inappropriate development under Policy H of PPTS.

12. The national GB policies are reflected in the Council's local plan, ie South Cambridgeshire Local Plan 2018 (LP) Policy S4. The site is also in the open countryside where LP Policy S7 would regard the development as unacceptable in principle as not requiring to be sited at the appeal site. Only defined uses would be permitted (not including residential development) save for "*other uses that need to be located in the countryside or where supported by other policies in this plan*". Despite concluding that the proposal complies with national and local policy the appellant fails to address or mention Policy S7.
13. PPTS at paragraph 25 advises that new travellers sites should be very strictly limited in open countryside that is away from existing settlements or outside areas allocated in the development plan and that sites in rural areas respect the scale of, and do not dominate, the nearest settled community, and avoid placing an undue pressure on the local infrastructure.
14. Thus, whilst traveller and other residential sites may be inappropriate development in the GB, a case may be made for their acceptance in principle at the location in question, based on the sustainability credentials of the site. As to which, the site is close to transport links, to local services being on the edge of the built-up area of a city, and the PPTS does not state that new traveller sites should not be located in the open countryside. Nevertheless, the environmental harm occasioned by its incursion into the openness of the GB is considerable and ultimately unsustainable. I also have concern about another extension to what is already a very large densely populated group of caravan sites. Overall, in broad locational terms the development conflicts with LP Policies S4 and Policy S7 which aims to protect the countryside from gradual encroachment on village edges and against incremental growth in unsustainable locations.

Character and appearance

15. The land surrounding the appeal site is flat with high-density caravan site use nearby that is understood to accommodate gypsy and traveller families. The site itself is at the end of a cul-de-sac road and largely secluded from roadside views by dense vegetation. The caravans occupy about one fifth of the field area closest to the road, numbering twenty units in two long rows. There is a splendid and wide belt of established trees within the northern boundary of the field that adds positively to appreciation of the landscape setting.
16. The site is relatively isolated but one can see from the aerial images dated May 2020 and June 2021 that the new caravans and associated hardstanding have had a transformative and damaging effect on the field and wider area. The site is subject to public views from the railway line on its western boundary and beside and along the River Cam from the eastern boundary. I agree with the Council that the development has caused harm to the rural character of once open countryside. Although adjacent to another existing caravan site the encroachment of the vans, associated domestic paraphernalia, the extent of hardstanding and parked vehicles into this separate and once tranquil field has markedly destroyed its rural character and appearance.
17. Policy H of PPTS also sets out site specific criteria to assess the suitability of traveller sites. However, the weight I can attach to these matters set out in paragraph 26 is very limited. The land is not previously developed, and it is not well planned or landscaped, being without any boundary treatment to the rest of the field, leaving the appearance of a site that could well expand to the rest

of the field. The hardstanding created to accommodate the number of vans with a central pathway down the middle of the two rows, is considerable. There are no proposals submitted for other hard or soft landscaping that would demonstrate in an effective way how the appellant would positively enhance the environment and increase its openness or ensure adequate landscaping and play areas for children.

18. I find the development conflicts with the aims of LP Policy HQ/1 which are to seek in all new development a high quality design, with a clear vision as to the positive contribution the development will make to its local and wider context.
19. It would also conflict with LP Policy NH/8 in failing to be located and designed so that it does not have an adverse effect on the rural character and openness of the GB, and in failing to include careful landscaping and design measures of a high quality. In their absence I have severe doubts as to whether a general condition would ensure such measures would be effective to mitigate the harm to the rural character of the locality.

Whether GB harm and any other harm outweighed by very special circumstances

20. Policy E of PPTS also states that subject to the best interests of the child, personal circumstances and unmet need are unlikely to clearly outweigh harm to the GB and any other harm so as to establish very special circumstances.
21. The appellant asserts that all caravan-related development at Chesterton Fen Road has taken place in the GB and commends to me two planning permissions (granted by the Council) pointing out the need for consistency in decision-making. These are Ref S/0664/11, 18 Gypsy/Traveller caravan pitches at West View Park, and S/2150/11, seven caravan plots for travellers at The Old Coal Yard, immediately to the south of the present appeal site. The limited detail provided has been considered. However, no information is provided to substantiate the assertion that - in either case - permission was granted due to very special circumstances that overrode the harm to the GB or any other harms. Such may well be the case but the lack of detail in the appeal statement as to what those considerations may have been, makes it impossible to make a meaningful comparison with the present appeal. The Council did confirm that in both cases there were very special circumstances but it also failed to explain why or what other issues were considered in the proposals. I have therefore assessed the development under appeal on its own merits.
22. The study by Opinion Research Services covering the period 2016 to 2036, identified a need for 20 pitches up to 2036 for Gypsies and Travellers that met the updated definition. According to the appellant it is out-of-date, there is unmet need in the district which is evident at Chesterton Fen Road where people live in sub-standard caravans on sub-standard plots. The Council does not dispute this part of the appellant's case and I accept there may be a general shortage of suitable accommodation for gypsies and travellers in the locality.
23. The appellant also refers to demand from "near-neighbours" for better quality accommodation in the "urgent interests of their long-term physical and mental health". I have been given no details of these persons, their state of health, status as gypsies or otherwise, or other personal circumstances.

24. At the site visit I was asked to note conditions at other caravan sites such as the adjoining site, "The Laurels". Some of the vans on other sites do appear to be of lesser environmental quality than those on the appeal site. Although this was a general impression, I acknowledge that the units on the appeal site appear to be of a high quality and arranged in an orderly and reasonably well-spaced layout and are connected to the various necessary utilities.
25. All the above factors are said to amount to very special circumstances sufficient to justify the grant of a conditional planning permission. I regret that I disagree. The appellant has failed to develop his case to provide quantifiable and meaningful evidence from which I could be satisfied about the precise extent of need or, since the basis of the proposal is largely predicated on the acceptability of this GB site to be used as a caravan site for gypsies and travellers, any robust evidence as to the status and personal circumstances of the present or intended occupiers which I might consider over and above the issue of the general suitability of the appeal site to accommodate travellers.

Planning balance

26. The development is inappropriate development in the GB which by definition is harmful to the GB and should not be approved except in very special circumstances. Substantial weight should be given to that harm.
27. The stationing of caravans, hardstanding and associated parking of vehicles represents a significant loss of openness where what was there until relatively recently was an open field, conflicting with the purposes of including the land within the GB, ie in preventing urban sprawl and encroachment into the countryside. The amount of hardstanding is considerable and facilitates the siting of the caravans, associated vehicles and domestic paraphernalia. Although the site is in an edge of settlement location it comprises twenty caravans and represents a significant encroachment into the appeal site. The harm to openness and conflict with the purposes of the GB carry additional weight against the development.
28. The appeal site has some locational credentials to support its use for the development in principle, being close to local services and facilities, and its location is compliant with PPTS policy inasmuch as the latter does not seek to prevent gypsy and traveller pitches in the countryside, especially where they are near to the edge of settlements. However there is a conflict with LP Policy S4, as well as Policy S7 which does set up a presumption against new development in the countryside.
29. Moreover, the impact of the development on the character of the area is significant in that it erodes the rural nature of the landscape, contrary to LP Policy NH/8 which seeks to avoid new development having an adverse effect on the rural character and openness of the GB. Screening the site with a landscaped boundary would mitigate the overall effects to a limited extent, but not eliminate them. No details were provided that would clearly mediate the harm. Moderate to significant weight is given to the enduring harm to the rural character and appearance of the site and surrounding area.
30. The very special circumstances said to justify a conditional grant of permission comprise the grant of planning permissions by the Council for similar development nearby, a shortage of suitable accommodation for gypsies and travellers in the locality, and the superior quality of accommodation offered by

the development. Whilst I cannot conclude from the lack of detail provided that the permissions are directly comparable to the circumstances that obtain on the appeal site, I accept for present purposes that there may be a general unmet need for good quality accommodation for the gypsy and traveller community in the locality which this development would assist in meeting.

31. However, the matters advanced in favour of the development do not amount to very special circumstances that outweigh the harm caused to the GB and the other harms identified.

Other matter

32. The Council's statement of case does not deal with flood risk as an issue beyond mentioning that the site is in FZ2, whereas the appellant deals at some length with national policy and the importance of taking account of flood risk at all stages of planning. It was asserted that in essence there were several factors that made the development "potentially appropriate" including that there was nowhere the proposal could be sited nearby at lower risk, the area benefitted from flood defences, and there were no groundwater problems or sewers lacking capacity in heavy rainfall. Whether such claims could be substantiated is unclear (a full flood risk assessment was promised but did not materialise) but if there were found to be no undue flood risk concerns, this would be neutral in weighing the proposal's benefits and disbenefits.

Conclusion on ground (a)

33. Considering the above factors and all other matters which have been put before me, the appeal on ground (a) does not succeed.

Ground (f)

34. An appeal on ground (f) is that the requirements of the notice exceed what is necessary to remedy the breach of planning control or, as the case may be, to remedy any harm to amenity resulting from the breach. From the requirements of the notice I take its purpose to be to remedy the breach of planning control.
35. The requirement in the enforcement notice to remove all hardcore, gravel and kerbing from the land is claimed to be excessive on the grounds that there was a significant amount of hardcore, gravel and kerbing on the land already, that had been there for over a decade. I disagree. The aerial images clearly show the difference on site between 2014, May 2020 and June 2021, where the site is firstly shown as an unspoilt open field, then with rubble at the south-eastern boundary and finally with new caravans and widespread hardstanding introduced. Any pre-existing hardcore and the like was clearly not significant.
36. Secondly, it is claimed that some commercial use of a building for the repair of farm machinery for neighbouring farm businesses would not be a material change of use. The notice does not seek to remove a building or prevent an agricultural use of the land, but whether as claimed a commercial (as opposed to an agricultural use) could be made for the repair of farm machinery for neighbouring farm businesses, is not a matter for me but is for the Council.
37. The new use on the site is damaging to the rural character of the area and unacceptable on its planning merits. The aim of the notice is clearly to remedy the breach of planning control that has occurred, and there is no obvious alternative that might be pursued at lesser cost. Therefore, the requirements of

the notice to cease the unauthorised use and remove the associated works are not excessive to remedy the breach of planning control. The appeal on ground (f) cannot succeed.

Ground (g)

38. The appeal on this ground is that the period for compliance with the requirements of the notice is too short and should be extended to nine months to allow for orderly removal and appropriate relocation of the caravans. Also, off-site storage of redundant units appears to be an issue for the appellant.
39. In terms of complying with the requirements of the notice to remove the caravans, I consider that this may well involve giving reasonable notice to the occupants, although nothing is said on their behalf specifically about the potential loss of their homes. In the circumstances I consider that a period of six months would be a reasonable period for compliance and I will vary the notice accordingly. Therefore the appeal on ground (g) succeeds to that extent only.

Overall Conclusion

40. For the reasons given above I conclude that a reasonable period for compliance would be six months, and I am varying the enforcement notice accordingly, prior to upholding it. The appeal under ground (g) succeeds to that extent and I shall refuse to grant planning permission on the deemed application.

Formal Decision

41. The appeal is allowed on ground (g), and it is directed that the enforcement notice be varied in section 6 by the deletion of "3 months" and the substitution of "six months" as the period for compliance. Subject to these variations the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Grahame Kean

INSPECTOR