



Appeal Decision

Hearing held and site visit made on 14 November 2023

by Jonathan Price BA(Hons) DipTP MRTPI DMS

an Inspector appointed by the Secretary of State

Decision date: 11th December 2023

Appeal Ref: APP/Z1510/W/21/3289767

Land south west of Fox and Pheasant Farm, Colchester Road, White Colne, Essex CO6 2PS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mr Sam Prater against Braintree District Council (BDC).
 - The application Ref 21/02421/FUL, is dated 30 July 2021.
 - The development proposed is change of use of land for the creation of 4no. Gypsy/Traveller pitches, comprising the siting of 1 mobile home, 1 touring caravan and the erection of a utility building per pitch, alongside the erection of a stables building comprising 2no. stable boxes, feed store and tack room.
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Decision

1. The appeal is allowed and planning permission is granted for the change of use of land for the creation of 4no. Gypsy/Traveller pitches, comprising the siting of 1 mobile home, 1 touring caravan and the erection of a utility building per pitch, alongside the erection of a stables building comprising 2no. stable boxes, feed store and tack room at land south west of Fox and Pheasant Farm, White Colne, Essex CO6 2PS in accordance with the terms of the application, Ref 21/02421/FUL, dated 30 July 2021, subject to the conditions set out in the Schedule attached to this decision.

Application for costs

2. An application for costs was made by Mr Sam Prater against BDC. This application is the subject of a separate decision.

Preliminary Matters

3. Since the appeal was made, the Council adopted the Braintree Local Plan 2013-2033 (BLP) in July 2022. This adds the Part 2 Braintree-specific policies to the Part 1 Joint strategic North Essex ones. The BLP comprises the current development plan in respect of determining this appeal. The National Planning Policy Framework (NPPF), Planning Practice Guidance (PPG) and Planning policy for traveller sites (PPTS) are also important considerations in this decision.
4. The proposal is partly retrospective, with the access from the public highway serving the four pitches already created. The pitches themselves have been defined by open fencing, with one containing a mobile home and the others touring caravans. The Council had earlier served an Injunction on 13 October 2021 against the partial implementation of the proposal, which the occupiers of the site are in breach of. The Government's letter to Council Chief Planners of 31 August 2015 makes the intentional unauthorised development carried out a material planning consideration to be weighed in this appeal decision.

5. The appeal is against non-determination and the Council's statement of case provides four putative reasons for refusal (RfR), had a decision been issued. That relating to highway safety has been addressed by later evidence showing that adequate visibility onto the Colchester Road at the site access can be achieved and be made a condition of approval.
6. A putative RfR rested on a failure to secure mitigation payment for the proposal's recreation impacts on nearby coastal nature conservation sites, required to comply with the Habitats Regulations¹. This RfR has also fallen away as the appellant has since made the required RAMS² mitigation payment.
7. With respect to the location, the Council is not arguing the pitches have poor accessibility to existing community services and facilities, but is maintaining a finding of harm to the character and appearance of the area as an outstanding RfR. The other unresolved RfR concerns foul drainage arrangements, whereby the proposed use of cesspools is considered inadequate to address the risk of water pollution.

Main Issues

8. Based on the Council's outstanding putative RfR, the main issues in the appeal are:
 - the effect of the proposal on the character and appearance of the area;
 - whether there would be adequate means of foul water drainage.

Reasons

Character and appearance

9. The appeal site comprises a comparatively small parcel of former farmland of some 0.4 hectares. It abuts the A1124 Colchester Road which runs alongside the otherwise larger fields edging onto the River Colne. The surroundings are mainly those of the open countryside separating the settlements of White and Wakes Colne. There is sporadic development along this route, including some quite large employment sites. Most but not all of this lies along the opposite side of the A1124 to this proposal. The appeal site is a short distance from the built up extent of White Colne; clearly separate from it and within the open countryside adjacent.
10. This area of countryside is not the subject of any statutory status or identified quality in the BLP as to require its protection or enhancement as a valued landscape under NPPF paragraph 174. The valley floor has an intrinsic character and beauty as undeveloped countryside lying alongside and between settlements. The Council's 2015 landscape analysis³, evidence underpinning the BLP, identifies this area as having a low capacity to accommodate new development.
11. Gaps in the roadside trees and hedging along the A1124 provide views through to the open meadows and woodland which occupy the River Colne valley floor. The appeal site occupies a relatively small parcel of visually well-contained land

¹ Conservation of Habitats and Species Regulations 2017 (as amended)

² Essex Coast Recreational disturbance Avoidance and Mitigation Strategy Supplementary Planning Document (SPD) May 2020 – formally adopted by BDC on 16 July 2020

³ Braintree District Settlement Fringes Evaluation of Landscape Analysis Study of Silver End for Braintree District Council by the Landscape Partnership, June 2015.

within this wider expanse of countryside. The caravan pitches are set against a thick tree belt running along the western edge of the site, which provides affective screening of that side. A denser area of woodland lies adjacent to the eastern side of the site and the part kept open as horse pasture. This provides effective screening of the pitches when viewed on the approach from the east.

12. The Gypsy/Traveller site is mainly visible from the site entrance, through the gap created within the roadside vegetation. The rest of the roadside frontage remains well vegetated, with mature hedging and a large oak tree. Only a limited amount of the existing roadside vegetation would need to be trimmed back to provide required visibility splays, and that behind these could therefore be maintained and reinforced.
13. The visual effects would be experienced kinetically for a relatively brief period on passing the site entrance when travelling along the Colchester Road. This visual harm could be further reduced by judicious landscaping within and around the site to soften the degree of adverse impact. The close boarded timber fencing and gates already provided at the entrance, and open ranch-style fences around the pitches, are reasonably sympathetic to the rural setting.
14. Gypsy and traveller sites are a regular feature of the countryside, where often the stationing of mobile homes and caravans is within previously undeveloped farmland. This proposal is such a case and where there would inevitably be some tension with BLP Policy SP 7. Its place-shaping principle is for proposals to respond positively to local character and context and to preserve and enhance the quality of existing places and their environs. This is perhaps more relevant to new built development, requiring this to meet high standards of urban and architectural design. Caravans are of a standard appearance where there is not the same scope for a design response to the surroundings. With regard to the buildings proposed, the stables and four small washrooms are all considered to be of an acceptable design.
15. I give limited weight to any conflict with Policy SP 7 in respect of design, given the nature of the proposal. My conclusions are similar with regard to any conflict with policies LPP 47 and 52, as these apply mainly to the high standard of design sought for built development. These policies refer not just to design but also layout, over which this proposal achieves a compliant standard. This is through the overall spacious arrangement of the four pitches and their siting off-centre and towards the screening tree line along the western edge of the site. I have recognised the intrinsic character and beauty of the countryside, as required to satisfy Policy LLP 67, whereby the scheme addresses the wider landscape sensitivities. This is through its relatively small scale, the visually well contained nature of the site and the screened setting of the caravan pitches.
16. It is generally accepted that Gypsy and Traveller sites may be within the countryside. This is implicit in PPTS Policy C, where their suitability in rural or semi-rural settings depends on not dominating the nearest settled community, which would apply to this small scale of pitch provision. BLP Policy LPP 1 states that development outside development boundaries will be confined to uses appropriate to the countryside whilst also protecting and enhancing valued landscapes, sites of biodiversity or geological value and soils to protect the intrinsic character and beauty of the countryside. I consider this to be a

proposal appropriate to the countryside, which means this policy is complied with.

17. Policy SP 1 of the BLP applies the NPPF's presumption in favour of sustainable development, seeking solutions so as to approve development where possible and securing improved economic, social and environmental conditions in the area. Paragraph 9 of the NPPF advises that economic, social and environmental criteria are not ones against which every decision can or should be judged. In this case, improved social conditions through the provision of residential accommodation are weighed against environmental factors and gain the balanced support of Policy SP 1.
18. The aforementioned policies apply generally, whereas it is Policy LPP 34 that deals specifically with Gypsy and Traveller accommodation and holds particular weight in this decision. This sets out the criteria that must be met in such proposals coming forward as planning applications. Relevant to this issue is the criterion requiring Gypsy and Traveller sites to be located, designed and landscaped to minimise their impact on the environment. It is implicit in this criterion that Gypsy and Traveller accommodation can have an impact on the environment, given the requirement is for this to be minimised.
19. Regarding this impact, I have factored in the domestic paraphernalia, such as washing lines, gas bottles, children's play equipment, garden furniture and personal vehicles, that will accompany the mobile homes, caravans, and washrooms in each of the four pitches. Nevertheless, the visually contained nature of the site, the effective screening from existing vegetation and the siting of the pitches towards the western tree belt, all serve to minimise the proposal's impacts on the environment and this satisfies Policy LPP 34 in this regard.
20. Gypsy and Traveller site proposals will often require a rural, greenfield location where some degree of adverse visual impact will be unavoidable. For the reasons explained, the harmful effects of this proposal on the character and appearance of the area would be limited and quite localised. Considering the BLP policies in the round, giving particular weight to LPP 34, I find this proposal to comply with the development plan in regard to its effects on the character and appearance of the area.

Means of foul water drainage

21. Policy LLP 34 also requires Gypsy and Traveller proposals to be capable of being provided with appropriate drainage, water supply and other necessary utility services. A connection to the main sewer system will be preferable under this policy, except when it is impractical to achieve. Policy LLP 70 seeks that all new developments ensure no deterioration in water quality and proposals provide sufficient information to enable a full assessment of potential hazards. It states that development will not be permitted where, individually or cumulatively and after mitigation, there are likely to be unacceptable water quality impacts.
22. The PPG⁴ advises that proposals relying on anything other than connection to a public sewage treatment plant will need to be supported by sufficient information to understand the potential implications for the water environment.

⁴ Paragraph: 020 Reference ID: 34-020-20140306 Revision date: 22 07 2019

It further states that septic tanks or package sewage treatment plants may only be considered if it can be clearly demonstrated by the applicant that discharging into a public sewer is not feasible (taking into account cost and/or practicability and whether the package treatment plant poses a risk to a designated site) in accordance with Approved Document H of the Building Regulations 2010.

23. The appellant confirmed at the Hearing that the proposed use of cess pits would apply only if the appeal were to be allowed on a temporary basis. Otherwise, a condition was acceptable to the appellant to secure an appropriate means of foul drainage whereby the risk of water pollution was satisfactorily addressed. The proposal is currently not supported by sufficient information to understand the potential water environment implications. However, a retrospective condition could apply a strict timetable for the detailed agreement and implementation of suitable foul water drainage arrangements to avoid an unacceptable risk of water pollution. In my view, such a condition would be sufficient to ensure that the proposal was acceptable on water quality grounds and complied with the requirements of BLP policies LLP 34 and 70.

Habitat Regulations assessment

24. The appeal site lies within the Zone of Influence established in the RAMS. In that location, the Gypsy and Traveller pitches would have a likely significant effect upon the notified interest features of the European designated sites along the adjacent Essex coast, either alone or in combination with other plans or projects. This is due to the further households leading to increased recreational pressure, which can then impact negatively upon the condition of these site features, such as from bird disturbance by dog walkers and boat users.
25. The RAMS provides a strategic approach to off-setting the effects of development by securing payments towards mitigatory measures, in amounts commensurate with the scale of proposal. The appellant's RAMS contribution thus allows me to conclude that the appeal proposals would not have an adverse effect upon the integrity of the Blackwater Estuary Special Protection Area and RAMSAR, and the Essex Estuaries Special Area of Conservation. This proposal therefore complies with the Habitats Regulations and satisfies BLP Policy SP 2.

Planning balance

26. The Council considers the requirement of BLP Policy LLP 34 to seek up to 26 pitches for Gypsy and Traveller accommodation, at Strategic Growth Locations, or through the planning application process, is met. There is no reason for me to dispute this. However, as with other types of housing, this does not impose a ceiling on provision. In accordance with paragraph 11 of the PPTS, Policy LLP 34 provides the criteria for assessing Gypsy and Traveller proposals which come forward beyond those meeting an identified need. The proposal satisfies these criteria and on the basis of this and the other relevant policies discussed, I consider that the proposal complies with the BLP when considered as a whole.
27. The partial implementation of this proposal amounts to intentional unauthorised development. This is a material planning consideration to which moderate weight is given. However, the significant social benefits of providing a settled basis for four Gypsy and Traveller families would outweigh such harm.

Therefore, material considerations would not on balance indicate that this appeal be decided otherwise than in accordance with the development plan, with which I find compliance when taken as a whole. On this basis, there is no requirement for me to consider either temporary or personal permission, for which eventualities suggested conditions had been agreed by the parties.

Conditions and conclusion

28. A suite of suggested conditions was included in the statement of common ground from the main parties. Other than those making permission personal and temporary, neither of which are necessary to make the development acceptable in planning terms, these conditions meet the tests set out in NPPF paragraph 57.
29. For certainty, a condition is needed which specifies the plans on which this decision is based (1). To reflect the reasons and policy basis for this decision, a condition is necessary tying occupation to persons meeting the PPTS definition of Gypsies and Travellers. This definition is amended to include those who have ceased to travel permanently⁵ (2). Also for certainty, a condition imposes a site limit of 4no mobile homes and 4no touring caravans (3). To avoid light pollution harming the rural character of the locality, a condition restricts further illumination other than that approved (4). Also in the interests of preserving rural character, a condition is necessary to preclude large vehicles and commercial activities on the site (5). For the same reason, a condition is required to remove permitted development rights for additional gates, walls, fences or other means of enclosure (6).
30. It is necessary to impose a condition (7) to ensure that the required details of hard and soft landscaping, external lighting and foul and surface water drainage are submitted, approved and implemented so as to make the development acceptable in planning terms. There is a strict timetable for compliance because permission is being granted retrospectively, and so it is not possible to use a negatively worded condition to secure the approval and implementation of these outstanding matters before the development takes place. Amended slightly to reflect a standard template, Condition 7 will ensure that the development can be enforced against if the required details are not submitted for approval within the period given by the condition, or if the details are not approved by the local planning authority or the Secretary of State on appeal, or if the details are approved but not implemented in accordance with an approved timetable.
31. To promote the use of electrical vehicles, a condition requires charging points be provided (8). Finally, in the interests of highway safety, a condition requires the provision and maintenance of open visibility at the site access (9). Subject to these conditions, and for the reasons explained, I conclude that the appeal should be allowed and planning permission granted.

Jonathan Price

INSPECTOR

⁵ To reflect the judgment in *Smith v SSLUHC & Ors* [2022] EWCA Civ 1391.

APPEARANCES

FOR THE APPELLANT:

Alan Masters of Counsel
Brian Woods BA(TP) MRTPI
Sam Prater - appellant
Noreen McCarthy – site occupier

FOR THE LOCAL PLANNING AUTHORITY:

Wayne Beglan of Counsel
Chris Tivey BSc(Hons) BPI MRTPI
Steve Jarman, Opinion Research Services
Alan Massow, Principal Planning Policy Officer, BDC

INTERESTED PARTIES:

Marianne Cammack
Erica Bruce

DOCUMENTS SUBMITTED AT THE HEARING

Extract from High Court decision on *Devonhurst Investments Ltd, R (On the Application Of) v Luton Borough Council* [2023] EWHC 978 (Admin).

Statement of personal circumstances prepared on behalf of the appellant and other occupiers of the appeal site.

Copy of RAMS payment receipt.

SCHEDULE OF CONDITIONS

- 1) Other than as altered through compliance with condition 7 (below), the development hereby permitted shall be carried out in accordance with the following approved plans:
 - drawing no. j003957-dd-01 – site location plan
 - drawing no. j003957-dd-02 – as existing site plan
 - drawing no. j003957-dd-03 – as proposed site plan
 - drawing no. j003957-dd-04 – as proposed utility buildings
 - drawing no. J003957-DD-05 – as proposed stables building
 - visibility splays shown on drawing number: 2202071-02.
- 2) The site shall not be occupied by any persons other than Gypsies and Travellers, defined as persons of nomadic habit of life whatever their race or origin, including such persons who on grounds only of their own or their family's or dependents' 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.

- 3) No more than 4no mobile homes and 4no touring caravans, as defined by the Caravan Sites and Control of Development Act 1960 and the Caravan Site Act 1968 as amended, shall be stationed on the site at any one time. No further caravans shall be placed at any time anywhere within the site.
- 4) No additional external lighting shall be put in place or operated on the site at any time, other than has been previously submitted to and approved in writing by the local planning authority.
- 5) No vehicles over 3.5 tonnes shall be stationed, parked or stored on this site, and no commercial activity shall take place on the land.
- 6) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development)(England) Order 2015 (or any Order revoking and re-enacting or amending that Order) no additional gates, walls or fences or other means of enclosure including bunding, shall be erected or placed within/to the boundaries of the site.
- 7) The use hereby permitted shall cease and all caravans, vehicles, structures, equipment and materials brought onto the land for the purposes of such uses shall be removed and the land restored to its condition before the development took place within 28 days of the date of failure to meet any one of the requirements set out in (i) to (iv) below:

(i) Within 6 months of the date of this decision, notwithstanding the details shown on Drawing No J003957-DD-03 as proposed site plan, a Site Development Scheme (SDS) shall be submitted for the written approval of the local planning authority and shall include a timetable for its implementation and:

- a) all hard and soft landscaping of the site, including tree, hedge and shrub planting with details of species, plant sizes and proposed numbers and densities as well as a schedule of maintenance for a period of 5 years to include provision for the replacement, in the same position, of any tree, hedge or shrub that is removed, uprooted or destroyed or dies within 5 years of planting or, in the opinion of the local planning authority, becomes seriously damaged or defective, with another of the same species and size as that originally planted;
- b) replacement planting details of any and all vegetation, hedge, and shrub planting required to be removed to achieve and maintain the visibility splays,
- c) details of the external lighting;
- d) details of surface water drainage, to be based on sustainable drainage principles and to include management and maintenance arrangements; and
- e) details of foul water drainage, including management and maintenance arrangements.

(ii) if within 11 months of the date of this decision the local planning authority refuse to approve the SDS or fail to give a decision within the prescribed period, an appeal should 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 scheme shall have been approved by the Secretary of State.

(iv) The approved SDS shall have been carried out and completed in accordance with the approved timetable and shall be retained for the duration of the use of the site and development.

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.

- 8) Within six months of the date of this decision each pitch shall be provided with a fast charge electricity socket, (7Kw Mode3 with a Type 2 Connector230V/AC32 Amp single phase dedicated supply), which shall be retained thereafter.
- 9) Within one month from the date of this decision the visibility splays shown on drawing number: 2202071-02 shall be provided and retained thereafter. Nothing shall be sited, erected or allowed to grow in excess of 600 mm within the 2.4 m by 152m splay to the west, and the 2.4m by 135.4m splay to the east.
