



Appeal Decision

Hearing held on 19 October 2022

Site visit made on 19 October 2022

by Timothy C King BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19th December 2023

Appeal Ref: APP/J1535/W/19/3236140

**White Rose, Curtis Mill Lane, Stapleford Abbots, Navestock,
Romford RM4 1HS**

- 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 and Mrs L Dann against the decision of Epping Forest District Council.
 - The application Ref EPF/1649/17, dated 11 June 2017, was refused by notice dated 26 June 2019.
 - The development proposed is described as *'material change in use of land to provide for stationing of caravans for residential occupation by Gypsy family with associated hardstanding, fencing/gate, septic tank, gas tank (retrospective)'*
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appeal was previously allowed, but that decision was challenged by Epping Forest District Council under Section 288 of the 1990 Act, as amended. The High Court was of the opinion that the decision appealed against was erroneous in that the Inspector erred in law in failing to consider, on a proper basis, whether the appeal scheme was likely to have a significant effect on the Epping Forest Special Area of Conservation (SAC). The Secretary of State conceded, and the Court made an Order quashing the decision and remitting it for a new hearing and redetermination.
3. Neither main party had actually brought the SAC to the attention of the Inspector and, following the new Hearing it became obvious that, despite the implications of the development, Natural England (NE) had never been notified of the retrospective planning application nor the appeal which ensued. In the event, as the circumstances involved the potential of the development to impact on the integrity of the SAC the Secretary of State formally consulted NE in this regard.
4. Comments were subsequently received from the appellants as to NE's representations, although the Council made no response to NE's position.
5. In March 2023 the Council adopted its new development plan, the 'Epping Forest District Local Plan' (DLP), and the previous local plan, the policies of which had been applied to the determination of both the planning application and the subsequent appeal decision, ceased to exist.

6. Policies from the DLP considered particularly relevant to the appeal's redetermination are SP1, SP2, concerned with sustainable development and spatial policy; SP5, SP6, DM3 and DM4 which, together, relate to the Green Belt, the natural environment and landscape character; DM2, concerned with SACs, H4, concerned with development for traveller sites, and T1, which serves to promote transport choice.

Background

7. The appellants are members of the gypsy and traveller community. They and their family temporarily lived in bricks and mortar housing until 2017, but have since resided at the appeal site.
8. The planning application, made retrospectively was submitted in June 2017.

Considerations and Main Issues

9. The site lies within the Metropolitan Green Belt and, given the particular circumstances here, there is no dispute that the development is considered 'inappropriate' therein for the purposes of the National Planning Policy Framework (the Framework).
10. It therefore follows that an assessment must be made as to whether the development is harmful to the openness of the Green Belt, as is the development's effect on rural character, and whether the site is a suitable location for the use.
11. The supply of land and local need for gypsy and traveller purposes is also a particular consideration to be given significant weight as is the development's effect on the integrity of the SAC.
12. I therefore consider the main issues to be:
 - 1) the effect of the development on the openness of the Green Belt;
 - 2) the effect on the surrounding rural character;
 - 3) policy and local need for gypsy and traveller accommodation;
 - 4) whether the site is in a suitable location for such development;
 - 5) the effect of the development on the integrity of the SAC; and
 - 6) whether the harm, by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations which would amount to the very special circumstances necessary to justify the proposal.

Reasons

Openness of Green Belt

13. Despite the surrounding rural character there are already scatterings of buildings along Curtis Mill Lane. Nonetheless, this does not mean that new development for residential purposes should be acceptable insofar as preserving the openness of the Green Belt is concerned.
14. The development involves a material change in the use of the land for residential purposes which, as mentioned, constitutes inappropriate

development in the Green Belt for the purposes of the Framework and can only be justified where very special circumstances can be demonstrated.

15. It would appear from the appeal paperwork that, prior to 2017, the appeal site was free from development. However, at the time of my site visit I observed that it is effectively now a fenced-off compound, gated, and laid with hardstanding. This accommodates both static and touring caravans. Also, I noted the presence of apparatus in the form of tanks associated with the use, and I observed several vehicles parked within the compound. In addition, there are also horses kept on the site.
16. In essence, a development cannot preserve the openness of the Green Belt when it causes harm to openness and, here, the stationing of additional caravans and any associated development has clear implications in this regard. In terms of such impact, I find that the development conflicts with the aims and objectives of both local policies and the Framework.
17. The residential use could potentially also give rise to domestic paraphernalia which, quite reasonably, goes hand-in-hand with such occupation, thereby impacting further on openness. From outside the site, along the lane, the surrounding timber fence and high gates are particularly prominent, and I noted that the upper parts of the mobile homes are visible outside the site due to the lie of the land.
18. Nonetheless, neither DLP policy H4 nor the government's Planning policy for traveller sites document (PPTS) precludes development of Gypsy and Traveller accommodation in the countryside as a matter of principle. Similarly, although there are additional factors to take into account, Green Belt locations for such uses are not prohibited.
19. Clearly, the effect on its openness is a primary consideration and I must conclude that, given the form of the development involved, the use is harmful in this regard and contrary to the objectives of policies SP6 and DM4, and the relevant proviso in policy H4. However, as mentioned, I am also mindful of the various existing developments within the vicinity.

Character

20. The apparent surrounding rural character is not as it might seem from a distance. As indicated, Curtis Mill Lane serves a number of sporadically spaced developments including dwellings, set back into their sites, and various buildings of differing size and appearances.
21. There are also other Gypsy and Traveller sites with the associated caravans evident. A number of sites are similarly gated and fenced and some serve also to accommodate motor vehicles and trailers.
22. The overall appearance of the site is comparatively open and spaciouly laid out. It is not cluttered nor in any sense densely developed. There is scope to soften the appearance of the boundary fencing by additional planting fronting the lane and internally. In combination with the varied character and presence of similar and much more conspicuous built form along the lane, the proposal causes only limited harm to the character and appearance of the area.
23. Both the Green Belt and the immediate general rural character has therefore been somewhat sullied and in this regard the use is not necessarily at odds

with the developments, as mentioned, therein. As such whilst, on paper, the development is not one which is supported by DLP policies SP5, SP6, DM3 and DM4, it is not as unduly intrusive as one might expect.

Policy and need

24. Paragraph 24 of the PPTS makes clear, subject to the best interests of the child, personal circumstances and unmet need are unlikely to clearly outweigh the harm to the Green Belt and any other harm so as to establish very special circumstances. This is not a blanket ban on sites in the Green Belt, but is a significant material consideration.
25. A local Gypsy and Traveller Accommodation Assessment (GTAA) was published in September 2017. The GTAA shows there is an acknowledged need for gypsy & traveller sites within the District Council area. The assessment provided the evidence base for local need and the provision of sites to inform the DLP. In relation to the sites which are proposed as allocations for gypsy and traveller purposes in the DLP it was indicated at the Hearing that many of these are expected to be extensions or intensifications of existing sites, and on the basis of a sequential approach. There is also an obvious absence of alternative sites which is a significant material consideration.
26. In general, Green Belt sites sit towards the bottom of this approach and requires that their location provides for appropriate access to healthcare, education and other services. Policy H4 also includes criteria for assessing applications for such development on sites. Nonetheless, the policy amounts to an acknowledgement that some sites for gypsy and traveller accommodation will need to be located within the Green Belt.
27. At the Hearing the Council acknowledged that it cannot currently demonstrate a 5 year supply of traveller sites, but takes the view that the need can be satisfied. In contrast, the appellants indicated that the need is beyond that shown in the GTAA, and expressed concerns over the accuracy of the GTAA which calculates a need of 64 pitches between 2011 and 2033. In particular, the appellants regard the GTAA study to be flawed concerning, amongst other things, its timing, low response rate, date of publication, failure to liaise with stakeholders and to assess bricks and mortar families, with also a lack of regard to an appropriate migration allowance.
28. Paragraph 27 of the PPTS explains that where an up-to-date 5 year supply of deliverable sites cannot be demonstrated this should be a significant material consideration when considering applications for a temporary planning permission. It goes on to exclude sites in the Green Belt from this approach but ultimately, this provision in the PPTS does not prevent the absence of a 5 year supply from being a material consideration in respect of applications for permanent planning permission.
29. In summary, it does appear that there has been some failure of policy and I afford the recognised shortfall, and apparent lack of alternative sites, significant weight. There is uncertainty as to whether the Council's considered need for 64 pitches can actually be met but, even so, this should not be seen as a ceiling for such development as flexibility is required due to changes in circumstances, including those on the ground.

30. Although, therefore, there is conflict with policy there are factors which would lend support to the development of this site and I similarly give this factor significant weight.

Location

31. In terms of locational accessibility the site lies within the open countryside and I would consider, due to the location, that there will be heavy reliance on the private motor vehicle.
32. The Framework, though, advises that in terms of giving people a choice in how they travel, different measures are required by different communities and opportunities to maximise sustainable transport solutions will vary from urban to rural areas.
33. In combination with the provision of a settled base for the family, thereby reducing the need for long distance travelling in line with paragraph 13 of the PPTS, I consider that any environmental harm here is somewhat neutral in the overall planning balance.

The Epping Forest SAC

34. SACs are international designations which are applied to sites whose habitats and species have significant ecological importance. They are protected in UK law by The Conservation of Habitats and Species Regulations (2017). Under the Regulations, development proposals must not give rise to adverse effects on the integrity of the SAC and, if they are likely to, measures must be secured to remove this impact, otherwise the Competent Authority is obliged to refuse planning permission, subject to the exception tests set out in Regulation 64(1).
35. The correct approach to be taken, as applied by NE, is that the development needs to be assessed against the requirements of regulation 63 of the Conservation of Habitats and Species Regulations 2017.
36. The essence of the policy is reflected in the contemporary advice within paragraph 180 of the Framework which clearly indicates that planning permission should be refused for development that would result in significant harm to biodiversity and/or result in the loss or deterioration of irreplaceable habitats. No means of strategic mitigation currently exists for the development at appeal.
37. Only when in receipt of the necessary details can the requisite appropriate assessment be carried out by a competent authority.
38. Regarding the Epping Forest SAC the Council has identified two main issues, recreational pressure and atmospheric pollution, and strategies have been drawn up to mitigate against such. In addition, a Green Infrastructure Strategy is also in operation. All three are subject to a tariff based approach for each new residential unit.
39. NE, having assessed the development considers, that without appropriate mitigation, it will have an adverse effect on the integrity of the SAC through in-combination impacts upon both air quality and recreational pressure. The latter point is, though, seemingly contended by the two main parties.

40. The Council cannot act unilaterally by deciding not to have regard to NE's advice, because it would be unlawful unless there are cogent and compelling reasons for doing so.
41. One of the primary ways of mitigating any impacts is, as indicated, by making a financial contribution towards the implementation of measures included in the adopted strategies. All financial related contributions required to mitigate a development's impact on the Epping Forest will need to be secured by way of a section 106 planning obligation; in particular a Unilateral Undertaking (UU). Although the appellants indicate otherwise the Council says it has developed a standard S106 UU template.
42. The site appears to be beyond the 6.2km radius of the SAC – both main parties have indicated this to be the case – and, if so, the development would not be caught by the Epping Forest Strategic Access Management and Monitoring (SAMM) strategy. However, financial contributions are still required under the Interim Epping Forest Air Pollution Mitigation Strategy, with reference to NE's guidance in its 2018 publication concerning road traffic emissions, and also by way of The Epping Forest District Green Infrastructure Strategy.
43. In conclusion, on this main issue, the development does not enjoy planning permission, and neither is it immune from planning control. As contributions will be required for all residential proposals, be them intended or retrospective, to mitigate identified harm (both individually and cumulatively) the development's continuation without such provision is contrary to DLP policies SP6, DM2 and DM22.

Other Considerations

Personal Circumstances

44. The proposed development is occupied by the appellants and their dependants, including children of school age.
45. In addition to the wider need there is also the personal need of those living at the appeal site. The family has a personal need for a settled site which would facilitate a satisfactory residential environment, with good access to health, education and other services and provide a stable base from which travelling for work can be undertaken.
46. I note that the appellants and their children previously lived in bricks and mortar accommodation, but I understand that this was a difficult arrangement, but necessary at the time so that their children could gain benefit from an education at a preferred school and a stable settled base. In the event the appellants subsequently were able to purchase the appeal site and there is clearly a personal need for the appellants and their dependents for a site to which I attach significant weight.
47. The appellants wish for their grandchildren, like their own children, to have access to all available education. Access to a settled base is clearly in the best interests of a child. It would give them the best opportunity for a settled, good quality environment and a stable and secure family life, with access to education and other services and opportunity for play and personal development.

48. A settled base also provides stability for the necessary health checks provided for young children. A roadside existence would not preclude all access to education and health but, if prolonged, it is likely to lead to serious disruption to a child's early education and, similarly, access to healthcare.
49. The site is well planned in its layout, which is a factor to bear in mind by way of advice within paragraph 26 of the PPTS. Also, the site does not give the impression of being isolated from the rest of the community along the lane. These are both matters which weigh in favour of the proposal. Further, I note that representations have been made in support and it has been said that the appellants and their family are an integral part of the local community, a community which also contains settled residents.
50. There are obvious advantages for the general wellbeing of this family in being settled, living in an extended family group and having continual access to basic amenities and a secure living environment. This would also facilitate the Gypsy and Traveller way of life.

Human Rights

51. Article 8 of the European Convention on Human Rights was enshrined in UK law through the Human Rights Act 1998. This provides that everyone has the right to respect for his private and family life, his home and correspondence. In this regard there shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary, amongst other things, for the protection of the rights and freedoms of others.
52. Accordingly, if Article 8 is engaged, then interference with those rights can be justified by the Council if it is a legitimate aim, in accordance with the law and necessary in the public interest.
53. Article 3(1) of the United Nations Conventions on the Rights of the Child provides that the best interests of the child shall be a primary consideration in all actions by public authorities concerning children.
54. In 2013, the Court of Appeal heard the case of *Collins v SSCLG* [2013] EWCA Civ 1193 where it was held that whether the best interests of the children had been taken properly into account in the overall exercise was a question of substance to be answered by the detailed reasoning of the decision letter as a whole. Importantly, though, it was held that the best interests of the children were not only not determinative, neither were they paramount; the judge noting that Article 3 says "*a primary consideration*" rather than "*the primary consideration*". Nor should they be considered temporally or logically first.
55. Nonetheless, if the appellants or intended occupiers are living on the site it should be regarded as their home. In this particular instance the family has a long standing connection with the area and the appellants keep horses, both in the locality and also at the appeal site. However, this should be balanced with the mitigation issue which is clearly a matter of public interest and concern.

Representations from interested parties

56. The Council and an interested party are concerned about the risk of setting a precedent but each case must be determined on its own merits. This would allow for the assessment of all relevant policies and considerations and demonstration of very special circumstances which would be required for such

development on Green Belt sites. Although not raised by the Council I am satisfied that the proposal does not affect the Curtismill Green Site of Special Scientific Interest.

57. In reaching this view I have also had regard to the representations made by third parties concerning traffic and maintenance of the lane but I do not consider the proposal results in highway safety concerns, and maintenance of a private road is not a matter for me to address as part of this appeal.

Planning Balance

58. The proposal is inappropriate development and causes a modest degree of harm to the openness of the Green Belt and the purpose of safeguarding the countryside from encroachment. In accordance with paragraph 148 of the Framework I give substantial weight to the harm to the Green Belt. I have also found some limited harm to the character and appearance of the area. Nonetheless, both these issues should be balanced with the existence of other 'inappropriate' developments along Curtis Mill Lane, as the situation on the ground has obvious implications to this end. Further, in this contextual setting the reliance on private vehicle trips does not weigh significantly against the development.
59. Considerations weighing significantly in favour of the development are the need for pitches in the district, the personal circumstances and needs of the appellants and their dependants, and the lack of any alternative sites. There is also some support from the advice in paragraph 26 of the PPTS.
60. In considering whether very special circumstances exist to outweigh the objection to inappropriate development in the Green Belt - and the consequences of such - the case is finely balanced until the matter of mitigation is factored in. As a particular material consideration to be taken into account this strongly suggests that, in the absence of the requisite financial contributions, permitting the lawful continuation of the use would be unduly harmful to the SAC, and this must weigh strongly against the development.
61. I do have sympathy with the appellants' position, especially given how long the application and appeal process has ultimately taken. With this in mind, though, following receipt of NE's advice, I have researched the mitigation issue and the basis for the requested financial contributions in depth and whether, given that the use commenced in 2017, the tariff based system should apply in this instance.
62. In this regard the appellants understandably take a contrary view to NE's stance. However, NE's position is unequivocal in that a residential use, unless lawful - ie at the point where the Council is unable to take enforcement action due to the use having acquired the necessary ten year immunity - must be subject to the same requisite contributions as those deemed necessary for newly proposed residential development.
63. I am required to determine this appeal with regard to the development plan in place at the current time. Although the DLP was only adopted earlier this year the tariff based system, in accordance with NE's continuing advice, was being applied prior to this as the emerging plan's policies were already being used for development control purposes.

64. In 2024 the appellants will have occupied the site for some seven years. A temporary permission would therefore serve little purpose. Moreover, it would not address the issues of mitigation which I have highlighted. Other policies relevant to this appeal do have some flexibility but, in contrast, ameliorating the impacts from new residential development is applied to all proposals for residential development. Accordingly, I cannot make an exception in this instance.

Conclusion

65. I find that the proposal is not in accordance with the development plan as a whole. For the above reasons, and having had regard to all matters raised, I am satisfied that the proposal as it stands is incomplete and, as such, the very special circumstances necessary in this instance have not been fully demonstrated.

66. The appeal is therefore dismissed.

Timothy C King

INSPECTOR