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## Appeal Decision

Hearing held on 16 November 2023

Site visit made on 16 November 2023

**by Mr M Brooker DipTP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 23 January 2024**

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**Appeal Ref: APP/C1570/W/23/3324961**

**Land to the north of Birchanger Lane, Birchanger, Bishops Stortford CM23 5QA**

- 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 Messrs O'Connor, Connors, and Delaney against the decision of Uttlesford District Council.
  - The application Ref UTT/22/3094/FUL, dated 11 November 2022, was refused by notice dated 12 June 2023.
  - The development proposed is described as the change of use of land for the stationing of caravan and mobile homes for residential purposes and ancillary works (comprising the formation of 6 no. pitches, each comprising of 2no. static caravans and 1no. touring caravan).
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### Decision

1. The appeal is allowed and planning permission is granted for the change of use of land for the stationing of caravan and mobile homes for residential purposes and ancillary works (comprising the formation of 6 no. pitches, each comprising of 2no. static caravans and 1no. touring caravan) on land to the north of Birchanger Lane, Bishops Stortford CM23 5QA in accordance with the terms of the application, Ref UTT/22/3094/FUL, dated 11 November 2022, subject to the attached schedule of conditions.

### Applications for costs

2. The appellants have made an application for costs against Uttlesford District Council. This application is the subject of a separate decision.

### Background and Main Issues

3. The appeal scheme has, in part, already been carried out and consent is sought retrospectively. I have determined the appeal on this basis. I have amended the description of development detailed on the appeal form, removing reference to S73a and retrospective application in the interests of clarity.
4. Planning permission<sup>1</sup> has previously been granted for the change of use of the site for the stationing of caravans and mobile homes for residential purposes and ancillary works. However, complications discharging conditions attached to that permission resulted in the submission of a new planning application and subsequently this appeal.

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<sup>1</sup> Appeal Ref: APP/C1570/C/18/3219384 dated 9 October 2021

5. It is not at dispute between the parties that the occupiers come within the definition of gypsies and travellers as set out in Annex 1: Glossary to the Planning Policy for Traveller Sites 2015 (PPTS 2105). The PPTS 2015 was updated in December 2023 (PPTS). The changes relate to the definitions of Gypsies and Travellers and Travelling Showpeople in Annex 1 in so far that it now includes those who on specified grounds have ceased to travel temporarily or permanently. I have heard evidence from the Appellants and, having regard to the written statements from the occupiers and would be occupiers of each pitch, I am satisfied that the occupiers and would be occupiers of the plots come within the updated definition.
6. Furthermore, it is common ground between the parties that, in accordance with Policy E: Traveller sites in Green Belt of the PPTS, the appeal scheme is inappropriate development in the Green Belt and based on the evidence before me I agree.
7. The Council's Decision Notice refers to Policy S6 of the Uttlesford Local Plan, adopted 2005 (the LP). Policy S6 implements the Council's spatial strategy set out in the LP on where development will take place. However, Policy S6 only deals with development in four named villages which are surrounded by the Green Belt and four other sites within the Green Belt, where a limited amount of development will be permitted. The appeal site lies outside these areas and, as such, I find that Policy S6 is not relevant to the consideration of the appeal scheme.
8. The Council's second reason for refusal refers to excessive noise and air pollution levels. The submitted Statement of Common Ground (SoCG) confirms that the Council has withdrawn the air pollution element, this reason for refusal therefore only refers to noise.
9. Therefore, I consider that the main issues are:
  - I. The effect of the proposal on the openness of the Green Belt.
  - II. Whether or not the appeal site would provide appropriate living conditions for the occupiers with particular regards to noise.
  - III. Whether any 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 required to justify the proposal.

## **Reasons**

### Openness

10. It was discussed at the hearing that the appeal site has previously been used as a temporary living area, potentially with vehicle parking, for the workforce building the nearby M11 Motorway some time ago. Nonetheless, it is shown on the submitted plans that prior to the current works on site being carried out, the site was vacant with no existing structures.
11. I saw at the site visit that as a result of the gentle slope of the land, other than when viewed from the south and adjacent to the entrance gateway, the appeal site is somewhat screened by hedgerows and existing trees. The earth bund shown on the submitted plans is of such a limited height and without any

supplementary planting it affords negligible screening or effect on the openness of the Green Belt.

12. The current arrangement of the mobile homes, touring caravans and other vehicles on site is somewhat disorderly and does not accord with the submitted plans. The proposed layout shows a simple layout of mobile homes, touring caravans and car parking for each of the 6 pitches. I am satisfied that suitably worded conditions could control the layout of the site, the details and implementation.
13. Nonetheless, on the basis of the evidence before me and my observations at the site visit, it is clear that there is harm to the openness of the Green Belt from the introduction of mobile homes, touring caravans, hardstanding, fencing, gates, vehicles and domestic paraphernalia.
14. The Uttlesford Green Belt covers only a very small area of the overall district. The Green Belt Review dated 24 March 2016 confirms that the Green Belt in this area meets purposes of Green Belt Policy, specifically: checking the unrestricted sprawl of large built-up areas; preventing neighbouring towns merging into one another; and assisting in safeguarding the countryside from encroachment.
15. I therefore find that the appeal scheme would result in harm to the openness of Green Belt and Green Belt purposes. The level of harm is, as a result of the scale of the appeal site in the context of the wider Green Belt in the area, moderate. This is not disputed by the appellant. As such the appeal scheme is contrary to the provisions of the Framework, in particular paragraphs 152 and 154.

#### Noise

16. The appeal site is located under the flight path for the nearby Stanstead Airport and near to a busy road network. The PPTS requires "proper consideration of the effect of local environmental quality (such as noise) on the health and well-being of any travellers that may locate" on new sites.
17. The appellant submitted a Noise Impact Assessment<sup>2</sup> that found that "unmitigated, the development site is exposed to environmental noise of a sufficient magnitude to cause a medium risk of adverse impact." The WHO advise that noise impacts can affect health and wellbeing. Based on my observations on site I consider the assessment to be robust and this finding appears reasonable, and I have no alternative substantive evidence before me that would lead me to conclude otherwise.
18. The appellant proposes a number of forms of mitigation that could be controlled by planning conditions. These include, that all the mobile homes (static caravans) on site are compliant with BS3632:2015, essentially being of modern construction which affords greater noise insulation qualities; that windows be kept closed and an alternative form of cooling and ventilation be provided; and, acoustic screening be installed to the communal amenity area shown on the submitted plans to achieve the "lowest practicable noise level".

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<sup>2</sup> Noise Impact Assessment Report 1521.NIA.00 By dBA Acoustics dated 06 July 2023

19. These measures would, on the basis of the evidence before me, generally be sufficient to reduce noise levels to acceptable levels. However, these are considerable interventions, in particular the need to replace the majority of the existing static caravans on site and the ongoing need to have the windows shut and supplemented by some form of mechanical ventilation to achieve the reduced internal noise levels required, the latter would have a detrimental impact on the living conditions of the occupiers of the site.
20. Furthermore, as discussed at the hearing, traditional acoustic screening will do little to mitigate overhead aircraft noise and it was not disputed by the appellant that there is likely to be further growth of air traffic at Stanstead Airport in the future.
21. To conclude this main issue, the appeal site is situated in a location that suffers a noise impact from road traffic and aircraft such that it would have a detrimental impact on the living conditions of the occupiers of the site. The proposed mitigation measures necessary to reduce the noise levels to acceptable levels are significant interventions that in themselves would have ongoing adverse impact on the living conditions of the occupiers.
22. I note that the Council and appellant have agreed the wording of the conditions that would secure the proposed mitigation. Nonetheless I am satisfied that the appeal site would provide poor living conditions for the current and future occupiers of the site with particular regards to noise, contrary to LP Policy ENV10 that seeks to prevent noise sensitive development if the occupants would experience significant noise disturbance the guidance set out in PPTS.

#### Other Considerations

23. With regards other considerations, Policy E Traveller sites in the Green Belt of the PPTS states that "subject to the best interests of the child, personal circumstances and unmet need are unlikely to clearly outweigh harm to the Green Belt and any other harm so as to establish very special circumstances".

#### *The need for sites for Gypsies and Travellers*

24. The PPTS requires local planning authorities to make their own assessment of need for the purposes of planning, to set pitch targets for travellers which address the likely needs, and to identify a supply of specific deliverable sites sufficient to provide 5 years' worth of sites against their locally set targets.
25. The most up-to-date assessment of current need is the Uttlesford District Council Gypsy, Traveller and Travelling Show People Accommodation Assessment (GTTSA) carried out in 2017. The Assessment considered that the future need for travellers' pitches in the district (to 2033) was eight pitches, with none being required until 2021.
26. The Council confirmed that there have been no annual reports setting out the five-year supply position for gypsy and traveller sites and that they are unaware of any other sites being granted planning permissions since the earlier appeal decision in respect of the appeal site.
27. On this basis I am satisfied that there is an unmet need for Gypsy and Traveller sites. This is a material consideration and I afford it significant weight.

#### *Alternative sites*

28. Paragraph 24 of the PPTS details that consideration should be given to the availability (or lack) of alternative accommodation for the Appellants.
29. At the hearing the Council confirmed that they have very limited information regarding any alternative sites for the Appellants. The Council confirmed that there are some publicly owned and run sites, but it was understood that there are waiting lists for these sites. It was not known how long the waiting lists are or if other criteria would hinder the Appellant's applications to move to these public sites.
30. The Appellants confirmed at the hearing that they had no alternative sites to go to if they were unable to continue to live on the appeal site. I note that one family that had to leave the appeal site is temporarily living on a shared pitch with a relative, contrary to the planning permission of that site.
31. Furthermore, the Council have not presented at the hearing any notable progress since the last appeal on this site with regards the new Local Plan, annual monitoring report or in the provision of other Gypsy Traveller sites.
32. I am therefore satisfied that, on the basis of the evidence before me, that there are no alternative sites and if the Appellants cannot continue to live on this site it would necessitate a return to a largely roadside existence. This is a material consideration to which I afford significant weight.

*Personal circumstances*

33. Four of the 6 pitches are currently occupied. The families previously occupying the two vacant pitches found it necessary to move due to their personal circumstances and have not found suitable alternative accommodation. As with all those who travel, a settled base would enable them to have regular access to medical care and education. The parties have submitted personal statements and other supporting evidence detailing their personal circumstances.
34. The occupiers of pitch 1 detail that they have had to temporarily cease to travel because of the medical, educational and support needs of their child with significant special educational needs (SEN), a second child is awaiting assessment. The appellant has submitted evidence that the children are attending local schools and benefiting from their attendance at the schools.
35. The occupiers of pitch 2 detail that they have no particular health problems. Nonetheless, the children have benefited from a settled base and their attendance at local schools.
36. The occupiers of pitch 3 have a child with SEN who has benefited from and needs access to healthcare and education. The statement also details that not having a settled base, thus requiring constant travelling, has harmed the education of their children.
37. The personal statement by the occupiers of pitch 4 details that one of the adults has a medical condition that requires access to GPs and pharmacy care and the parents are keen that their children are able to access education.
38. The prospective occupiers of pitch 5 state that one person has an on-going medical issue. The statement details the parties have searched for a suitable site over many years and that it has been difficult to find a suitable site that could accommodate the family group.

39. With regards to the prospective occupiers of pitch 6, an adult suffers a significant medical issue, and they would understandably benefit from a settled base and access to healthcare. Furthermore, the benefit of continuous education for their children is recognised.
40. The personal statements demonstrate that the group has a close and supporting relationship and despite their efforts over some time have not been able to secure a suitable site to accommodate them.
41. The best interests of the children are a primary consideration in my decision and there are some 18 living on this site. The children's best interests are to have a secure and settled home from which to access health and education services.
42. It is clear, on the basis of the evidence before me and the discussion at the hearing, that if this appeal were to be dismissed there would be an infringement of the occupiers human rights under Article 8 of the European Convention on Human Rights. This refers to the right to a family life and the home.

#### *Other Matters*

43. The appellant has submitted various appeal decisions, in particular where noise was at issue. These appeal decisions are material considerations which I have taken into account. Each case had its own individual set of circumstances, in particular regarding the source of noise and the particular situation of the appeal sites. I therefore give limited weight to these various appeal decisions.

#### *Planning Balance*

44. It is clear that a refusal of planning permission would interfere with the Article 8 rights of those living on the appeal site. Indeed, the Courts have held that Article 8 imposes a positive duty to facilitate the gypsy way of life, as defined by race and ethnicity rather than planning policy. Any interference in this regard must be balanced against the public interest in upholding planning policy to protect the environment generally.
45. Both the Framework and PPTS state that inappropriate development in the Green Belt is harmful and should not be approved except in very special circumstances. There is harm on this basis and also moderate harm caused due to the loss of openness. Substantial weight is to be afforded to this level of harm. In addition, some weight is added from my finding on living conditions.
46. Set against this harm, I consider the general need for pitches situation leans in favour of the appellant. I consider there is unmet need which merits significant weight.
47. Furthermore, I consider that the personal accommodation needs of all of the occupiers are considerable and I have not been advised of any potential alternative sites. The health needs of some of the occupiers, including children, are significant and in the absence of any obvious short or medium term alternative location, I conclude there is a strong possibility that they would have to resort to an unauthorised encampment or roadside living. This would likely be seriously detrimental to their health and this merits significant weight.

48. The PPTS states the best interests of the children are a primary consideration and, in this case, I conclude that in this instance merits substantial weight due to the number of children involved. In particular, a number have SEN and it is important to safeguard not only their welfare and well-being but also that of all the children.
49. My conclusions in respect of need and supply, the availability of alternative sites and the best interests of the children point to a grant of planning permission. I have considered whether this should be a temporary planning permission having regard to the harm to the Green Belt and the new Local Plan, and the progress in the provision of other Gypsy Traveller sites. However, it appears in the absence of any compelling evidence, that these matters are unlikely to be resolved in the short or even medium term. As such a temporary planning permission would not be proportionate as it would not balance the protection of the public interest against the families' human rights.
50. My overall conclusion on the planning balance is therefore in respect of a permanent planning permission. The harm to the Green Belt and the poor living conditions are clearly outweighed by other considerations. Having regard, in particular, to the best interests of the children, I find that there are very special circumstances which would justify the granting of planning permission on a permanent basis in this case.

### **Conditions**

51. I have considered the need for conditions put forward by the parties in the light of the Planning Practice Guidance. In the interests of clarity I have included a condition detailing the approved plans. The permission should be personal to the named families on the site as their personal circumstances and the rights and best interests flowing from them are considerations of some weight in the planning balance. A condition limiting occupation to gypsies and travellers is also required as my decision relies on unmet need.
52. In the interests of the appearance of the site it is necessary to limit the number of caravans, control external lighting, prevent commercial activities on the land and the stationing/storage of vehicles over 3.5 tonnes and the further erection of any boundary treatment.
53. As the material change of use has already occurred, it will also be necessary to impose conditions requiring the submission of various additional details in the interests of the appearance of the site and the submission of details of noise mitigation works in the interests of protecting future and existing occupiers in a particular form because it is not possible to use a negatively worded condition.
54. The conditions are drafted in such a way as to require the appellant to comply with a strict timetable. I am very much aware that it was the failure to comply with a similar condition on the 2021 Appeal that resulted in a resubmission and subsequently this Appeal. Nonetheless the conditions and requirements are necessary and relevant, as is the need to ensure compliance within a timely manner.
55. As before, the condition provides for the loss of the effective benefit of the granted planning permission where the detailed matters in question are not submitted for approval during the time set by the condition, approved (either

by the local planning authority or by the Secretary of State on appeal) and then implemented in accordance with an approved timetable.

56. I am aware that some details of the earlier site development scheme have been agreed between the parties. I have carefully reviewed the earlier condition and the submissions by the parties and as a result I have revised the condition to remove reference to the site layout, the layout of the pitches, hardstandings, access road, the siting of the caravans, design and layout of a play area, amenity areas, parking and manoeuvring areas because these details are shown on the submitted plans and are therefore included within that condition. However, other details in respect of materials to be used, surface and foul drainage, landscaping, refuse, external lighting and, in particular a timetable for their implementation have not been submitted in sufficient detail and therefore in the interests of clarity and certainty I have retained those parts of the condition as described above.
57. I have not included a condition relating to contaminated land because it is not necessary, I have no substantive evidence before me to suggest that the site is contaminated.

### **Conclusion**

58. For the reasons given above I conclude that the appeal should be allowed.

*Mr M Brooker*

INSPECTOR

### Schedule of Conditions

- 1) The development hereby permitted shall be carried out in accordance with the approved plans as set out below, Drawing Numbers:
  - J004311-DD01 Site Location Plan,
  - J004311-DD02 As Existing Site Plan,
  - J004311-DD03 As Proposed Site Plan,
- 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 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.
- 3) The occupation of the site hereby permitted shall be carried on only by the following and their resident dependants: Mr Thomas Delaney and Mrs Angie O'Connor; Mr Patrick O'Connor and Mrs Roseanne O'Connor; Mr John O'Connor and Mrs Bridie O'Connor; Mr Anthony O'Connor and Mrs Alison O'Connor; Mr Jeremiah O'Connor, Mr. John Connors and Mrs Alice Connors; and Mr Paul O'Connor and Mrs Mary O'Connor.
- 4) When the land ceases to be occupied by those named in condition 3 above the use hereby permitted shall cease and all caravans, structures, materials and equipment brought on to or erected on the land, and/or works undertaken to it in connection with the use, shall be removed and the land shall be restored to its condition before the development took place.
- 5) The use hereby permitted shall be limited to six pitches. No more than three caravans, as defined in The Caravan Sites and Control of Development Act 1960 and The Caravan Sites Act 1968 shall be stationed on any pitch at any time and no more than two caravans per pitch shall be static caravans.
- 6) No vehicle over 3.5 tonnes shall be stationed, parked or stored on this site.
- 7) No commercial activities shall take place on the land, including the storage of materials.
- 8) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any other order revoking and re-enacting that order with or without modifications), 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.
- 9) 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, submit details of:
    - a) A timetable for the implementation of the site layout, the layout of the pitches, hardstandings, access road, the siting of the caravans, design and layout of a play area, amenity areas, parking and

- manoeuvring areas shown on the approved plans set out in condition 1;
- b) Details of the proposed materials to be used for the access road and hardstandings;
  - c) Details of foul and surface water drainage;
  - d) Details of waste disposal including collection point and storage areas;
  - e) Proposed external lighting on the boundary and within the site;
  - f) A tree, hedge and shrub supplemental planting scheme for the Birchanger Lane Boundary, including details of species, plant sizes and proposed numbers and densities. Unless identified to be removed, all existing trees and hedgerows on the land shall be retained. The scheme shall be set out measures for their protection throughout the course of the development.
  - g) the means of foul and surface water drainage of the site; proposed and existing external lighting on the boundary of and within the site;

The details shall have been submitted for the written approval of the Local Planning Authority and shall include a timetable for its implementation.

- ii. If within 12 months of the date of this decision the local planning authority refuse to approve the 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 details shall have been approved by the Secretary of State.
  - iv. The approved details shall have been carried out and completed in accordance with the approved timetable.
- 10) The works pursuant to condition 9 shall be retained for the duration of the use of the site and development.
- 11) 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 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 three months of the date of this permission, submit a noise/acoustic report to the Local Planning Authority for their written approval documenting measures to show how the internal space of the static caravans are/will be protected from external noise in accordance with BS8233:2014 and the current Noise Policy Statement for England. The report shall include a timetable for implementation of the measures.

The internal ambient noise levels shall not exceed the guideline values in BS8233:2014, Table 4.

07:00 to 23:00

Resting - Living room 35 dB LAeq,16hour

Dining - Dining room/area 40 dB LAeq,16hour

Sleeping/Daytime Resting - Bedroom 35 dB LAeq,16hour

23:00 to 07:00

Sleeping/Night-time Bedroom 30 dB LAeq,8hour.

Night-time individual noise events shall not exceed a level of 45dB LAFmax more than 10 times (23:00 to 07:00 hours).

- ii) A scheme for approval for alternative means of ventilation and air cooling and heating is required in writing to demonstrate that: Noise from the system will not present an adverse impact on occupants. The alternative means of ventilation will enable optimum living conditions for heating and cooling in all weather and with reference to climate change predictions The alternative means of ventilation shall be maintained thereafter.
- iii) All mobile homes permitted under this permission shall have entrance doors located in the façade facing away from the M11. Alternately, entrance doors shall be lobbied from direct access to bedrooms or living rooms.
- iv) Within 11 months of the date of this decision
  - a) the details set out in (i) above should have been approved by the local planning authority or, if the Local Planning Authority refuse to approve the details 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.
  - b) all mobile homes permitted under this permission should meet or exceed the sound insulation and ventilation standards set down in BS3632:2015. Details of compliance with BS3632:2015 shall be submitted to the local planning authority for all existing mobile homes at the site.
  - c) For future placing of Mobile homes at the site details of compliance with the standard shall be submitted to the Local Planning Authority at least 7 days prior to installing any new/replacement mobile home at the site.
- v) If an appeal is made in pursuance of (ii) above, that appeal should have been finally determined and the submitted noise/acoustic report should have been approved by the Secretary of State.
- vi) The approved details as set out in (i) above shall have been carried out and completed in accordance with the approved timetable.

12) The works pursuant to condition 11 shall be retained for the duration of the use of the site and development.

End of Schedule

## **APPEARANCES**

### **FOR THE APPELLANT:**

Alan Masters of Counsel, instructed by the appellants.

|                 |                                               |
|-----------------|-----------------------------------------------|
| Brian Woods     | WS Planning & Architecture                    |
| David Fernleigh | Principal Acoustic Consultant · dBA Acoustics |
| Tom Quigg       | Director Flume Consulting Engineers           |
| A O Connor      | Resident on the site                          |
| John O Connor   | Appellant                                     |

### **FOR THE LOCAL PLANNING AUTHORITY:**

|                |                                     |
|----------------|-------------------------------------|
| Chris Tyler    | Senior Planning Officer             |
| Sarah Marshall | Planning Enforcement Team Leader    |
| Jane Mann      | Senior Environmental Health Officer |

### **INTERESTED PARTIES:**

Colin Deans  
Anna Yates  
John McArthur  
Cllr Nick Church  
Geof Driscoll  
Angie Driscoll  
Brian Ross  
Paul Ferret  
John McArthur  
Peter Bracken

## DOCUMENTS

- I. Statement of Common Ground dated 16/11/23  
Letter from Essex County Council Children and Young People Disabilities Service dated 18 October 2023
- II. Letter from Bentfield Primary School dated 17 October 2023
- III. Letter from Essex County Council dated 12 October 2023
- IV. Unredacted personal statements from the Appellants and existing and would be occupiers of the 6 pitches.
- V. Noise Impact Assessment Report 1521.NIA.00 By dBA Acoustics dated 06 July 2023