



Appeal Decision

Hearing held on 23 April 2024

Site visit made on 23 April 2024

by G Pannell BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 May 2024

Appeal Ref: APP/H1515/W/23/3336049

Plots 2 & 2A Oak Tree Farm, Chelmsford Road, Blackmore, CM4 0PZ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr Michael Saunders against the decision of Brentwood Borough Council.
 - The application Ref is 23/00492/FUL.
 - The development proposed is material change of use of land from the keeping of horses to a mixed use of the keeping of horses and the stationing of caravans for residential purposes and dayrooms ancillary to that use.
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Decision

1. The appeal is allowed and planning permission is granted for Material change of use of land from the keeping of horses to a mixed use of the keeping of horses and the stationing of caravans for residential purposes and dayrooms ancillary to that use at Plots 2 & 2A Greenacres, Chelmsford Road, CM4 0PZ in accordance with the terms of the application, Ref 23/00492/FUL, subject to the conditions in the attached schedule.

Preliminary Matters

2. A revised version of the National Planning Policy Framework (the Framework) was published in December 2023. There were no substantive changes of relevance to this appeal proposal. A revised version of the Planning Policy for Traveller Sites (PPTS) was also published on 19 December 2023. The main change of relevance to this appeal is the definition of gypsies and travellers in Annex 1 which reinstates those who have ceased to travel permanently.
3. I observed the development that has taken place on the appeal site and that the appellant and their families have moved onto the site, with the plots established as indicated on the submitted plans.

Main Issues

4. The parties agree that the appeal scheme would be inappropriate development in the Green Belt. This is because the appeal scheme is not any of the types of development listed as an exception in the Framework as required by Strategic Policy MG02 of the Brentwood Local Plan March 2022 (LP).
5. As a result, the main issues in this appeal are the effect of the proposed development on:
 - the openness and purposes of the Green Belt; and

- whether the harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify it.

Reasons

Openness and purposes of the Green Belt

6. The appeal site is situated in the Metropolitan Green Belt. Policy MG02 of the LP states that the Green Belt will be preserved from inappropriate development so that it continues to maintain its openness and serve its key functions in accordance with the provisions of the Framework,
7. The appeal site is a triangular parcel of land, comprising two stable blocks at the point furthest from the existing access. Adjacent to the site is a neighbouring gypsy and traveller site, which has planning permission for 11 pitches. The introduction of two pitches, as well as residential occupation of the site has led to the introduction of garden furniture and other domestic paraphernalia associated with its use. This has a visual impact and results in a loss of openness. The scale of the proposal and the fact that it is viewed against the backdrop of existing pitches means that the impact is modest but does not preserve the openness of the Green Belt.
8. The proposal results in urbanisation and encroachment with the introduction of the development, contrary to paragraph 138 of the Framework which identifies the five purposes of the Green Belt, and of which c) is to assist in safeguarding the countryside from encroachment.
9. Paragraph 16 of the PPTS confirms that traveller sites are inappropriate development in the Green Belt. When applying Paragraph 155 of the Framework, it is also apparent the proposed change of use would not preserve the openness of the Green Belt.
10. Accordingly, the proposal is inappropriate development in the Green Belt which paragraph 152 of the Framework states is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Paragraph 153 of the Framework states that in considering a planning application substantial weight should be given to any harm to the Green Belt.

Other considerations

11. As set out above, the development constitutes inappropriate development in the Green Belt. I have found it to result in modest harm in terms of loss of openness to the Green Belt. Substantial weight should be given to any harm to the Green Belt. Very special circumstances will not exist unless the harm to the Green Belt is clearly outweighed by other considerations.

Need for Gypsy and Traveller Sites and Alternative Sites

12. It is common ground that the Council cannot demonstrate an up to date 5 year supply of deliverable sites. Evidence has been provided which puts the extent of the deficit between 68 and 108 pitches. The Council have indicated that some of this demand could be met through the subdivision of existing sites under LP policy HP07. However, I have no certainty that these would come forward and in any event would unlikely to be available to the appellant as are on other private sites.

13. Unmet need can be met through windfall sites coming forward under Policy HP10, however the Council have confirmed that none have been approved under this policy since its adoption in March 2022. The Council also accepts that any future allocation of sites is likely to be on land that is currently within the Green Belt.
14. The Council has a Local Plan allocation of 5 pitches within a strategic site, known as Dunton Hills. However, whilst the pitches are intended to be provided within the first phase of this development, the outline planning permission has yet to be granted with the legal obligation still under discussion.
15. The Council have also confirmed that a Local Plan review is at early stages, with a call for sites consultation undertaken recently and meetings having taken place with the Brentwood Gypsy and Traveller Support Group. In addition officers have arranged meetings with members of the gypsy and traveller community, including with residents of the neighbouring Oaktree Farm site. However, at this stage adoption of the Local Plan is anticipated in 2027.
16. Therefore, in respect of both the strategic site and future allocations within the Local Plan review, neither are likely to result in pitches being available in the short term to meet the needs of the appellant.
17. The Council considers that the site at Oaktree Farm, where the appellant's previously resided, has sufficient capacity to accommodate the family. However, at the hearing it was explained by the appellant that the site is already over occupied, with 19 families residing on the 11 approved pitches. Whilst the Council has a policy which would support the subdivision of existing sites, there is no certainty that further subdivision of this site would be permitted or that any additional pitches created would be available for the appellant, noting that the site may already be over subscribed.
18. Due to the degree of uncertainty that there are currently vacant pitches at Oaktree Farm I have given the possibility of this site being available only limited weight.
19. Under the Public Sector Equality Duty (PSED) set out in s149 of the Equality Act 2010, I need to consider how the modest increase in the supply of sites arising from the development could positively contribute to the advancement of equality and good relations, with s149 placing an onus on public authorities to avoid discrimination and being proactive in promoting equality. The equality implications arising from the development are, as such, an important factor in favour of the proposal. As such I consider that need for Gypsy and Traveller sites carries considerable weight.
20. In accordance with the PPTS, in these circumstances, lack of supply should be a significant material consideration in relation to a planning decision when considering the grant of a temporary planning permission. However, the PPTS makes it clear that this does not apply to sites within, amongst other things, the Green Belt. It also does not say that the lack of supply is a significant material consideration when considering permanent schemes.

Personal Circumstances

21. Evidence has been supplied by the appellant to demonstrate a nomadic habit of life and the Council has not taken an alternative view or suggested the

- submissions are inconsistent or inaccurate. Accordingly, there is no dispute that the proposed occupiers are Gypsies and Travellers.
22. The appellant and his family are an ethnic minority, and thus have the protected characteristic of race under s149(7) of the Equality Act 2010 and so, as required by section 149(1) of the Equality Act 2010, the public sector equality duty is applicable.
23. There is therefore a need to have due regard to eliminating discrimination, advancing equality of opportunity and fostering good relations. The appeal scheme would support the traditional way of life of families that have a protected characteristic and facilitate the establishment of a settled base for the appellant's family whilst they continued to pursue a nomadic lifestyle for economic purposes.
24. The appeal site would be occupied by the appellant, his wife, young adult son and two dependent children. The second pitch would be for the appellant's father and mother who depend on the appellant's family for a degree of care and support due to ongoing health issues. The family have been residing in temporary locations whilst seeking to establish a permanent base, this has included doubling up on the neighbouring Oaktree Farm site. They are seeking to remain in the local area in order to maintain connections with family who are based locally, both at Oaktree Farm and within the wider county.
25. Article 1 of the First Protocol sets out that a person is entitled to the peaceful enjoyment of his possessions and that no one shall be deprived of his possessions except in the public interest. Article 8 of the Human Rights Act states that everyone has the right to respect for his private and family life and his home.
26. Dismissing the appeal would represent an interference with the home and family life of the proposed occupiers, such that both Articles would be engaged. There is also a positive obligation imposed by Article 8 to facilitate the gypsy way of life.
27. Aside from the best interests of the children, I attach moderate weight to the other personal circumstances as a factor in favour of the scheme noting that Policy E of the PPTS sets out that subject to the best interest 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.

Best Interests of the children

28. Where Article 8 rights are those of children, as in this case, they must also be seen in the context of Article 3 of the United Nations Convention on the Rights of the Child. This requires a child's best interests to be a primary consideration. More particularly, case law identifies that, although a primary consideration, the best interests of a child are not a determinative planning issue, but no consideration must initially be regarded as more important or, in advance of the subsequent assessment of the individual circumstances, be given greater weight.

29. The Planning Practice Guidance advises that decision-makers need to consider whether children's best interests are relevant to any planning issue under consideration. In doing so, it similarly advises they will want to ensure the approach is proportionate. Decision-makers need to consider the case before them, and need to be mindful that the best interests of a particular child will not always outweigh other considerations including those that impact negatively on the environment or the wider community.
30. The appeal site would provide a settled base for 2 children, and their best interests need to be carefully considered. I accept that the best interests of the children would, in principle, be served by a permanent and secure home, whilst having regard to the fact that their educational needs are not currently being met by a school in the local area.
31. If the appeal is dismissed, then the family would have to live in temporary locations, leading to a degree of uncertainty which could impact upon the children's welfare if they had to move from their current location. Instead, an enduring settled base would enable certainty in terms of access to education, healthcare and generally supporting the children's welfare by, for example, attending clubs, making friends and being close to family.
32. The merits of the case presented are such that I afford the benefits, of this development to the best interests of the children, significant weight.

Intentional unauthorised development

33. The establishment of two pitches at the appeal site, without planning permission amounts to intentional unauthorised development, as such the 2015 ministerial statement is relevant¹. By way of mitigation, the appellant had limited options in respect of accommodation and has sought to regularise the situation through a planning application.
34. Nonetheless, the works undertaken have gone beyond what is necessary to establish a temporary home pending the outcome of the application. Overall, the undertaking of intentional unauthorised development adds modest additional weight as a material consideration against the proposal.

Green Belt Balance

35. I have identified that the scheme would be inappropriate development in the Green Belt as defined by the Framework and result in harm to the openness of the area. It would, by definition, be harmful to the Green Belt, harm which the Framework indicates should be given substantial weight. Very special circumstances will not exist unless the harm to the Green Belt is clearly outweighed by other considerations.
36. There are several points in favour of the proposal. The Council are unable to meet the accommodation needs of the appellant, who are ethnic Gypsies and Travellers. The appeal scheme would support the traditional way of life of a family that has a protected characteristic.

¹ Green Belt Protection and Intentional Unauthorised Development 2015

37. The appeal scheme would facilitate the establishment of a settled base for the appellants' family whilst they continued to pursue a nomadic lifestyle for economic purposes. This would allow cultural traditions to be balanced with the practicalities of modern living thereby, advancing equality of opportunity. The unmet need for pitches also indicates inequality in housing opportunities and the proposal would help to offset this in a modest way.
38. These are important points in achieving the social sustainability sought by Paragraph 13 of the PPTS. It does not automatically follow that the appeal should be permitted because the PSED is relevant. Nonetheless, the equality implications weigh notably in favour of permitting pitches at the appeal site because dismissing the appeal would perpetuate the disadvantages currently endured.
39. The accommodation needs and personal circumstances of the intended occupiers are together, significant points in favour of the proposals. Furthermore, the best interests of 2 children is a primary consideration. All would benefit considerably from a settled base from which to gain stability and an education. I have attached moderate weight to the accommodation needs and personal circumstances of the appellant, and significant weight to the best interests of the children.
40. Therefore, having taken account all the other considerations outlined above, collectively they outweigh the substantial weight which must be given to Green Belt harm and the modest harm I have attributed to the intentional unauthorised development. Consequently, I consider that there are very special circumstances necessary to justify inappropriate development in the Green Belt and is therefore in accordance with policies MG02 and HP10 of the LP.
41. I have considered whether a temporary planning permission of 3 to 5 years would be appropriate as it would be time limited and lessen the interference with the appellant's human rights while protecting the public interest (in this case relating to the Green Belt). However, there is no certainty regarding the likely adoption of the emerging Local Plan and whether it would make adequate provision to meet local need and the needs of the site's occupants. Moreover, a temporary permission would not provide long term stability for the occupants. In any case, a permanent personal permission would be acceptable based on the planning balance. Thus, I have not considered a temporary permission further.

Conditions

42. As the development has already been carried out the standard implementation condition is not necessary. However, I have imposed a condition to ensure that the proposal is in accordance with the approved plan to provide certainty.
43. The proposals are acceptable, partly due to the personal circumstances of the intended occupiers and therefore it is necessary to impose a condition detailing this. As the proposed occupants are Gypsy and Travellers and the permission would be personal it is not necessary to restrict occupation to Gypsies and Travellers, defined so as to not exclude those who have ceased travelling permanently.

44. As only two pitches are justified it is necessary in the interests of certainty to secure this and the total number of caravans permitted on the site. I have also restricted the commercial use of the site and the size of vehicles to be kept at the site.
45. In order to ensure suitable living conditions for the occupiers of the site, details of foul and surface water drainage and evidence of a water supply connection are also required.
46. To limit the visual impact details of landscaping, are also required to be submitted, agreed and implemented.

Conclusion

47. The proposal adheres to the development plan and there are no other considerations which outweigh this finding. For the above reasons, and having had regard to all other matters raised, I conclude that the appeal should be allowed.

G Pannell

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr Matthew Green BA Hons Director Green Planning Studios

Mr Michael Saunders

Mr John Jefford

FOR THE LOCAL PLANNING AUTHORITY:

Mrs Julia Sargeant BA MA Senior Planner

Miss Andrea Pearson BA DEIA MSc MRPTI Senior Policy Planner

DOCUMENTS

1. Document 1: Witness Statement of Michael Saunders
2. Document 2: Witness Statement of John Jefford
3. Document 3: Approved Block Plan 19-00909-FUL 09_250B_003

Schedule of Conditions

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans: 001-PO2; 003-PO2; 005-PO2
- 2) The occupation of the site hereby permitted shall be carried on only by the following and their resident dependants:
 - Mr Michael Saunders and Mrs Rosemarie Saunders
 - Mr Michael John Saunders
 - Mr John Jefford and Mrs Rosemarie Jefford
- 3) When the land ceases to be occupied by those named in condition 1 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.
- 4) There shall be no more than 2 pitches on the site and on each of the pitches hereby approved no more than 2 caravan(s), shall be stationed at any time, of which only 1 caravan shall be a static caravan.
- 5) No vehicle over 3.5 tonnes shall be stationed, parked or stored on this site.
- 6) No commercial activities, other than for the breeding and sale of horses, shall take place on the land, including the storage of materials.
- 7) 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 56 days of the date of failure to meet any one of the requirements set out in i) to iv) below:
 - i) Within 3 months of the date of this decision a scheme for the means of foul and surface water drainage of the site; evidence of a water supply connection to serve the development, hard and soft landscaping, including tree, hedge and shrub planting with details of species, plant sizes and proposed numbers and densities; the restoration of the site to its condition before the development took place, (or as otherwise agreed in writing by the local planning authority) at the end of the period the site is occupied by those permitted to do so, as appropriate (hereafter referred to as the site development scheme) shall have been submitted for the written approval of the local planning authority and the scheme shall include a timetable for its implementation.
 - ii) If within 11 months of the date of this decision the local planning authority refuse to approve the 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 scheme shall have been approved by the Secretary of State.
 - iv) The approved scheme shall have been carried out and completed in accordance with the approved timetable.

Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter be maintained/retained/remain in use.

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.

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