



Appeal Decision

Site visit made on 16 April 2024

by Zoë Franks, Solicitor

an Inspector appointed by the Secretary of State

Decision date: 26TH JULY 2024

Appeal Ref: APP/A0665/C/22/3307792

Land off Brook Furlong, Frodsham, Cheshire, WA6 7BZ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr Peter Lee against an enforcement notice issued by Cheshire West and Chester Council.
 - The notice was issued on 1 September 2022.
 - The breach of planning control as alleged in the notice is without planning permission, the formation of hardstanding, associated engineering operations and siting of caravans to facilitate a residential use relating to an area of land in the green belt.
 - The requirements of the notice are to: i. Cease the residential use of the site and remove all caravans including static caravans and touring caravans. ii. Remove associated domestic structures, and hardstanding from the Land comprising the Unauthorised Development and restore to a grassed area.
 - The periods for compliance with the requirements are: Requirement i) 3 months and Requirement ii) 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (g) of the Town and Country Planning Act 1990 (as amended). Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
-

Decision

1. It is directed that the enforcement notice is corrected and varied by:
 - the deletion of paragraph 3 in its entirety and substitution with the words:

“Without planning permission the material change of use of the land to use for the stationing of caravans for the purpose of human habitation and the construction of hardstanding and associated engineering operations to facilitate that change of use.”;
 - the deletion of the requirements in paragraph 5 and substitution with:

“i. Cease the use of the land for the stationing of caravans for the purposes of human habitation and remove all of the caravans, including static caravans and touring caravans from the land;

ii. Remove associated domestic structures, and hardstanding and restore the land to its condition prior to the breach of planning control.”; and
 - the deletion of three and six calendar months and substitution with 12 months as the time for compliance.
2. Subject to the correction and variations, the appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the

application deemed to have been made under section 177(5) of the 1990 Act as amended.

Preliminary Matter

3. The site visit (which had been arranged as an accompanied site visit) took place on 16 April but there was no-one present to represent the appellant. I spoke to an occupant on the site who allowed me and the Council Officer access and proceeded on that basis. A letter was subsequently sent to the appellant's agent to inform them what had happened and to give them the opportunity to make representations regarding whether an accompanied site visit was essential but nothing further has been received. I am satisfied that I saw all that I required to determine the matter and therefore proceed on that basis.

The Notice

4. The notice alleges operational development to facilitate the residential use of the land. It requires the residential use of the site to cease and for the removal of all caravans. The parties were asked whether amending the allegation to refer to the material change of use would cause any injustice. The parties have both put their cases based on the use of the land for the siting of caravans for residential use, and have clearly understood this to be the purpose of the notice, and the notice requires that use to cease. I am therefore satisfied that this correction can be made without causing injustice as it provides clarity to the notice, but does not make it more onerous, and that the description of the use in the requirements can likewise be varied.
5. In addition, I am satisfied references to "Green Belt" and "unauthorised development" can be removed from the allegation and requirements in the notice, in order to provide consistency and without causing injustice.

Ground (a) and the deemed planning application

6. The appeal site is located in the countryside in an area which is designated as Green Belt. It is common ground that the development, as a Gypsy and Traveller site to which the Planning Policy for Traveller Sites ('the PPTS') applies, is inappropriate development in the terms set out in the National Planning Policy Framework 2023 ("the Framework").
7. The main issues are therefore:
 - The effect of the development on the openness of the Green Belt
 - The effect of the development on the landscape, and character and appearance of the area;
 - Whether the development is in accordance with Policy SOC including flood risk;
 - The existing level of local provision and availability of alternative accommodation;
 - The personal circumstances of the occupants including the best interests of children

- 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 development.

Green Belt

8. Policies DM19 and STRAT9 of the Cheshire West and Chester Local Plan ('the CWCLP'), which forms part of the development plan for the area, advises that any development of land in the Green Belt must accord with Green Belt Policy as set out in the Framework. It therefore complies with national policy.
9. The appellant accepts that the development leads to a loss of openness and also encroaches onto the countryside. It is a fairly large site with up to 10 caravans and associated structures and domestic paraphernalia on previously undeveloped rural land. This harms openness notwithstanding that the site is bounded by hedgerows. I agree that the development harms openness both visually and spatially, and undoubtably encroaches into the countryside as it is not part of, or even adjoining, an existing settlement, and is therefore in conflict with one of aims of Green Belt as set out in the Framework, and which are reflected also in the CWCLP.

Landscape

10. The appeal site is in the countryside outside of Frodsham, close to the M56. Whilst it is located fairly close to Frodsham, it is surrounded by fields. The boundary hedgerows do not fully prevent views into the site and the development and its difference in terms of the nature of the use to the surrounding rural area is evident from outside of the site. This causes material harm to the character and appearance of the area.
11. The PPTS implicitly accepts that traveller sites may be located in rural areas but the scale and visual impact of the development in this case causes material harm to the character of the countryside.
12. The site has not been well-planned including in terms of soft-landscaping and, in any event, there appears to be limited scope for it to any significant extent. There are no plans before me to consider regarding this, although the appellant does argue that a condition could secure landscaping as required. However, without any information before me regarding the proposed layout or landscaping of the site, it is not possible to assess whether the harm could be adequately mitigated.
13. The development is therefore in conflict with Policy ENV6 and GBC2. of the CWCLP which, amongst other things, seek to require development to respect and protect local landscape character. In addition, Policy DM3 advises that development in the countryside will only be permitted where it is not detrimental to its character.

Policy SOC 4 Gypsy and Traveller and Travelling Showpersons Accommodation

14. Policy SOC4 of the CWCLP states that development for such accommodation will be permitted where all of its criteria are met. These criteria relate to the living conditions of the site occupants, environmental effects, location in relation to highway network, access to local services and facilities, supply of essential services, relationship with existing settlements, scale, and location outside of the Green Belt except in very special circumstances.

15. Whilst the appellant argues that most of these criteria are met, the site is located in Flood Zone 3 but a site specific flood risk assessment has not been provided as is required by the Framework. It has therefore not been shown that the development would not be affected by flooding which could result in unacceptable living conditions, and it has not been demonstrated that the development would be safe for its lifetime taking account of the vulnerability of its users. The development has therefore not been shown to be in accordance with Policy SO4 in this respect.
16. In addition, the site is close to the M56 and the Mersey Estuary (which has designation as an SPA, Ramsar site and SSSI). An assessment regarding noise from the motorway and its effect on the living conditions of the occupiers of the site has not been provided. Likewise, there is not an ecological assessment relating to the effect of the development on the Mersey Estuary. It is therefore not possible to assess whether the development provides acceptable living conditions or is acceptable in terms of its effect on the environment. As the site is located in the Green Belt it is also necessary to show that very special circumstances exist in order to meet that criterion, and I deal with this in detail below.
17. Overall, the development has not been shown to be in accordance with Policy SO4.

Need for and availability of pitches

18. It is accepted that the appellant and his family meet the PPTS definition of gypsy and traveller.
19. The most recent Gypsy and Traveller Accommodation Assessment ("the GTAA") was undertaken in 2018. It identified a need for an additional 21 permanent pitches for households who meet the PPTS definition by the end of the Local Plan Period (2030). 20 pitches have been granted permission subsequently.
20. The Council argues that they have substantially met their unmet need. However, these figures do not include households who do not meet the PPTS definition, or more pertinently, unknown households which may meet the definition (and which the appellant says includes him and the other occupants).
21. Overall, the Council has granted permission to meet a large part of their identified need, and the criteria-based Policy SO4 as previously discussed also allows for windfall sites to be granted permission for appropriate development for all Gypsy and Traveller households, irrespective of whether they meet the PPTS definition. I do not therefore find that there is a failure of policy.
22. Nevertheless, the appellant and other occupiers are living on the site which indicates an unmet need. The Council did not provide information regarding any other available pitches and as such there is clearly a need for these pitches with no alternative identified. I have not been provided with any information regarding where the occupants would go if they could not remain on the appeal site.
23. I therefore accept that occupants of the site have a personal need for pitches but, given the lack of specific details before me, attribute this moderate weight.

Personal circumstances

24. Very little information has been provided regarding the occupants of the site. It appeared from the site visit that there were young children living there (as was stated in the grounds of appeal). However, I do not have details regarding the number of children, their ages or their circumstances such as whether they are attending local schools, are permanent occupants or have any other specific reasons to need to live on the site.
25. As the appellant has provided no further details I can only consider the personal circumstances in the broadest of terms i.e. that a settled base provides the best opportunity for a stable and secure family life with access to regular schooling and healthcare, and afford it moderate weight.
26. Whilst the best interests of children are a primary consideration I have little detailed information before me to assess what that might be, other than in the general terms set out above. I therefore also attribute it moderate weight. This is based on the limited understanding that I have regarding the occupiers or their circumstances but accepting that there are generally personal benefits to having a settled base, especially for school-age children in education.

Green Belt Balance

27. Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. 'Very special circumstances' will not exist unless the harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations. In addition, the development is in conflict with the CWCLP as set out above.
28. The definitional harm to the Green Belt along with the harm to openness caused by the development is significant, as is the harm to the character and appearance of the surrounding area and countryside. Whilst not a specific reason for the issue of the notice, the lack of a site specific flood risk assessment is also in conflict with the Framework and therefore a material consideration to which I attribute significant weight given the location of the development within Flood Zone 3 and the vulnerable nature of the use as caravan site in terms of flood risk (as defined in Planning Practice Guidance).
29. Policy E of the PPTS advises 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. Whilst the best interests of children are the primary consideration I afford it moderate weight in this instance as I have little in the way of specific information.
30. The harm to Green Belt by reason of inappropriateness attracts substantial weight. This taken together with the other significant harm that I have set out above, is not clearly outweighed by other considerations; even taking into account the primacy of the best interests of the children on the site, the personal circumstances of the other occupiers and the personal need for pitches due to the lack of identified alternatives which all attract moderate weight. The very special circumstances needed to approve the inappropriate development in the Green Belt do not therefore exist.

31. Dismissing the appeal would interfere with the appellant's and the other occupiers' rights to peaceful enjoyment of their possessions, and to a private and family life and home, under Article 1 of the First Protocol and Article 8 as set out under the Human Rights Act 1998. However, as those are qualified rights, interference with them in this instance would accord with the law and be in pursuance of well-established and legitimate planning aims including the protection of the Green Belt and local landscape character, and the reduction of flood risk
32. I have also had due regard to the Public Sector Equality Duty set out under the Equality Act 2010. The harm caused by the appeal development outweighs its benefits in terms of eliminating discrimination against persons with the protected characteristics of age and race, advancing equality of opportunity for those persons and fostering good relations between them and others. I therefore conclude that it is proportionate and necessary to dismiss the appeal.
33. In view of my findings there is no need for me to undertake an assessment under the Conservation of Habitats and Species Regulations 2017 to determine whether a likely significant effect would be caused to the integrity of the Mersey Estuary SPA and Ramsar site as it would not alter the outcome of the appeal.

Conclusion on Ground (a)

34. The appeal on Ground (a) does not succeed and the deemed planning application is dismissed.

Ground (g)

35. The appellant seeks an extension of the period for compliance to 12 months to enable the extended family to obtain alternative accommodation and avoid homelessness. No further details are provided but as the family comprises 5 households with a range of ages a fairly large site or number of pitches will be required to accommodate them all. In addition, the fact that some of the children are attending local schools means that a longer period than 3 months is reasonable and proportionate in order to allow the appellant and other occupiers some time to make alternative arrangements.
36. The period for compliance should therefore be extended to 12 months in relation to both requirements.

Zoë Frank's

INSPECTOR