



Appeal Decision

Site visit made on 10 July 2024

by G Pannell BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 July 2024

Appeal Ref: APP/A1530/W/24/3339852

52b Bourne Road, Colchester, CO2 7LT

- 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 D Thursting against the decision of Colchester City Council.
 - The application Ref is 231561.
 - The development proposed is the continued use of the site for the provision for traveller accommodation including one static mobile home, a tourer caravan and an amenity block.
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Decision

1. The appeal is allowed and planning permission is granted for the continued use of the site for the provision for traveller accommodation including one static mobile home, a tourer caravan and an amenity block at 52b Bourne Road, Colchester, CO2 7LT in accordance with the terms of the application, Ref 231561, and the plans submitted with it, 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.

Main Issues

3. The main issues in this appeal are:
 - the effect of the development on the safety and convenience of highway users;
 - the effect of the development on residential amenity; and
 - whether the proposal would make adequate provision for community and sport/recreation projects.

Reasons

Highway Safety

4. The site is accessed off an existing track which links Bourne Road and Cavalier Grove and also serves a number of existing garages but is not part of the adopted highway. It was being well used by pedestrians at the time of my site visit.
5. The access road leading to the appeal site is of limited width and at its entrance is bordered on both sides by fencing and a narrow grass verge. The limited width of the road means that it would not be possible for two vehicles to pass along the length of the access, which would result in cars either having to wait within the site, or on the highway when entering or exiting the site.
6. Concerns have also been raised that it would be difficult for emergency vehicles to manoeuvre within the site, however, the need for an emergency vehicle to access the site is unlikely to be frequent. Similarly refuse vehicles are unlikely to need to enter the access road, as bins could be placed on Bourne Road on collection day, where collections already take place.
7. The appellant has included evidence to demonstrate that the entrance onto Bourne Road was to be widened as part of the construction of 52a Bourne Road, under 96/1061, however it does not appear that these works have been carried out despite being part of the conditions of that planning permission. More recently a school patrol sign has been erected across the approved access which places doubt that the widening of the access could now take place as part of those historic plans.
8. Whilst average vehicle movements and speeds are likely to be low and therefore the development would not result in frequent conflicts between vehicles entering and exiting the site, even limited incursion into traffic passing along Bourne Road as a result of vehicles accessing the site would result in an unacceptable impact on highway safety.
9. Whilst the appellant has noted that the access road is not a public right of way, given that it remains open and available to pedestrians, and I have nothing before me to indicate that such use could be prevented, I have had regard to the fact that pedestrians and cyclists could use this route and as part of my site visit I witnessed in a short period several people using the route.
10. As a result of its limited width and lack of dedicated footpath, the access road would also be a shared space between pedestrians, cyclists and vehicles, which could lead to conflict between these users. The evidence before me indicates that whilst it may be possible for pedestrians to seek refuge along parts of the access road, given the limited width of these areas and the limited opportunities for this to occur, vehicles would pass in close proximity to those pedestrians. To my mind, this arrangement would result in a less than ideal situation for pedestrians and would be a safety concern for those using the access road.
11. Although the vehicle movements associated with the development would be less than the claimed historic use of the site, the scale of the site has been reduced over time with the demolition of a number of the existing garages and it has not been operational as a builders yard for a period of time.

12. I also have nothing before me to suggest that the use of the site in connection with the appellant's landscape gardening business alone would generate similar levels of traffic than the previous use. This leads me to conclude that it is unlikely to revert to the same scale in the future, if at all and therefore I have given this fallback position limited weight.
13. Taking all of the above factors into account, the proposal would not result in a safe and suitable access from the development for both cars and pedestrians contrary to Policies DM11, DM15 and DM21 of the Colchester City Council Local Plan 2017-2033 (LP).
14. It would also be contrary to Paragraphs 108, 109 and 110 of the National Planning Policy Framework which together seek to ensure that development does not result in an unacceptable impact on highway safety, minimises the scope for conflicts between pedestrians, cyclists and vehicles and requires suitable access to the site for all users.

Residential Amenity

15. The Council's second reason for refusal sets out concerns that adequate plans have not been submitted to show the proposed layout of the site. However, the proposal is for the use of the land and therefore it is not strictly necessary for the plans to show the siting of the caravan and the tourer. However, as part of the appeal, the appellant has provided a block plan which indicates the position of the amenity block and the mobile home. Furthermore, details of a site development scheme could be secured by condition.
16. The site is located in a built up area, overlooked by a number of two storey properties which have their rear windows and gardens backing onto the appeal site on two sides. As such the garden areas of the neighbouring dwellings are likely to suffer from a degree of mutual overlooking as a result of their close relationship.
17. Having regard to the single storey scale of the mobile home, I am satisfied that the suggested siting, despite being in proximity to the rear gardens of properties in Bourne Road and Canterbury Road would not result in any further loss of privacy to those residents.
18. Furthermore, I have no evidence to demonstrate that the proposal would result in any increase in noise and disturbance to residents in Bourne Road or Canterbury Road. The access track already exists and serves a number of existing garages and as such vehicles accessing those garages already pass the boundaries of 52a and 54 Bourne Road. In my judgement any modest increase resulting from the occupation of the site by one family would not impact upon the amenities of neighbouring properties.
19. Whilst this is different to the view the previous Inspector came to in considering the appeal for a dwelling to be located on the site, it is clear from that decision that the Inspector considered this was a matter of planning judgement and in exercising my own planning judgement I am content that having regard to the existing use of the access by vehicles and the scale of development proposed that the modest increase arising from the proposed use would not be detrimental to residential amenity.

20. Therefore, I have found no conflict with policy DM15 of the LP which requires development to protect and promote residential amenity, including with regard to noise and disturbance.

Planning obligations

21. The Council has advised that financial contributions are required towards the provision of community and leisure facilities. The appellant has not indicated an unwillingness to provide these contributions but they have cited a lack of understanding of how the request is necessary to make the development acceptable in planning terms or that it is directly related to the development.
22. Local Plan Policy SP6 indicates that all development must be supported by the provision of the infrastructure that is identified to serve the needs arising from the development. It sets out that it will work with developers to facilitate the delivery of a wide range of social infrastructure. Contributions will be sought to mitigate the adverse effects that new development may have on the local community and infrastructure. Policy SG7 states development will only be granted if it can be demonstrated that there is sufficient appropriate infrastructure capacity to support the development. Small sites can have a cumulative effect on infrastructure and proportional contributions will be sought from all developments where this is demonstrated to be the case.
23. Whilst the reason for refusal makes reference to a contribution towards sport and recreation, the details provided in appendix 4 of the Council's statement only sets out requirements for a contribution towards community facilities and therefore I have considered the appeal on this basis.
24. With regard to community facilities two buildings have been identified, St Stephens Church Centre and Wimpole Road Methodist Church with a list of suggested works that might be required. However, the Provision of Community Facilities Supplementary Planning Document (SPD), states for the purposes of this SPD a community facility is defined as a building or space where community led activities for community benefit are the primary use. It is not clear whether either building satisfies this criteria. Nor whether consideration has been given to the capacity of the existing facilities and any impact this development would have on existing provision. As such, I have not been provided with any detailed evidence to define the extent of any local deficiencies in community facilities or the effect that the appeal proposal might have on them.
25. Policy DM2 sets out that where existing facilities can be enhanced the Local Planning Authority will audit existing facilities and deliver any requirements for such facilities to deliver comprehensive provision of services to serve these extended communities. Whilst a long list of improvement works have been put forward which the suggested contribution could be put towards, these works have not been costed, nor is there any evidence to suggest that the sums requested are fairly and reasonably related in scale and kind to the scale of the works requested.
26. Accordingly, I cannot be certain that the contributions sought would be necessary to make the development acceptable or that they would be directly related to the development and fairly and reasonably related in scale and kind.

27. Consequently, and notwithstanding the aims of development plan policy, I am unable to conclude that a planning obligation seeking to provide these contributions would comply with Regulation 122 of the Community Infrastructure Levy Regulations 2010. In these circumstances, the absence of a planning obligation does not weigh against the development
28. In conclusion, I cannot be satisfied that the suggested contributions are necessary to make the development acceptable in planning terms, is directly related to the development and is fairly and reasonably related to it in scale and kind and therefore would not meet the tests for a planning obligation as set out in regulation 122(2) of the Community Infrastructure Levy Regulations 2010 and there is no conflict with policies SP6, SG7 and DM2 of the LP or the SPD in this regard.

Other Considerations

Need

29. The Colchester Gypsy and Traveller Accommodation Assessment (GTAA) was published in May 2017 and represents the most up to date reference when assessing need. However, the GTAA has a shelf life of perhaps 3-5 years and in the absence of an updated GTAA, proposals for new pitches should be made in the context of the existing data available.
30. Policy DM11 of the LP sets out that, based on the GTAA, there is an overall need for 15 pitches over the life of the plan to 2033 with all 15 still to be delivered in the next 9 years. This is despite the policy stating 6 pitches will be delivered by 2021 through the expansion of the existing council owned site at Severalls Lane. I have no evidence before me to indicate that these pitches have been provided, or whether they would be available to the appellant.
31. The remainder of the need will be delivered through strategic sites and allocations within the Garden Community, however again, the Council have not provided any details to set out which sites have been allocated for pitches or the timescale for their delivery.
32. Whilst the inclusion of allocations in the recently adopted plan does demonstrate the Council's commitment to providing for the need identified within the GTAA, I have little evidence before me that the sites suggested will come forward within the remaining lifespan of the plan. I attach moderate weight to this consideration, noting that the Council has a criteria based policy under which any unmet need can be considered.

Personal Circumstances

33. 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.
34. The appellant is an ethnic minority, and thus has 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.

35. 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 the appellant, who has a protected characteristic and facilitate the establishment of a settled base for the appellant and his partner.
36. The appeal site would be occupied by the appellant and his partner. The appellant has previously been residing in temporary locations whilst seeking to establish a permanent base.
37. 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.
38. Dismissing the appeal would represent an interference with the home and life of the proposed occupier, such that both Articles would be engaged. There is also a positive obligation imposed by Article 8 to facilitate the gypsy way of life.
39. I attach moderate weight to the personal circumstances as a factor in favour of the scheme.

Planning Balance

40. Notwithstanding that the scheme would be contrary to the development plan as a whole, the question remains whether there are material considerations which would warrant a decision in this instance other than in accordance with the development plan.
41. There are several points in favour of the proposal. The Council are currently unable to meet the accommodation needs of the appellant who meets the planning definition of Gypsies and Travellers in the PPTS. The appeal scheme would support the traditional way of life of the appellant who has a protected characteristic.
42. This would allow cultural traditions to be balanced with the practicalities of modern living thereby, advancing equality of opportunity. The uncertainty around the delivery of pitches also indicates inequality in housing opportunities and the proposal would help to offset this in a modest way.
43. 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.
44. The accommodation needs and personal circumstances of the intended occupiers are together, significant points in favour of the proposals. I have attached moderate weight to the accommodation needs of the appellant.
45. In the overall planning balance, the benefits of the proposal, including that the development would provide a settled base for the appellant, are sufficient in this case to outweigh the highway harm identified above.

Other Matters

46. The appeal scheme proposes a net increase of one unit on a site that lies within the Zone of Influence for a European habitats site.
47. The Conservation of Habitat and Species Regulations 2017 (the Regulations) require that the competent authority must ensure that there are no significant adverse effects from the proposed development, either alone or in combination with other projects, that would adversely affect the integrity of the habitats site. The effects arising from the proposal need to be considered in combination with other development in the area and adopting a precautionary approach.
48. Since the development is for a single pitch, the number of additional recreational visitors would be limited and the likely effects on habitats site from the proposed development alone may not be significant. However, in combination with other developments it is likely that the proposal would have significant effects on the designated site.
49. Given my findings, the Regulations place a duty on the competent authority to undertake an appropriate assessment of the implications of the appeal scheme in view of the site's conservation objectives.
50. The site is within the zone of influence where new residential development is likely to result in recreational pressure, which would, both alone and in combination with other development within the zone of influence, have a likely significant effect on the interest features of the aforementioned site. Therefore, I consider that the development would have an adverse effect on the integrity of the site, but regard can be had to whether these adverse effects can be mitigated.
51. The Essex Coast Recreational Disturbance Avoidance and Mitigation Strategy (RAMS) sets out a strategic approach to mitigation by several councils across the wider area. It details mitigation measures that would be funded by financial contributions at a specified tariff per dwelling. Since these include a range of habitat-based measures such as education, communication and monitoring, and have been endorsed by Natural England, I am satisfied that the measures would adequately overcome any adverse effects of the proposal on the habitats site.
52. The appellant has indicated that they have made a per dwelling contribution to fund the Essex Coast RAMS. The Council have confirmed receipt of the payment. This approach can be problematic as there is no obligation on the Council to spend the money as envisaged and in a particular timescale. However, the evidence before me indicates that as a responsible public body the mitigation measures have been secured and would be used for their intended purpose.
53. The contributions would be necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development, in accordance with Regulation 122 of the Community Infrastructure Levy Regulations. As such, the contributions toward the mitigation schemes would count as mitigation toward maintaining the integrity of the sites.

54. I have also taken into account the matters raised in the representations received from third parties, including issues such as impact of external lighting, the poor integration with the rest of the neighbourhood and the use of the site for commercial purposes. However, there is no substantive evidence before me that there would be harm in respect of these matters, and no objection has been raised by the Council or statutory consultees in regard to these matters. Therefore, none of the matters raised provide a compelling reason why planning permission should not be granted.

Conditions

55. The Council has suggested conditions which I have considered against the advice in the Framework and Planning Practice Guidance. I have imposed a condition to ensure that the proposal is carried out in accordance with the approved plan to provide certainty but noting the Council's concerns regarding the accuracy of some of the submitted plans I have only listed the site location plan which defines the application site and the details of the amenity block.
56. As the proposal has been considered acceptable on the basis of a single pitch and the siting of a single static caravan and a tourer it is necessary to control this and that the caravans must accord with the relevant definition as set out in the Caravan Sites Act.
57. A number of details are required to be submitted as part of the site development scheme in order to minimise the developments impact on the character and appearance of the area and ensure appropriate living conditions for both future occupiers and adjoining neighbours. These include details of the siting of the caravans; landscaping, foul and surface water drainage, means of enclosure, external lighting, bin storage and ecological enhancements.
58. I have also imposed a condition limiting the occupation of the site to Gypsies and Travellers as defined in Annex A of the PPTS as it was part of the justification for allowing the appeal. However, I have not found it necessary for this to include a personal permission as the site would go towards the Council's requirement to meet a general need for pitches.
59. I have not imposed a condition restricting the use of the site for commercial activities despite the concerns raised by third parties. This is because it was not part of the list of the suggested conditions submitted by the Council and therefore it does appear to be necessary or reasonable.

Conclusion

60. The proposed development would conflict with the development plan but material considerations indicate that a decision should be made other than in accordance with it.
61. For the reasons given above the appeal should be allowed.

G Pannell

INSPECTOR

Schedule of Conditions

- 1) 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;
 - proposed and existing external lighting on the boundary of and within the site;
 - the internal layout of the site, including the siting of caravans, plots, hardstanding, access roads, parking and amenity areas; tree, hedge and shrub planting and where appropriate earth mounding including details of species, plant sizes and proposed numbers and densities;
 - proposed wildlife enhancement measures; and
 - refuse and recycling storage facilities.(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 site development 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 site development scheme shall have been approved by the Secretary of State.
 - iv) The approved site development scheme shall have been carried out and completed in accordance with the approved timetable.Upon implementation of the approved site development scheme specified in this condition, that scheme shall thereafter be maintained.

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.
- 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) There shall be no more than 1 pitch on the site and no more than 2 caravan(s) [as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 as amended], shall be stationed at any time, of which only 1 caravan shall be a static caravan.
- 4) The development hereby permitted shall be carried out in accordance with drawing no's Site Location Plan Promap Plan 1:1250 & MRF-50020-01 Amenity Block.

-END-