



Appeal Decision

Hearing held on 16 July 2024

by Paul Dignan MSc PhD

an Inspector appointed by the Secretary of State

Decision date: 23 August 2024

Appeal Ref: APP/X1545/C/23/3319780

Land Adjoining Longfield, Hyde Chase, Woodham Mortimer, Maldon, Essex, CM9 6TN

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr John Smith against an enforcement notice issued by Maldon District Council.
 - The notice was issued on 6 March 2023.
 - The breach of planning control as alleged in the notice is: a) The unauthorised change of use of 'The Land' to a C3 residential caravan site, with the positioning of 3 caravans for residential occupation, and b) The importation of materials and operation development to create hardstanding, the erection of a structure incidental to the unauthorised C3 use and the erection of boundary treatments, all facilitating the unauthorised change of use to a caravan site.
 - The requirements of the notice are: a. Cease the use of 'The Land' for unauthorised C3 residential use as a caravan site; b. Remove from the site all caravans, mobile homes, domestic and commercial vehicles and residential paraphernalia; c. Demolish entirely and remove from the 'Land', all unauthorised structures, hardstanding and boundary treatments associated with and facilitating the unauthorised change of use of the 'land'; and d. The removal of all vehicles, equipment, materials, paraphernalia, and waste associated with the completed compliance with requirements a.- c. as detailed above.
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (f) 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.
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Decision

1. It is directed that the notice be corrected by substituting the description of the Breach of Planning Control Alleged with the following: "Without planning permission, the material change of use of the Land to use for the stationing of caravans for residential purposes."; and varied by deleting requirement "a." and replacing it with the following: "a. Cease the use of the land for the stationing of caravans for residential purposes."
2. Subject to the correction and variation, the appeal is allowed, the enforcement notice is quashed, and planning permission is granted for the material change of use of the Land to use for the stationing of caravans for residential purposes at Land Adjoining Longfield, Hyde Chase, Woodham Mortimer, Maldon, Essex, CM9 6TN, subject to the conditions set out in the Schedule of Conditions attached to this decision.

Applications for costs

3. An application for costs was made by the appellant against the Council. This is the subject of a separate decision.

Preliminary matters

4. It was agreed at the hearing that the allegation could be more simply described as “The material change of use of the Land to use for the stationing of caravans for residential purposes”, and that requirement 1 should be varied to reflect the breach of planning control as corrected. It is not necessary to enforce separately against the operational development associated with, and facilitating, the material change of use, so I shall delete paragraph 3(b) of the notice. These amendments can be done without injustice to the main parties. With the amendments the appeal on ground (b) and the appellants argument that the notice is a nullity fall away.

Ground (a) and the deemed planning application

5. Under this ground the appellant seeks retrospective planning permission for the development the subject of the notice. By way of background, the appellant and his wider family are Travellers and meet the current definition of “gypsies and travellers” set out in Planning Policy for Traveller Sites (PPTS), being persons of nomadic habit of life. They own the site and moved onto it in January 2023, having had to leave their previous site. The site was cleared and some hardstanding laid to facilitate the stationing of caravans for residential purposes. The Council issued a Temporary Stop Notice preventing further development. The enforcement notice was issued subsequently. The reasons for issuing the notice were the lack of an application for planning permission and the consequent inability to control or mitigate any identified harm. As such it considered that the development was contrary to development plan policies concerned with ensuring sustainable development, having regard to the location of the site in the countryside outside of settlement boundaries. The development plan includes the Maldon District Local Development Plan 2014-2029 (MDLP). Specific policies referred to included MDLP Policies T2 and N2. Policy T2 seeks to create and maintain an accessible environment. Among other things it expects development to be located where there is physical and environmental capacity to accommodate the type and amount of traffic generated. Policy N2 aims to improve the condition of existing biodiversity sites and protected or priority habitats and species, and expects development which could have an adverse effect to be assessed accordingly.
6. In response the appellant commissioned a Transport Assessment and a Preliminary Ecological Appraisal. Subsequently the Council confirmed that they now accept that the development meets the criteria to be considered suitable under MDLP Policy T2. Similarly, so far as biodiversity is concerned, it now accepts that any impacts can be controlled by planning condition and so no longer considers the development to be in conflict with MDLP Policy N2. The potential for the development to affect nearby Special Protection Areas has been satisfactorily mitigated by a financial contribution to the The Essex Coast Recreational Disturbance Avoidance and Mitigation Strategy (RAMS).

Reasons

7. The main issues are whether the site can be considered as acceptable in policy terms, having regard to access to services and facilities, and the location of the site in the countryside, and the effect on the character and appearance of the area.
8. National policy is contained within the PPTS and National Planning Policy Framework (NPPF) and these are material considerations. PPTS, which must be read in conjunction with the NPPF, aims to ensure fair and equal treatment for travellers in a way that facilitates the traditional and nomadic way of life of travellers while respecting the interests of the settled community. Amongst other things, it expects local planning authorities to increase the number of traveller sites in appropriate locations to address under provision and maintain an appropriate level of supply. In locational terms, it advises that 'authorities should very strictly limit new traveller site development in open countryside that is away from existing settlements or areas allocated for development'. This policy guidance does not present an absolute restriction on the location of new gypsy and traveller sites in the countryside, but the general thrust of the policy goes against such development in remote or spatially isolated locations.
9. MDLP Policy S1 aims to achieve sustainable development. It seeks to maintain the rural character of the District and minimise the need to travel, and where travel is necessary it prioritises sustainable modes of transport. As part of the strategy Policy S8 directs most development to within settlement boundaries. However, it identifies Traveller sites as acceptable in the countryside provided that they do not adversely affect the intrinsic character and beauty of the countryside. Policy H6 is specifically concerned with the provision of Traveller sites. It expects sites outside of designated areas to form sustainable development and it includes criteria for the assessment of applications for planning permission.
10. The appeal site is in the countryside about 0.7 Km southeast of the settlement of Woodham Mortimer, a village with limited facilities. The village does, however, have a good bus service with stops within reasonable walking distance of the appeal site. At least part of the walking route to the village would be along Marlpits Road which is not ideal for walking, being subject to the national speed limit, unlit and without footpaths. However, for the most part there is good forward visibility, reasonable width and verges, and after about 200m a user can leave Marlpits Road to reach the village via a public footpath. The journey to the village by foot would not be comfortable for more vulnerable users, but the site is in any case relatively close to settlements, including Maldon, with a wide range of services. The school-age children living on the site attend a nearby school and transport is shared between the families, as I saw on my site visit, and those with health issues have been able to access appropriate healthcare facilities. The men on the site travel for work together, also reducing the number of private transport journeys generated by the site. In terms of access to services, and having regard to the characteristics and functioning of traveller sites generally and multi-generational family sites in particular, I consider the site to be well located.
11. In terms of its impact on the character and appearance of the countryside, the site is well screened from any public views that might take in the surrounding countryside. Furthermore it is sited within a strip of residential development on

the southern side of Hyde Chase. Formerly it would have been perceived as a wooded gap in the residential frontage along Hyde Chase rather than as part of the wider farmland and wooded landscape, hence the impact on the character and appearance of the countryside is very limited and not contrary to Policy S8. Policy H6(f) also requires that traveller sites be designed and landscaped to avoid unacceptable harm to the character of the local area and the living conditions of local residents. For the amount of development proposed the site is large enough to provide ample opportunity for an appropriate scheme of landscaping that would enable the site to integrate into its surroundings, and this can be secured by condition.

12. So far as the living conditions of local residents are concerned, there have been complaints of noise and disturbance, but these appear to have been appropriately responded to. There is nothing intrinsic about the site that would indicate that harm to residential amenity would not be avoidable, properties along Hyde Chase being well-spaced and relatively well screened from each other, and from the appeal site, by fencing or mature vegetation. With appropriate conditions imposed I have no reason to conclude that criterion (f) would not be complied with, and there is no suggestion of conflict with the other criteria in part 3 of Policy H6.
13. The Council acknowledges that it does not have a 5-year supply of Traveller sites, no alternative sites have been identified that could accommodate the family, and that there is a substantial unmet need for sites in the District, and indeed in the wider area and nationally. When the MDLP was adopted the Council considered that the outstanding need was possibly met, but in any case was not large, hence it was considered not required or practicable to allocate land for sites. The current position is not known with accuracy, the assessment that informed the MDLP being out of date and quite probably unreliable now given that the definition of traveller relied upon then no longer applies, having been found to be discriminatory¹. A review of the Local Plan has been paused, so in the meantime provision must continue to rely on the application of MDLP policies.
14. The works undertaken to establish the site have resulted in clearance of what appears to have been partly recent plantation woodland of some kind, assessed retrospectively as likely to have comprised mixed scrub of moderate condition with scattered trees of young age. Although not considered likely to have been of high value in biodiversity terms, habitat loss in advance of an application for planning permission is a matter to which weight against the proposal may be attached as intentional unauthorised development. Some mitigation is proposed, including planting and gapping-up of native species boundary hedgerows along the south-western and eastern boundaries to strengthen habitat connectivity and provide habitats or food sources for birds, bats and reptiles, which can be secured by condition. I consider however that the unauthorised nature of the development having prevented assessment of the prior habitats means that the extent of mitigation possible cannot fully outweigh the harm. Overall however, the weight I attach to the level of unmet need for traveller sites and the absence of identifiable alternatives for a family in need of accommodation, along with the benefits that a secure stable site will provide for the 10 children on the site, whose best interests are a primary

¹ Lisa Smith v SSLUHC & others [2022] EWCA Civ 1391

consideration, is sufficient to outweigh the harm due to the unauthorised nature of the development.

15. For the reasons given above I am satisfied that the development, notwithstanding its unauthorised nature, accords with the development plan, read as a whole. I shall therefore grant planning permission on the deemed planning application, subject to conditions.
16. In view of the relevant planning policy considerations, and the nature of the development, I shall impose a condition restricting occupation of the site to gypsies and travellers. In the interests of the character and appearance of the site and surrounding area, biodiversity, and to safeguard residential and visual amenity, I shall impose a condition requiring the submission of a Site Development Scheme, covering the internal layout of the site, including the position of the caravans, full details of ancillary structures, sheds or buildings, the extent of hardstanding, parking and amenity areas, external lighting, surface and foul water drainage, biodiversity enhancements reflecting the recommendations of the submitted Preliminary Ecological Appraisal Report, landscaping and boundary treatment. For the same reasons I shall limit the number of caravans using the site, preclude commercial activity and the parking of larger commercial vehicles, and require maintenance of any planting. In the interests of highway safety I shall require the use of bound material at the site access.
17. The appeal on ground (a) succeeds and the enforcement notice will be quashed. Grounds (f) and (g) therefore require no further consideration.

Paul Dignan

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Matthew Green	Planning Agent
John Smith	Appellant
George Smith	Occupant
Harry Smith	Occupant

FOR THE LOCAL PLANNING AUTHORITY:

William Coleman	MDC
Michael Johnson	MDC

INTERESTED PARTIES:

Mike Scraggs	Local resident
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DOCUMENTS:

1. Appeal Decision APP/X1545/W/22/3308046, issued 21 August 2023
2. Updated witness statement of John Smith

SCHEDULE OF CONDITIONS

1. The site shall not be occupied by any persons other than 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.
2. No more than 8 caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 (of which no more than 4 shall be a static caravan) shall be stationed on the site at any time.
3. 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 a scheme, hereafter referred to as the Site Development Scheme, including details of: proposed and existing external lighting on the boundary of and within the site; the internal layout of the site, including the siting of caravans; full details of ancillary structures, sheds or buildings; areas for vehicular access and turning and manoeuvring; the means of foul and surface water drainage of the site; biodiversity enhancements reflecting the recommendations of the submitted Preliminary Ecological Appraisal Report; fencing and other means of enclosure; hard and soft landscaping including details of finished hard surface materials, species, plant sizes and proposed numbers and densities, along with details of soft landscaping maintenance, shall have been submitted for the written approval of the local planning authority, and the said scheme shall include a timetable for its implementation.
 - ii) within 6 months of the date of this decision the Site Development Scheme shall have been approved by the local planning authority or, if 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 Site Development 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, and works comprised in the scheme shall be thereafter retained for the duration of the development.
4. Any trees or plants comprised in the approved details of landscaping which within a period of 5 years from planting die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.
5. No commercial activities shall take place on the land, including the storage of materials.
6. No vehicle over 3.5 tonnes shall be stationed, parked or stored on this site.
7. No unbound material shall be used in the surface treatment of the vehicular access within 6 metres of the highway boundary.