

Appeal Decision

Hearing held on 3 September 2024

Site visit made on 3 September 2024

by Helen Hockenhull BA (Hons) B.PI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24th of September 2024

Appeal Ref: APP/C3430/W/24/3343269

Land north-east of Essington Primary School, Hobnock Road, Essington, Staffordshire, WV11 2RF

- 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 Barney McCarthy against the decision of South Staffordshire District Council.
 - The application Ref is 23/00328/FUL.
 - The development proposed is the change of use of land to use as a residential caravan site for two Gypsy/Traveller families, each with two caravans including no more than one static caravan/mobile home, together with laying of additional hardstanding.
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Decision

1. The appeal is allowed and planning permission is granted for the change of use of land to use as a residential caravan site for two Gypsy/Traveller families, each with two caravans including no more than one static caravan/mobile home, together with laying of additional hardstanding on land north-east of Essington Primary School, Essington, WV11 2RF in accordance with the terms of the application, Ref 23/00328/FUL, subject to the conditions in the attached schedule.

Preliminary Matters

2. The appeal proposal is part retrospective in that a change of use of the land, the siting of a static caravan, the siting of two tourers and additional hardstanding have already taken place. The existing approved stable building on the site, whilst not specifically referenced in the description of development, is shown on the submitted plans to be converted to an amenity building. This has not yet taken place. I have considered the appeal on this basis.
3. During the event, a revised Unilateral Undertaking was submitted by the appellant, to reflect the increased financial contribution required by the Council towards the Strategic Access Management and Monitoring Measures (SAMMM). I have taken this into account in my decision.
4. The Gypsy status of the appellant and his family are not in dispute.

Main Issues

5. The main issues in this case are :

- whether the proposal forms inappropriate development in the Green Belt;
- the effect on openness and the purposes of including land in the Green Belt;
- the effect of the proposal on the integrity of the Cannock Chase Special Area of Conservation (SAC);
- whether other material considerations, clearly outweigh the harm to the Green Belt and any other harm, such that very special circumstances exist.

Reasons

Background and Planning History

6. The appeal site comprises a roughly rectangular piece of land to the north east of Essington village. It is set back approximately 75 metres from Hobnock Road. St Johns Primary School lies immediately to the western boundary.
7. The site is occupied by a stable building which includes two loose boxes and a tack room granted planning permission in 2018 and extended to include a hay barn in 2019. Amendments to the permitted building have been approved to install gable end windows and change the materials of the roof to slate. The building currently on the site has also had three rooflights installed and the approved stable doors have been replaced with full height window and door openings. The submitted plans show these as part of the appeal proposals.
8. The site lies within the West Midlands Green Belt and is also within the zone of influence of the Cannock Chase Special Area of Conservation (SAC).

Inappropriate development, Openness and Green Belt purposes

9. The Framework is clear that the government attaches great importance to Green Belts and that their essential characteristics are their openness and permanence.
10. Policy E of the Planning Policy for Traveller Sites (PPTS) specifically defines traveller sites as inappropriate development in the Green Belt (paragraph 16). The parties agree in the Statement of Common Ground (SoCG) that in principle the proposal forms inappropriate development in the Green Belt. I concur with this view.
11. Turning to openness, this is an essential characteristic of the Green Belt. It has a visual dimension and a spatial aspect. I saw on my site visit that the site is set back from Hobnock Road. There is an existing hedgerow along the road though there are gaps within it allowing glimpses of the appeal site. There is also a laurel hedge located on the southern site boundary. These two hedges assist to screen the existing consented stable block, which itself screens one of the proposed mobile homes and touring caravans.

12. Looking down the access drive, views of the site can be achieved. There is an existing sliding gate at the top end of the drive which when closed restricts views into the site. Having regard to the proposed layout, it is likely that the upper part of one of the proposed mobile homes may be visible above the gate, but it would not be highly visible from the highway given the set back from the road and the provision of planting.
13. There would inevitably be some domestic paraphernalia on the site. Such items would not be large or visually dominant from public viewpoints. The increased area of hardstanding creates a harder urban character to the site. However, it can only be appreciated from the site frontage itself and so would have little negative effect visually. Given the above, and that many of the views of the site would be gained by passing motorists and therefore fleeting, I consider the perception of visual harm would be very limited.
14. That said, the siting of two mobile homes and two touring caravans, the proposed extended hardstanding together with the parking of vehicles and other domestic equipment would introduce a significant level of development over and above the approved stable block. This would further urbanise the site, introduce development where currently there is none, and cause significant harm to the spatial aspect of openness.
15. The appellant brings my attention to the Court of Appeal case of *Turner v SSCLG and East Dorset Council*. In this case it was determined that where a development in the Green Belt has limited or no visual impact, it follows that the impact on openness is reduced from that of a more visible development. It was determined that it was not irrational for an Inspector to decide that the impact on openness of movable development such as caravans and mobile homes, is less than the impact of an equivalent permanent structure. This case however involved the replacement of a mobile home and storage yard with 11 parked lorries with one bungalow. It is therefore not comparable to the situation in the appeal case where there is an existing single stable/haystore building with the remainder of the site devoid of development.
16. Paragraph 143 of the Framework sets out the five purposes of the Green Belt. The Council's South Staffordshire Green Belt Study 2019 identifies the site as being within an area making a strong contribution towards checking the unrestricted sprawl of large built-up areas and safeguarding the countryside from encroachment.
17. The appeal site lies on the north eastern edge of the village of Essington. This is not a large built-up area but a rural village. The development of the scale proposed, would not result in the unrestricted sprawl of a large built-up area or result in neighbouring towns merging into one another. However, the increased urbanisation of the site and level of development proposed would not safeguard the countryside from encroachment. Given the extent of consented development on the site, I am not persuaded that it causes more than moderate harm.
18. In summary, the appeal proposal would form inappropriate development in the Green Belt, would cause harm to openness and conflict with one of the purposes of including land within it. This harm attracts substantial weight as set out at paragraph 153 of the Framework. It would also be contrary to

Policies GB1 and H6 of the adopted South Staffordshire Core Strategy which seek to support national Green Belt Policy.

19. As the proposals are part retrospective, intentional unauthorised development has taken place. A Written Ministerial Statement (WMS) published in December 2015 sets out that this is a material consideration that can be weighed in determining planning applications and appeals. In this instance, the actual harm as a result of the siting of the caravans is minimal, as the mobile homes are removable structures. Whilst the extended hardstanding has a greater impact, I accept it could be removed and the land reinstated. Overall, I conclude that the harm as a result of intentional unauthorised development is limited.

Locally Specific Criteria for Gypsy and Traveller Sites

20. Policy H6 of the South Staffordshire Core Strategy relates to Gypsies, Travellers and Travelling Showpeople. It states that the Council will grant planning permission in suitable locations for additional pitches subject to nine criteria. Criterion 4 and 5 do not apply to this case as they relate to transit or travelling showpersons sites.
21. The appeal site has mains electricity and water (criterion 2), and the site would provide a satisfactory living environment. Its use would not adversely affect the amenity of any neighbouring residential properties (criterion 3). The site has a safe access from Hobnock Road and provides adequate on site car parking and turning facilities (criterion 6). The provision of two pitches would not put an unacceptable strain on local infrastructure or over dominate the nearest settled community (criterion 7). The appeal site is also not located in an area at risk of flooding (criterion 9).
22. The Council considers the proposal conflicts with criterion 8 which requires a proposal to be sited and landscaped to ensure that any impact on the character and landscape of the locality is minimised including impacts on biodiversity and nature conservation. In addition, in areas of national or local designations eg Green Belt, the Policy states in part a) that planning permission will only be granted where the objectives of the designation would not be compromised.
23. The first part of criterion 8, relating to the impact on character and landscape of the locality, is not mentioned in the Council's reason for refusal; only the harm to Green Belt openness is referred to. In their Statement of Case, the Council refers to Policies EQ4 Protecting and Enhancing the Character and Appearance of the Landscape; Policy EQ11 Wider Design Considerations and Policy EQ12 Landscaping to support their view that the proposal would cause harm to the character and appearance of the area. None of these policies are mentioned in the reasons for refusal. Nevertheless, both parties address the issue of character and appearance in evidence.
24. The appeal site is on the edge of the village next to the primary school. The existing consented access to the site runs immediately parallel to the access to the school car park and drop off zone. In my view, the access appears to be within the village and in this context, causes no harm to local character. New residential development is being constructed immediately to the south of the appeal site on Hobnock Road. There is a footpath along the southern side

of the highway, street lighting and a 30mph speed limit. The speed limit increases just past Aspen Road, the entrance to the new housing.

25. The appeal site, in my view, relates more to the settlement than to the open countryside. Existing and proposed hedge planting, assist to screen the site from public viewpoints. Whilst glimpses of the development would still be possible from Hobnock Road, more so in the winter months, such views would be heavily filtered such that the proposal would not appear significantly incongruous or obtrusive. As a result, the impact on the character of the area would be limited.
26. Part a) of Policy H6 refers to the Green Belt and sets out that planning permission will not be granted if a proposal results in a demonstrably harmful impact on openness. In light of my findings above, that the proposal causes harm to openness, the development would conflict with this part of Policy H6.

Cannock Chase SAC

27. The appeal site lies within the zone of influence of the Cannock Chase Special Area of Conservation (SAC). The SAC is designated for its unique heathland habitat.
28. Policy EQ2 of the Core Strategy states that development will be permitted where it can be demonstrated that it will not be likely to lead directly or indirectly to an adverse effect on the integrity of the Cannock Chase SAC.
29. Under the Conservation of Habitats and Species Regulations 2017, the Habitat Regulations, as competent authority I am required to undertake an Appropriate Assessment of the proposal. The development would be likely to lead to increased recreational activity in the area of the SAC. In the absence of avoidance or mitigation measures, the proposal would likely have a significant adverse effect on its integrity.
30. The Cannock Chase SAC Guidance (April 2023) states that the 'in combination' impact of proposals involving a net increase of one or more dwellings within a 15 km radius of the SAC would have an adverse effect on its integrity unless avoidance or mitigation measures are in place.
31. The Cannock Chase SAC Partnership has agreed a series of mitigation and avoidance measures with Natural England. These are referred to as Strategic Access Management and Monitoring Measures (SAMMM). In line with the Council's approach to such matters, a mitigation payment per net residential unit is required. Such monies would be used to contribute to the SAMMM.
32. The appellant has provided a Unilateral Undertaking to make the necessary financial contributions. I am satisfied that with mitigation, the proposal would not result in adverse effects on the integrity of the Cannock Chase SAC either alone or in combination with other plans and projects. I note that Natural England has raised no objection to the proposal subject to appropriate mitigation being secured.
33. The appeal proposal would therefore meet the provisions of the Habitat Regulations and comply with Core Strategy Policy EQ2. These seek, among other matters, for development to be resisted if it would lead to an adverse effect upon the integrity of the SAC.

Other considerations

The need and supply of Gypsy sites

34. Policy H6 of the Core Strategy sets out the Gypsy and Traveller pitch requirements for South Staffordshire to 2028 and includes a commitment to maintain a 5 year supply. The most recent position is provided by the updated Gypsy and Traveller Accommodation Assessment (GTAA) 2024, which was produced to support the Local Plan Review.
35. This document identifies a need for 142 pitches up to 2042 for those meeting the planning definition of a Gypsy or Traveller, 24 pitches for undetermined households and a further 18 pitches for those who do not meet the definition. This provides a total need of up to 184 pitches. The GTAA identifies a 5 year need of 92 pitches from 2024-2028. I acknowledge that this document has not been tested through the Local Plan examination process, but nevertheless it indicates a significant need in the Borough over the next five years and to 2042.
36. The Council has confirmed that they do not currently have a 5 year supply of pitches. The Council also advises that 20 pitches in total have been granted planning permission in the Green Belt since the adoption of the 2018 Site Allocations Document (SAD). These comprise 13 permanent pitches and a resolution to grant permission for a further 7 permanent pitches. Fourteen of these pitches are additional to the 20 pitches allocated in the SAD and have been considered in line with the criteria in Policy H6.
37. Whilst I acknowledge the Council has taken a positive approach to allowing new sites in the Green Belt under Policy H6, it is clear from the evidence before me that there has been a continuing shortfall of pitches in the Borough over recent years. This shortfall is significant.
38. I understand that the Local Plan Review, which is at Regulation 19 stage, allocates 37 pitches, which is well below the identified need over the plan period. These allocations are in the main to meet the 5 year needs of existing families. It is notable that all these sites are within the Green Belt.
39. I understand from the SoCG that the Council are trying to address the shortfall. A search for a suitable public site has so far proved fruitless. Under the Duty to Cooperate, the Council have approached adjoining authorities in the same housing market area to see if they can assist to meet the unmet need. No firm offers of assistance have been forthcoming to date.
40. The Council is in a difficult position, and I recognise that they are trying to address the matter. However, the failure of the development plan process to meet the needs of Gypsies and Travellers is a material consideration. The emerging Local Plan is likely to be submitted for examination in the winter of 2024/25, with adoption likely to be the end of 2025 or early 2026. Allocated sites will then need time to come forward, gain planning permission and be implemented. In my view it is likely that allocated sites would not be available for at least 2 years. I also understand that allocated sites are either unauthorised sites or extensions of existing sites to accommodate individual family needs. It is therefore unlikely that they would be available to the appellant.

41. Overall, there is an unmet need for Gypsy and Traveller sites in the Borough and no 5 year supply of sites, as required by PPTS. There is an identified ongoing policy failure to meet the identified needs of Gypsies and Travellers. The matter of unmet need is critically important and carries great weight in favour of the proposal.

Alternative accommodation

42. I understand that the appellant has been living on the appeal site since April 2023. Prior to that the family were living on a public site in Wolverhampton and then doubling up with the appellant's father on a different site in Wolverhampton. The family had to move off this site as it is full.
43. There are no public sites in South Staffordshire and all existing private sites are full. It is agreed between the parties that there are no other alternative sites in the Borough for the appellant and his family. I have no reason to disagree with this assessment. The lack of suitable alternative accommodation weighs in favour of the appeal.

Personal Circumstances

44. The appeal site provides two pitches for the extended McCarthy family. One pitch is to be occupied by the appellant, his wife and five of their children. Two children are over 18 and three are school age. The two youngest attend a Catholic Primary School in Cannock and an older child is home tutored. The Catholic Primary School is clearly not the closest primary school to the appeal site, with Essington Primary School immediately next door. However, I am advised it is the closest Catholic Primary School. The appellant finds work as a builder/paving contractor in the Wolverhampton and Birmingham area, though also travels further afield for work.
45. The second pitch is to be occupied by the appellant's adult daughter and her pre-school child. A settled permanent base would be of benefit to the school age children and their ongoing education.
46. I am advised that the family are all registered with the local health centre in Essington and that the appellant has some health issues. Access to education and healthcare would be advantageous to the wellbeing of the extended family and would be in the best interests of the children. These matters count in favour of the proposal and accord with the aims of the PPTS to enable the provision of suitable accommodation from which travellers can access education, health, welfare and employment infrastructure.
47. Based on the lack of any identified available, alternative accommodation there is at least a possibility that the family would have to resort to life on the road in the event that they were unable to stay on the appeal site. Such an existence in itself presents challenges in terms of maintaining a good standard of health and wellbeing and is not in the best interests of the children.

Other appeal decisions

48. The Council referred to three appeal decisions at New Acre Stables¹, Streets

¹ APP/C3430/A/13/2210160

Lane² and Doveleys Farm³ which were issued in 2014, 2019 and 2022. The decisions all relate to sites within South Staffordshire and also within the Green Belt. I can see from the appeal decisions that there are differences between them and the appeal case in terms of the personal circumstances of the appellants and other material considerations. However, I note that in each of these cases, there was a significant shortfall of pitches in the Borough which has still not been addressed through the allocation of sufficient sites in the local plan process. Whilst I have had regard to the above appeals, each proposal should be determined on its individual merits.

49. The Council refer to the above Inspectors decisions in regard to the proportionality to human rights of development proposals that would be demonstrably harmful to the interests of protecting the Green Belt. I return to this issue in the planning balance below.

Whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations, so as to amount to the very special circumstances necessary to justify the development.

50. The Framework in paragraph 144 states that substantial weight should be given to any harm to the Green Belt and that very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness and any other harm is clearly outweighed by other considerations. PPTS paragraph 16 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.
51. The proposal represents inappropriate development by definition. I must give substantial weight to this harm. The proposal would also result in harm to openness and one of the Green Belt purposes, namely to safeguard the countryside from encroachment, albeit I consider harm to be limited in visual terms.
52. There is a significant local need for Gypsy and Traveller accommodation and some uncertainty as to whether and when the policy approach to meeting this need is to be established and adopted through the review of the Local Plan. The Council cannot demonstrate a five year supply of pitches and no alternative sites have been identified. The evidence before me indicates an ongoing failure to meet national policy requirements for the delivery of sites. These considerations carry significant weight.
53. The proposal would ensure that the extended family remain together and provide stability for dependent children in terms of educational needs along with healthcare access. In the absence of alternatives, it would also prevent the appellant and his family being forced into a roadside existence. This also carries significant weight.
54. Bearing in mind that around 80% of Borough is Green Belt, and given the competing interests in land use, it is fair to expect that any additional pitches would not be within settlements and so would be in the Green Belt. I attribute moderate weight to this factor.

² APP/C3430/W/18/3201530

³ APP/C3430/C/21/3274332

55. Bringing all the above together, I find in the circumstances of this case, the Green Belt harm and any other harm are outweighed by the other considerations set out above. In coming to this conclusion, I have given weight to the appellant's personal circumstances. It is therefore justified and appropriate that a personal permission be granted, limiting occupancy to the appellant and his extended family. I do not consider that this should be for temporary period, bearing in mind the level of unmet need and the doubt around whether and when this would be addressed.
56. Accordingly, the very special circumstances necessary to justify the development have been demonstrated. The development accords with the Framework strategy for the protection of the Green Belt and Policy GB1 of the adopted South Staffordshire Core Strategy which seeks to protect Green Belt in line with national policy.
57. As I am allowing the appeal subject to a personal condition, my decision would not interfere with the appellant's and their family's rights to respect for private and family life and their home. As such, there would be no interference with the occupiers' human rights under Article 8 of the European Convention of Human Rights as enshrined in the Human Rights Act 1998 (Article 8).
58. I have also had due regard to the Public Sector Equality Duty (PSED) contained in section 149 of the Equality Act 2010. This sets out the need to advance equality of opportunity and foster good relations between people who share a protected characteristic and those who do not share it. This includes those of a particular race and so the occupants of the development. Granting planning permission would allow the opportunity for the site's residents to continue to foster good relationships with the local community and to provide support to one another in the furtherance of the Gypsy way of life. Therefore, my decision advances opportunity in line with the PSED.
59. I have had regard to the appeal decisions put before me by the Council which relate to human rights and when interference is justified in the public interest, such as to protect the Green Belt. They do not however alter my overall decision.

Conditions

60. The Council have suggested a number of conditions should the appeal be allowed which I have assessed against the tests in the Framework and Planning Practice Guidance. I have amended the wording of some conditions in light of comments made and for reasons of precision.
61. I impose a condition requiring the development takes place in accordance with the approved plans for clarity and the avoidance of doubt. A condition restricting the occupancy of the site to Gypsies and Travellers is also necessary. I have amended the Council's suggested wording for clarity.
62. The permission is personal and therefore a condition restricting occupancy to the appellant and his extended family, and resident dependants is necessary. A further condition requiring the restoration of the land to its original condition within three months should the appellant cease to occupy the site is also necessary.

63. A condition is required in the interest of the character and appearance of the area, to control the number of pitches and caravans on the site. Further conditions are necessary to prevent the site being used for commercial activity and to limit the size of vehicles in order to protect the character and appearance of the area and to safeguard the amenity of nearby residents and uses.

64. As the development has already commenced, it is necessary to impose a condition to require the submission of a site development scheme to include details of landscaping, surface water drainage, the internal layout of the amenity building and the provision of lighting to safeguard the character and appearance of the area. There is a strict timetable for compliance, three months, because permission is being granted retrospectively. The condition will ensure that the development can be enforced against if the requirements are not met.

Conclusion

65. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should be allowed.

Helen Hockenhull

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Phillip Brown

Philip Brown Associates Ltd

Barney McCarthy

Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Paul Turner

Planning Consultant

DOCUMENTS SUBMITTED AT THE HEARING

1. Revised Unilateral Undertaking, signed and dated 3 September 2024

DOCUMENTS SUBMITTED AFTER THE HEARING

1. Further revised Unilateral Undertaking dated 18 September 2024

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall be carried out in accordance with the following submitted plans: Site Layout Plan (undated, no drawing no.), Amenity Building Floor Plan and Elevation Drawing dated July 2023 and Drawing no. PBA4 - Post and Rail Fence.
- 2) The site shall not be occupied by any persons other than Gypsies and Travellers, defined as persons of a nomadic habit of life whatever their race origin, including such persons who on grounds only of their own or their family's or dependant's educational or health needs or old age have ceased to travel temporarily or permanently, but excluding members of an organised group of traveling show people 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:
 - i. Barney McCarthy and Sara McCarthy
 - ii. Rose McCarthy.
- 4) Within three months of the land ceasing 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) No more than four caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 as amended (of which no more than two shall be a static mobile home), shall be stationed on the site at any time.
- 6) No vehicle over 3.5 tonnes shall be stationed, parked or stored on the site.
- 7) No commercial activities shall take place on the land, or within the buildings, including the storage of materials.
- 8) The use hereby permitted shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed within 3 months 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 site development scheme providing the details of landscaping, surface water drainage, the internal layout of the proposed amenity building, and the provision of external lighting 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) 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 retained.

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.