



Appeal Decision

Site visit made on 9 July 2024

by Bhupinder Thandi BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1st October 2024

Appeal Ref: APP/J3720/W/23/3326522

The Birches, Temple Grafton, Alcester B49 6NX

- 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 Richard Birch against the decision of Stratford-on-Avon District Council.
 - The application Ref is 23/00833/FUL, dated 10 March 2023, refused by notice dated 28 June 2023.
 - The development is described as material change of use of land to use as a residential caravan site for 3 gypsy families, each with two caravans including no more than one static caravan, together with laying of hardstanding, erection of amenity building and construction of new access.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application form refers to the site as 'Land adjacent Greenways, Church Lane, Temple Grafton, Alcester, Warwickshire', however, the Council have referred to the site as 'The Birches, Temple Grafton, Alcester B49 6NX'. The site address used by the Council is more accurate and I have borne this in mind when making my decision.
3. Based on my observations during the site visit the development which has been carried out is not in accordance with the plans which were submitted. Consequently, I have assessed the scheme before me on the basis of the submitted plans, together with the effects of the compliance with planning conditions. Any other development which has been carried out, but which is not in accordance with the approved plans would be a matter between the appellant and the local planning authority.

Main Issues

4. The main issues are:
 - The effect of the development upon the character and appearance of the area including the Arden Special Landscape Area (SLA);
 - Whether the development would provide adequate living conditions for the intended occupiers;
 - Whether the development would adversely effect the living conditions of existing neighbouring occupiers; and

- The effect on highway safety.

Reasons

Character and appearance

5. The appeal site is broadly rectangular and at the time of my site visit comprised a stable, touring and static caravans, storage container, extensive hardstanding and what appeared to be a concrete slab towards the northern end of the site.
6. From the information before me a temporary 4-year permission was granted in May 2022 for a single pitch on the site. The appellant advises that he now wishes to provide two additional pitches for his two teenage daughters. I am, therefore, now assessing the effect of 3 pitches on the site which is a materially different scheme to the previous one.
7. The appeal site lies within the SLA whereby the landscape is defined by a settlement pattern of small nucleated villages surrounded by a verdant high quality landscape. This reinforces the value of the gap between the two nucleated settlements of Ardens Grafton and Temple Grafton.
8. The proposed development would introduce additional mobile homes, touring caravans and an amenity block into the landscape and which would be more intensive compared to the use of the site for a single pitch. The siting of the mobile homes, amenity block and extensive hardstanding would disperse development across a greater area of the SLA appearing as stark and discordant features within the landscape compared to the consented pitch. I am mindful, that if allowed, the appellant's caravan would remain on site longer than the 4 years originally allowed. Overall, this would harm the character and appearance of the area and erode the gap between the two settlements.
9. When seen from Ardens Grafton Road and the Public Right of Way that extends to the north of the site, the proposed development would be most evident in localised views. When travelling along the road the mobile homes, amenity room and touring caravans would be visible appearing as unduly discordant and prominent features, despite the presence of vegetation.
10. I acknowledge that the proposal would result in more intensive development on site. However, it would not encroach further westwards towards Ardens Grafton and thus no greater physical or visual coalescence between Ardens Grafton and Temple Grafton would result from the proposal.
11. I conclude that the proposed development would adversely affect the character and appearance of the area and the SLA contrary to Policies CS.5, CS.12 and CS.21 of the Stratford-on-Avon District Core Strategy (2016) (CS) which, amongst other things, require proposals to protect landscape character and avoid detrimental effects on features which make a significant contribution to the character, history and setting of a settlement or area and seek to resist development proposals that would have a harmful effect on the distinctive character and appearance of the SLA.

Living conditions of the intended occupiers of the site

12. Part W of the Development Requirements Supplementary Planning Document 2021 (SPD) provides detailed guidance in respect of proposals for Gypsy and Traveller sites. At Paragraph A.12 the SPD sets out that each pitch should measure at least 500sq.m and provide facilities including an amenity/ garden area; hardstanding for the stationing of caravans and parking spaces.
13. There is no substantive evidence before me to indicate that each pitch would meet the minimum size outlined within the SPD. Whilst there would be space around the mobile homes, it would be nominal, hard surfaced and likely a functional space for the parking of vehicles and associated paraphernalia rather than meaningful or usable amenity spaces for recreational activities.
14. The limited separation between the mobile homes, the extensive hard standing, and parked touring caravans and vehicles combined with the absence of any usable amenity space would give the appearance of an intense and cramped form of development. Whilst the site would be occupied by members of the same family, this is not justification to allow a development that I find is unsatisfactory.
15. Conditions could be imposed relating to the number of caravans, commercial use and vehicles, lighting and hard and soft landscaping, however, they would do little to allay my concerns.
16. The appellant contends that green space could be provided, however, the site layout shows a thin green linear strip running along the eastern boundary which would not be conducive for recreational purposes. The appellant's wider land holding falls beyond the appeal site and as it stands it is not clear whether some or all of it would be made available for use; nor any information in respect of its management and maintenance has been provided. As such, I give this aspect of the appellant's argument limited weight in coming to my decision.
17. Compliance with the licensing conditions for gypsy caravan sites falls under different legislation and is not a substitute for a good layout and does not lead me to reach a different conclusion on the matter.
18. As such, I conclude that the development would fail to provide adequate living conditions for the intended occupiers of the pitches contrary to Policies CS.9, CS.21 and Part W of the SPD which, amongst other things, require a good standard of space and amenity for occupiers and the site to have a good residential environment.

Living conditions of existing neighbouring occupiers

19. Concerns have been expressed about the impact upon the living conditions of the occupiers of Greenways in respect of overlooking and privacy. The property neighbours the appeal site and in my judgement views between the two sites would be obscured by the existing boundary treatment formed of a fence and tall dense vegetation.
20. Whilst in winter months there may well be a thinning out of the vegetation the touring caravans would be transient features given the nomadic habitat of life of the appellant and his family. Moreover, they would be stationed away from the boundary and would not be occupied on a regular basis compared to the

mobile homes which represent the main living accommodation on the site. I, therefore, have no reason to believe that the stationing of the touring caravans as indicated on the plans would unacceptably harm the living conditions of the occupiers of the Greenways in terms of overlooking and loss of privacy.

21. As such, the development would not result in unacceptable harm to the living conditions of existing neighbouring occupiers in accordance with Policies CS.9 and CS.21 and Part W of the SPD which, amongst other things, seek to protect occupants of neighbouring properties from unacceptable loss of privacy.

Highway safety

22. The Highway Authority have expressed concerns that there is not adequate space within the site for visitors to park and pitch their touring caravans and which in turn could result in touring caravans and towing vehicles being parked on the public highway.
23. Based on the evidence before me the development has not been presented as a transit site or a site intended to provide pitches other than for the appellant and his family. There is also nothing to suggest that visits from friends and family would be a regular occurrence given the nature of the site or that this would result in parking overspilling on to the road. Furthermore, conditions restricting the occupation of the site and the number of pitches and caravans that could be stationed on site at any one time could be imposed to limit occupation of the site and prevent visitor vehicles from being stationed on it.
24. In addition, this section of Ardens Grafton Road is not subject to any traffic restriction orders and therefore a person could legitimately park on the highway, if they so wished. It would be at the discretion of others under different legislation to enforce any perceived traffic or parking contraventions.
25. As such, in my judgement the development would not adversely affect highway safety and would accord with Policies CS.9 and CS.26 which, amongst other things, seek to minimise danger from traffic and mitigate unacceptable highway impacts.

Other Matters

Intentional unauthorised development

26. The Written Ministerial Statement (WMS) from August 2015 establishes that intentional unauthorised development is a material consideration to be weighed in the determination of planning applications and appeals. The WMS expressed concern that where the development of land has been carried out in advance of obtaining planning permission there is no opportunity to appropriately limit or mitigate the harm that may have been caused. Based on the submissions of the Council the appellant imported materials on to site to create a large area of hardstanding, larger than permitted under the previous planning permission and the plans before me and has stationed caravans despite the serving of Temporary Stop Notices. No mitigating circumstances have been advanced by the appellant in respect of these actions. In the circumstances the unauthorised nature of the development attracts moderate adverse weight.

Other Considerations

Supply of Gypsy and Traveller pitches

27. The Planning Policy for Traveller Sites (PPTS) sets out that local planning authorities should use a robust evidence base to establish the accommodation needs to inform the preparation of local plans and make planning decisions. At paragraph 10, it states that local planning authorities should identify and update annually 5 years' worth of deliverable sites for Gypsies and Travellers.
28. The Council published a Gypsy and Traveller Accommodation Assessment (GTAA) in 2019 which sets out a minimum requirement of 70 pitches for those falling within the ethnic definition set out in the PPTS up to 2035.
29. The Council accept that they have not delivered a sufficient number of pitches and cannot demonstrate a 5-year supply of pitches for Gypsies and Travellers. Whilst the Council is exploring options to identify new permanent sites and preparing a new Local Plan it is evident that addressing the need through the local plan process is still some way off. I also note that the Council have approved a number of Gypsy and Traveller pitches in the district since 2019. However, there is still a substantial unmet need for Gypsy and Traveller pitches in the area and I attach significant weight to this matter.

Personal circumstances

30. Article 8 of the European Convention on Human Rights as enshrined in the Human Rights Act 1998, concerns a right to respect private and family life. Article 8 affords the right to respect for private and family life and home, including the traditions and culture associated with the gypsy and traveller way of life. The Public Sector Equality Duty was introduced under the Equality Act 2010 which requires at section 149 that a public authority or person exercising a public function must, among other requirements, foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
31. Despite the representations received I have no substantive evidence before me to indicate that the appellant does not fall within the definition of Gypsies and Travellers in the PPTS.
32. I have been advised that Mr Birch lives on site and shares parental responsibility with the mother of his children, from whom he is now separated. Whilst I have sympathy with the appellant's circumstances, I have not been presented with any specific need for the appellant's daughters to live on site beyond an understandable desire to live close to one another.
33. I have had regard to the evidence submitted concerning the health issues of two of the children and accept they could be severe. However, while there is a need for medical care there is nothing to indicate that they need to be on site or nearby to receive treatment.
34. Article 3(1) of the United Nations Convention on the Rights of the Child provides that the best interests of the child shall be a primary consideration in all actions by public authorities concerning children. From the outset no consideration should be regarded as more important or given greater weight in my assessment. That said, the best interests will not always outweigh the other considerations including those that negatively impact on the environment. I

have nonetheless kept the best interests of the children at the forefront of my mind in reaching my decision.

35. I acknowledge that the site would provide a settled and stable base for the appellant's children. However, I have not been advised of whether they attend school locally or otherwise. Therefore, there is nothing before me to indicate whether remaining on a single pitch or off site would disrupt their education.
36. As I understand the appellant and his ex-wife share parental responsibility of their children, therefore, they have a further base and point of support. As such, it is unlikely that the appellant's children would be rendered homeless or would have to adopt a roadside existence even if no alternative private or public pitches are available to them.
37. Having regard to these matters alongside the particular circumstances of the case it has not been shown that the scheme before me is necessary to serve their medical, social or educational needs.

Planning Balance

38. I have found that the development would cause unacceptable harm to the character and appearance of the SLA, in conflict with the CS. I have also found that the development would not provide satisfactory living conditions for the intended occupiers. These factors attract significant weight in the overall balance. I have also given moderate weight to the intentional unauthorised development undertaken on the site, as required by the WMS.
39. In favour of the appeal, I have found that the Council has an immediate shortage and cannot demonstrate a five-year supply of Gypsy and Traveller sites and there are no suitable and available alternative sites. I also attach significant weight to these considerations. I also attach moderate weight to the personal circumstances of the appellant and his children.
40. On balance, I am satisfied that the harm which would be caused by the development outweighs the other considerations to the extent that permanent planning permission should not be granted. However, it is also necessary to consider whether a further time-limited permission could be granted.
41. Granting a time-limited permission would give the Council a period in which to increase its supply of land for sites and mean that the harm caused by the development to the character and appearance of the SLA comes to an end in the foreseeable future. However, for the duration of that period the appellant and his family would be living in a cramped and intensive environment.
42. I have given consideration to a planning permission personal to the appellant and his children. However, bearing in mind the harm that arises from the development to the SLA and the fact that the site would not provide satisfactory living conditions for the intended occupiers and mindful too of the limited information about personal circumstances I conclude that a temporary planning permission for any length of time would not be justified.
43. In coming to my decision, I have paid regard to my Public Sector Equality Duty under s149 of the Equality Act 2010. I have had regard to the rights of the appellant under Article 8 of the European Convention on Human Rights as incorporated into the Human Rights Act 1998. It is a qualified right, and interference may be justified where it is lawful and in the public interest. The

concept of proportionality is crucial. As such, whilst there may be some interference of the appellant's rights under Article 8, it would be in accordance with the law and in pursuance of a well-established and legitimate aim: the protection of the environment and the living conditions of occupiers.

Conclusion

44. For the reasons set out above the appeal does not succeed.

B Thandi

INSPECTOR