



Appeal Decisions

Hearing held on 16 October 2024

Site visit made on 16 October 2024

by Elizabeth Pleasant BSc (Hons), DipTP, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 November 2024

Appeal A Ref: APP/P1560/C/23/3318915

Land adjacent Heathfields, Clacton Road, Weeley CO16 9EJ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Ms Nicola Ward against an enforcement notice issued by Tendring District Council.
- The notice was issued on 15 February 2023.
- The breach of planning control as alleged in the notice is: Without planning permission, the material change in use of the Land for the stationing of caravans for residential occupation, the erection of an outbuilding and the laying of hard-core and associated material onto the Land forming an area of hardstanding.
- The requirements of the notice are to:
 - (i) Cease the use of the Land for the stationing of a caravan for residential occupation.
 - (ii) Remove the caravan from the Land, including fencing and residential paraphernalia.
 - (iii) Demolish or remove the outbuilding located in the rear North-West corner of the site as coloured in black on the attached map and remove all resultant debris/material from the land.
 - (iv) Remove all associated fixtures, fittings including electricity connections, gas bottles and water connections and other items associated with residential use.
 - (v) Remove all non-organic matter including hardstanding within the site from the Land, including all associated detritus therefrom, restoring the level of the ground to its condition and appearance prior to the breach.
- The period for compliance with the requirements is four (4) months.
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (g) of the Town and Country Planning Act 1990 (as amended). Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

Summary Decision: The appeal is dismissed and the enforcement notice is upheld in the terms set out below in the Formal Decision.

Appeal B Ref: APP/P1560/W/23/3315193

Land adj. Heathfield, Clacton Road, Weeley Heath, Clacton-on-sea, Essex CO16 9EJ

- 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 Ms Nicola Ward against the decision of Tendring District Council.
- The application Ref is 22/01862/FUL.
- The development proposed is change of use of land for the creation of 1 no. Gypsy/Traveller Pitches, comprising the siting of 1 mobile home and 1 touring caravan, per pitch alongside the formation of hardstanding and erection of dayroom (converted stable building).

Summary Decision: The appeal is dismissed.

Decision on Appeal A

1. The appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application made under section 177(5) of the 1990 Act, as amended.

Decision on Appeal B

2. The appeal is dismissed.

Preliminary Matters

3. The appellant, Nicola Ward made the original planning application and was the owner of the site when the enforcement notice was issued. She made the appeals against both the planning refusal and the enforcement notice and instructed Mr Woods to act for her. However, Nicola Ward no longer owns the site, and it is now in the ownership of Mr Alan Chapman who currently occupies the site with his adult son. Mr Woods confirmed at the Hearing that he has been instructed by the appellant to continue to be the representative in this appeal.
4. The Council confirmed that having considered the information provided by the appellant regarding vehicular access to the site, including evidence in relation to visibility and vehicle tracking, it is no longer their wish to defend the highway safety reason for refusal. The Council confirmed that they were satisfied that a safe means of access to the site could be secured by the imposition of conditions. Considering observations on my site visit, and in the absence of any substantive evidence that would suggest otherwise, I see no reason to disagree. I have made my decision on that basis.
5. The occupiers of the site did not attend the Hearing. Considering questions raised by the Council at the Hearing in relation to alternative living accommodation available to the site occupiers, an opportunity was provided for the occupiers to respond to those submissions in writing. I have taken those submissions into account in my decision and no party has been prejudiced.
6. After the Hearing and in accordance with an agreed timetable, I have been provided with a signed and dated copy of the planning obligation which provides a Recreational Disturbance, Avoidance & Mitigation Contribution. I will take the obligation into account in reaching my decision.

Appeal A on ground (a), deemed planning application and Appeal B

Main Issues

7. The main issues in the appeals are:
 - the provision of and need for Gypsy and traveller sites in the district, having particular regard to local and national planning policy;
 - the effect on the character and appearance of the area;
 - the effect on ecological matters, including biodiversity; and
 - the effect on designated European conservation sites.

8. Other considerations, potentially weighing in favour of the development, include the availability (or lack) of alternative accommodation for the occupiers of the site and their other personal circumstances.
9. Integral to my decision-making will be exercising duties under the Human Rights Act 1998. Article 8, a Convention Right¹, affords a person the right for their private and family life, their home and their correspondence. It is a qualified right that requires a balance between the rights of the individual and the needs of the wider community. In applying Article 8 there is a positive obligation to facilitate the Gypsy way of life to the extent that the vulnerable position of Gypsies as a minority group means that some special considerations should be given to their needs and the different lifestyle in the regulatory planning framework and in reaching decisions on particular cases. Under the Equality Act 2010 I will have regard to the public sector equality duty (PSED).

Reasons

Provision of and need for Gypsy and traveller sites in the district

10. There is a generally accepted national need for more traveller sites. The National Planning Policy Framework (NPPF) expects that the housing needs for different groups in the community should be reflected in planning policies. The PPTS², which is itself a material consideration, makes it clear that a relevant matter in the consideration of planning applications for travellers is the existing level of local provision and need for sites. More specifically, local planning authorities should identify and update annually a supply of deliverable sites sufficient to provide 5 years' worth of sites against their local set targets.
11. The Tendring Gypsy and Traveller Availability Assessment (GTAA), updated 2018 is the last published study of Gypsy and traveller pitch provision to be carried out in the district. I was told at the Hearing that Opinion Research Services (ORS) have been commissioned by the 12 Essex Local Authorities to provide an Essex-Wide GTAA. However, no preliminary results are yet available for Tendring and until the new GTAA is published and adopted by the Council as their evidence base, the 2018 GTAA is the most up to date assessment of the need for Gypsy and traveller sites before me.
12. The baseline date of the GTAA was May 2017 when all the site interviews were completed. For the period of 2017-2033 the GTAA identified a need for 1 additional pitch for households meeting the 2015 definition of Gypsy and travellers, 3 pitches for households not meeting the definition and two pitches for householders where it is unclear whether the definition is met (Unknown). At that time there were 11 permanent pitches in the district and planning permission in place to deliver a further 11 permanent pitches and 1 temporary pitch. The Council advise that since that date, a further six pitches have been approved. Whilst they accept that the GTAA is out of date, it provided the evidence base for the adopted LP which extends to 2033 and considering the number of pitches approved since 2018, the Council believe that they have a five-year supply of pitches to meet the identified need. However, they are not currently aware of any available pitches within the district.

¹ Article 8 of the European Convention on Human Rights, enshrined into UK law by the Human Rights Act 1998.

² Planning Policy for traveller sites, updated December 2023

13. Mr Woods on behalf of the appellant contends that considering the age of the GTAA, the change in the definition of Gypsy and travellers in response to the Lisa Smith Judgment³, recent trends in relation to increased household formation and increased numbers in the annual caravan count, it is more than likely that the Council have a general unmet need within the district.
14. The GTAA is now six years old and provided the evidence base for the Tendring District Local Plan 2013-2033 (LP) which was examined and subsequently adopted in 2021. I concur with the Council that, considering the number of pitches granted planning permission since that date, and in the absence of any demonstrable evidence that would indicate otherwise, it seems to me that the Council is able to meet their local set targets through sites that have already obtained planning permission.
15. Nevertheless, the development plan is clear that, in accordance with the PPTS, any additional applications for pitches to meet the needs of Gypsies and travellers will be considered against criteria-based LP (Section 2) Policy LP9.
16. It is common ground between the parties that this is the correct approach in this case and the remaining dispute is focussed upon those remaining main issues identified above. These relate to LP Policy LP9, criteria (a) and (e) regarding adverse impacts on designated protected areas and the character and appearance of the area, including issues of ecology and biodiversity.

Character and appearance

17. The appeal site comprises part of a wooded area with access off Clacton Road (B1441). The site boundaries adjoin woodland to the north and south, and to the east there are open fields in use for agriculture. Clacton Road between the settlements of Weeley Heath and Little Clacton is characterised by sporadic housing, interspersed with woodland and open fields. Overall, I find that the character and appearance of this area is predominantly that of a rural countryside landscape.
18. The nature of the appeal proposal as a Gypsy and traveller site does not of itself confer an adverse effect on the character and appearance of the area. Indeed, PPTS Policy C, acknowledges that traveller sites can be appropriately located in the countryside. Furthermore, while Policy LP9 of the LP seeks to prevent development which is not of a high quality design and landscaping, the policy does not exclude site location in the countryside.
19. The single pitch, which would comprise a maximum of two caravans, would be at the smallest scale of traveller provision. However, the unauthorised development has involved a significant encroachment into an area of protected woodland. The appeal site forms part of woodland which is protected by Tree Preservation Order No. 5/78, Woodland, Clacton Road made by the Council in 1978. The woodland is described in the Order as "*woodland of mixed hardwoods consisting mainly of ash, elm, oak and good understorey*". Although it is unclear as to how many individual trees were removed as part of the unauthorised works, there is no doubt that the levelling of the site and importation and laying of the large hardstanding that has been created would have resulted in a substantial clearance of the woodland understorey at the very least. I also observed on my site visit, piles of new wood chippings close

³ Smith v SSLUHC & Ors [2022] EWCA Civ 1391

to the site boundary fences that have been erected, which would suggest that some trees or parts of them have been felled.

20. Whilst the existing caravans on the site are not visually conspicuous from the road due to the new fencing/gates that have been erected, the site clearance and importation of hardcore to create a substantial level area has had a significant and harmful effect on the woodland character. Furthermore, the proposed scheme, which is the subject of Appeal B, seeks permission for the development of a larger site area than has currently taken place. This would require further clearance of woodland to the east/rear of the existing fence line where it is proposed to site an amenity block. Further levelling, removal of trees/understorey and laying of hardstanding would be necessary to facilitate the proposal and the woodland character of the area would be further eroded.
21. I recognise that it may be possible to plant a new hedgerow along the site frontage to replace the fence and this would improve the appearance of the site. However, the hedgerow would not compensate for the overall loss of woodland character across the site, which has a harmful effect on the landscape character.
22. To conclude, there has been significant harm to the character and appearance of the area from the development and this would be reinforced by the proposal the subject of Appeal B. There is thus failure to comply with Policy LP9 of the LP (Section 2) which requires development to be of a high quality design and landscaping. I also find conflict with Policies SP7 of the LP (Section 1) and SPL3 of the LP (Section 2) which seek to ensure that new development makes a positive contribution to the quality of the local environment and protect and respond to local character. There is also conflict with Policy PPL3 of the LP (Section 2) which seeks to protect the rural landscape from overriding harm to its character or appearance, including its woodlands.

Ecology and biodiversity

23. Policy PPL4 of the LP (Section 2) is consistent with Section 15 of the NPPF in seeking the protection, management and enhancement of the natural environment. Policy PPL4 requires proposals for new development to be supported by an appropriate ecological assessment. It advises that where new development would harm biodiversity or geodiversity, planning permission will only be granted in exceptional circumstances, where the benefits of the development demonstrably outweigh the harm caused and where adequate mitigation or, as a last resort, compensation measures are included, to ensure a net gain in biodiversity. Furthermore, PPL4 advises that, as a minimum, there should be no significant impacts upon any protected species and schemes should (include provision, as may be relevant for) the preservation, restoration or re-creation of priority habitats, ecological networks and the protection and recovery of priority species populations.
24. The appeal site forms part of a protected woodland. Neither the planning application the subject of Appeal B, nor either of the appeal submissions, have been supported by an ecological assessment. Thus, the ecological value of the site, including biodiversity levels, presence of and/or a habitat for protected species, prior to the unauthorised development taking place is unknown. Neighbouring residents and representatives of the Parish Council clearly recall that historically there was a pond within the protected woodland, known locally as The Spinney. This recollection is supported by reference to Ordnance

Survey Maps and aerial images. The occupiers of the neighbouring property, which includes part of the adjoining woodland, told the Hearing that there were bats, slow worms and newts on their land. On the other hand, Mr Woods does not recall there being any evidence of a pond on the site when he carried out his initial site survey.

25. Nevertheless, taking into consideration the site's location within a woodland area, and my observations of the unauthorised works that have taken place on the Land, the development undertaken has clearly resulted in a loss of biodiversity. There has also, more likely than not, been harm to ecological networks and an impact on protected species, for example commuting bats. The absence of a preliminary ecological assessment conflicts with Policy PPL4 of the LP (Section 2). Having regard to the works undertaken and development proposals the subject of Appeal B, it seems to me that other than the suggested new hedgerow along the site frontage, there would be limited opportunities for mitigation or compensatory measures. Despite assurances and requests for ecological information from the appellant during the appeal process, no information or compensatory landscaping/ecological enhancement schemes have been provided to support their appeal.
26. I have had regard to another Inspector's decision⁴, which has been drawn to my attention by the appellant, and where matters in relation to biodiversity were dealt with by a condition. However, in that case the appellant had secured an additional area of woodland which was substantially larger than the appeal site, and the Inspector in that case was satisfied that in addition to the landscape enhancements on the appeal site this woodland would provide a suitably large area to carryout additional planting and ecological enhancements as compensation for the woodland that had been lost. In this case no landscaping scheme or compensatory measures have been provided by the appellant, and in the absence of any evidence to demonstrate otherwise, it seems to me that the appeal site and development proposals provide limited opportunities for such compensatory measures.
27. To conclude there is conflict with Policy PPL4 and the NPPF, the aims of which are set out above. There is also conflict with Policy LP9 (a) of the LP (Section 2) which states that sites for gypsy and travellers must avoid any adverse impacts on any internationally, nationally **or locally**⁵ designated protected areas.

Colne Estuary SPA & Ramsar – Appropriate Assessment

28. The SPA & Ramsar are extensive areas of estuaries and intertidal sand and silt flats, including several islands, shingle and shell beaches and extensive areas of salt marsh which support nationally important breeding and non-breeding birds, their qualifying features. The conservation objectives are to seek to ensure that levels of bird disturbance are not increased.
29. The proposal is within the identified Zone of Influence for European Sites covered by the Colne Estuary SPA and RAMSAR⁶. The future occupants of the pitches would be likely to use the Essex Coast thereby increasing visitor pressures on the protected habitats, leading to potential harm. I therefore

⁴ Appeal Ref: APP/M3645/C/21/3284447 & 3284448.

⁵ Bold type, my emphasis.

⁶ Appendix 3 & 4 of the Council's Statement of Case.

consider that the effects of the development, both on its own and in combination with other development projects, is such that they are likely to have significant effects on the integrity of these habitats. In such circumstances, Regulation 63(1) of the Conservation of Habitats and Species regulations (the Habitats Regulations) indicate the requirement for an Appropriate Assessment (AA). As the competent Authority, I have therefore undertaken an AA.

30. Various mitigation measures in response to pressures on the habitat that I have identified above are set out in the Essex Coast RAMS Strategy 2018-2038. The measures include restrictions on water recreation, rangers and in some cases restricted access. It is a comprehensive suite of mitigation measures. Funding for the measures is calculated, and a per dwelling averaged cost provided. I am satisfied that the mitigation payments are required to avoid an adverse effect on the integrity of the European sites. The Council confirmed at the Hearing that there was no requirement to consult Natural England due to the specified mitigations being agreed with them and in place for the Essex Coast as set out in the RAMS Strategy.
31. In accordance with the mitigation strategy, the appellant has provided a signed and dated planning obligation in the form of a unilateral undertaking ('UU')⁷. This UU secures the aforementioned financial contributions. This is necessary and would ensure that there are no likely significant effects on the European sites. Therefore, the integrity of the European sites would not be adversely affected, and the proposal would comply with Policy PPL4 of the LP in this respect.

Other Matters

32. With regard to personal circumstances, it is understood that the site is currently occupied by Mr Chapman and his adult son. Mr Woods has been confirmed that Mr Chapman and his son have alternative accommodation, living on a mobile home site during the summer months and bricks and mortar in the winter. Whilst I appreciate that Mr Chapman may wish to secure his own site and this would facilitate the Gypsy lifestyle all year around, he does currently have alternative accommodation available to him, and this consideration does not therefore have any positive weight in the planning balance.

Planning Balance on Appeal A, ground (a) and Appeal B

33. Section 70(2) of the Town and Country Planning Act 1990, as amended, provides that the decision maker shall have regard to the provisions of the development plan, so far as material to the application. Section 38(6) of the Planning and Compulsory Purchase Act, 2004 provides, that if regard is to be had to the development plan for the purpose of determination to be made under the planning Acts, the determination must be made in accordance with the plan unless material considerations indicate otherwise.
34. I find harm in relation to the character and appearance of the area to which I afford significant weight. The harm caused to biodiversity and ecological matters carries significant weight. I am not persuaded that these harms can be adequately addressed by any reasonable planning conditions.

⁷ Planning Obligation dated 6 November 2024.

35. The other considerations, including provision of and need for Gypsy and traveller sites, impact on European conservation sites and availability of alternative accommodation for the site occupiers are neutral in the planning balance.
36. Gypsies share the protected characteristic of race for the purposes of the PSED under s149 of the Equality Act 2010 which sets out the requirement to have due regard to the need to eliminate discrimination and advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not. I consider the harms resulting from the development, as identified, would outweigh the benefits in terms of advancing equality.
37. As a result of the above, I find the development to conflict with Policy LP9, SP7, SPL3, PPL3 and PPL4 of the LP (Sections 1 & 2). It also conflicts with Section 5 of the NPPF. There are no material considerations that indicate that a decision should be taken other than in accordance with the development plan. Appeal A on ground (a) and Appeal B do not therefore succeed.

Appeal A on ground (g)

38. The appeal is that the compliance period falls short of what should reasonably allowed. I need to balance the public interest in the notice being complied with expeditiously against the private interests bound up in the development. In this regard it is confirmed that the appellant has alternative accommodation. Therefore, I see no reason why the period of four months provided by the notice would not be sufficient to carry out the works required by the notice. The appeal on ground (g) fails.

Overall Conclusions

39. For the reasons given above, I conclude that the appeals should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act, as amended.

Elizabeth Pleasant

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr Brian Woods, WS Planning and Architecture.

FOR THE LOCAL PLANNING AUTHORITY:

Mr Matthew Lang, Team Leader, Development Management.

Mr William Fuller, Policy Officer.

Mr Matthew Deal, Team Leader, Enforcement.

Mr Matthew Ramsden, Planning Enforcement Officer.

INTERESTED PARTIES:

Mr J and M Dearsley, local residents.

Mr Green, local resident.

Cllr. Christine Hamilton, Chair of Weeley Parish Council.

DOCUMENTS received after the Hearing

1. Suggested Conditions from the LPA
2. Personal Circumstances correspondence from LPA dated 16 October 2024
3. Personal Circumstances correspondence from Appellant dated 31 October 2024.
4. Unilateral Undertaking dated 6 November 2024.