



Appeal Decision

Hearing held on 3 December 2024

Site visit made on 3 December 2024

by Darren Hendley BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29th of January 2025

Appeal Ref: APP/N4720/W/24/3347444

Sandgate Stables, Sandgate Terrace, Kippax, Leeds LS25 7BQ

- 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 Adam Smith against the decision of Leeds City Council.
 - The application Ref is 22/04416/FU.
 - The development was originally described as the 'Proposed siting of two caravans.'
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Decision

1. The appeal is allowed and planning permission is granted for the change of use of land for formation of 1 pitch comprising the siting of one static mobile home and one touring caravan for Gypsy/Traveller occupation of a single family, including the keeping of horses and creation of an access track and hardstanding, and erection of boundary fencing, cycle store, ancillary buildings and EVC point at Sandgate Stables, Sandgate Terrace, Leeds LS25 7BQ in accordance with the terms of the application, Ref 22/04416/FU, subject to the conditions in the attached schedule.

Procedural Matters

2. The development has commenced in that the static and touring caravans are on the site, and the site is occupied by members of the Gypsy and Traveller community. The development is however not complete, when the submitted plans are considered. What is for my consideration is as shown on the submitted plans and so I have dealt with the appeal on this basis.
3. The description of development in the banner heading above is taken from the planning application form. While the Council's decision notice presents a different description, there was not agreement to alter the description on the basis of which permission was sought.
4. The description of development as is set out in the agreed Statement of Common Ground (SoCG) is different again. This presents a more accurate description of what is set out on the submitted plans. However, it also refers to the temporary change of use of land for a period of 3 years. It is not though possible to rely on the description of development to control, restrict or limit a development as there is no power to impose a time limitation on a planning permission except by means of a 'temporary' condition.
5. The description of development in the decision paragraph above therefore utilises the description as is set out in the SoCG, apart from the reference to a temporary permission. This matter is considered later in my decision.

6. After the close of the Hearing, the revised Planning Policy for Traveller Sites (PPTS) and the National Planning Policy Framework (Framework) were published. The main parties were given the opportunity to comment solely on this matter and I have considered the responses that I have received in my decision. It was also evident that Leeds GATE (Gypsy & Traveller Exchange) was representing the appellant at the Hearing, along with the agent, and cannot therefore also be an interested party. I have therefore considered the response that Leeds GATE provided and in any event the Council was given an opportunity to respond. I have not however considered further information from the appellant on the very special circumstances case, as this was outside of where I was seeking comments on solely the revised PPTS and Framework.

Main Issues

7. The main issues are (i) the effect of the development on green infrastructure provision by way of Local Green Space and recreational use; and (ii) if there is harm, whether this is outweighed by the supply of pitches for Gypsies and Travellers, and other considerations.

Reasons

Green Infrastructure

8. The appeal site comprises an area of rectangular land which is accessed off Sandgate Terrace. As well as the caravans on the site, there is a stables building and other ancillary structures which relate to domestic use or the keeping of animals. These are positioned around an area of loose stone hardstanding that is located towards the rear of the site. An internal access track divides the front of the site into a paddock and a grassed area. The site frontage is enclosed by high vegetation and access gates. Vegetation and close boarded fencing enclose the remaining boundaries of the site.
9. The site forms part of a broader area of open space that lies to the north of Sandgate Terrace that is predominantly in use as allotments. The plots are owned and managed by Castleford and District Allotment Federation Ltd (CDAF), or else in private ownership. It is designated as Local Green Space under Policy GE1 of the Kippax Neighbourhood Plan 2018-2033. Map 4 Local Green Spaces shows the site within LGS13 Carters Field allotments, with LGS12 Sandgate Terrace allotments lying to the north.
10. Policy GE1 reaffirms the protection that is afforded to Local Green Space through national policy on Green Belts. Paragraph 108 of the Framework sets out that policies for managing development within a Local Green Space should be consistent with those for Green Belts. Paragraph 153 of the Framework states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. This is re-iterated by Policy E of the PPTS. None of the exceptions as set out in the Framework apply in this case. 'Grey Belt' matters do not take my deliberations any further. Accordingly, when judged against the Framework, the PPTS and Policy GE1, the development would be inappropriate development.
11. Openness is an essential characteristic of the Green Belt, as identified by paragraph 142 of the Framework. As the development would involve static and touring caravans, and other structures, it would alter the area of land on

which these would be sited, albeit at the rear of the site as the front would remain largely open. It would also increase the likelihood of vehicles being on the site and there would also be some domestic paraphernalia. In terms of the visual impact of openness, the site is well screened by both vegetation and its location amongst other plots of land and associated structures, even if a fence that I was told was unauthorised on a neighbouring plot is discounted. Overall, there would be a limited adverse impact on openness.

12. Policy GS1 of the Council's Site Allocations Plan as amended 2024 (SAP) designates green space. Policy G6 of the Core Strategy (as amended by the Core Strategy Selective Review 2019) (CS) protects existing green space from development unless one of its criteria are met. Saved Policy GP5 of the Leeds Unitary Development Plan (Review 2006) includes broader amenity protection.
13. Policy G6 criterion (i) states there should be an adequate supply of accessible green space / open space within the analysis area and the development site offers no potential for use as an alternative deficient open space type. The evidence is of a dated nature. The SAP Green Space Background Paper (GSBP) refers to a surplus of such land within the Council Ward where the site is found, but that dates from 2017, and it is understood those figures are themselves based on an earlier assessment¹. The Council also pointed out that the local population has risen and that would necessitate further provision, over and above that in the GSBP.
14. CDAF have also presented persuasive evidence which is of a more up to date nature in that it has set out there is strong demand for allotments in Kippax. It has also been pointed out that the allotments contribute to charitable organisations and community activities, and provide health and monetary benefits through the growing of produce. There is also an alternative deficit open space type, parks and gardens, which is identified in the GSBP.
15. In taking these factors together, criterion (i) is not met. None of the other criteria under the policy are applicable. It therefore follows that the site as green space is to be protected under the policy from the development, and as a consequence also recreational use. In addition, the site has related amenity value for the purposes of Saved Policy GP5.
16. The appellant has sought to rebut the effect on Local Green Space and the recreational use on the basis that as the site is in private ownership there would be no reasonable likelihood that it would fall into such a use. Yet, this would negate the point of such green space policy protection, which is established in the public interest, and it would also undermine the objectives of a development plan led planning system. This contention has a limited bearing on my decision.
17. The Council's reasons for refusal also include Policy H7 of the CS, which is the development plan's main Gypsy and Traveller policy. While the Council consider there would be conflict with criterion (ii), which states that pitches and plots should not be located on land that is deemed unsuitable for general housing, the example situations that are given are those which may impact on living conditions. Residing on a site which is green space is not such a circumstance and the reasons for refusal do not concern living conditions.

¹ Open Space, Sport and Recreation Assessment (2011)

Nevertheless, this does not overcome the conflict with the remaining policies that I have identified.

18. I conclude that the development would have an unacceptable effect on green infrastructure provision by way of recreational use. It would therefore not comply with Policy GS1, Policy G6 and Saved Policy GP5 in relation to green space protection and its amenity value. This carries significant weight in my decision.
19. I deal with matters arising from the consideration of very special circumstances to consider against inappropriate development and any other harm later in my decision. Hence, I conclude on compliance with Policy GE1, the Framework and the PPTS at that stage. There is not conflict with Policy H7 on this issue, in considering the Council's concerns.

Need and Supply of Pitches for Gypsies and Travellers

20. Policy H7 and the associated supported text sets out that 62 Gypsy and Traveller pitches are required up to the end of the plan period (March 2028). The majority of those pitches are safeguarded or allocated through the SAP, while the Council is dependent on the remaining coming through other private pitches and negotiated stopping sites. The SoCG confirms that no permanent pitches have come forward since the SAP. I was also referred to funding issues in providing public pitches and other constraints such as HS2 safeguarding.
21. The PPTS requires local planning authorities to identify and update annually a supply of specific deliverable sites sufficient to provide 5 years' worth of sites against their locally set targets. It is not in dispute that the Council cannot demonstrate a 5 year supply. The supply is 2.3 years and therefore the shortfall is very significant.
22. The Council has granted temporary permissions on Green Belt sites which it says is a pragmatic approach until such sites can be considered as part of a development plan review as permanent sites. Even in working with Leeds GATE, this could though take some time with the potential timescales involved and as further needs evidence is outstanding. In the meantime, there is a clear lack of pitches for Gypsies and Travellers in the Council area and waiting lists are long. Despite the lack of pitches, the Council does not though seek to grant temporary permissions on land which is Local Green Space due to the policy protection afforded. Supply is clearly therefore restricted.
23. The appellant is not required to prove that no other sites are available. However, whether there are alternative sites is useful in further understanding local provision in practical terms. The appellant has pointed to a lack of site availability and that other sites are full. The Council accept there is a lack of available sites. On this basis, there are no obvious alternative sites that the occupiers of the site could occupy.
24. The lack of pitch provision in the Council area is stark. Hence, matters in relation to pitch provision carry very significant weight in my decision.

Other Considerations

Circumstances of the Appellant

25. In exercising my function on behalf of a public authority, I am also consciously aware of my duties under the Public Sector Equality Duty (PSED) contained within the Equality Act 2010 which sets out to eliminate discrimination, harassment and victimisation, advance equality and foster good relations, and the protected characteristics under the PSED, including for Gypsy and Traveller groups. I am also aware of my duties under Article 8 of the Human Rights Act 1998 (Article 8) that bestows the right to private and family life and for the home, and that the Article 8 rights of a child should be viewed in the context of Article 3(1) of the United Nations Convention on the Rights of the Child.
26. The site is occupied by the appellant and his family. Prior to residing on the site, the appellant and his family resided on a Council site. This was on a shared pitch with another family that was not in the appellant's ownership, and was for a short period only.
27. The appellant and his wife have 4 children. One of the children is at a local primary school, while the older children that attended primary school are now home schooled, based on what was explained to me at the Hearing. Letters from the school submitted during the course of the planning application confirm there have been clear benefits from their attendance, including accessing the curriculum at their appropriate age year group. I was also informed that family members have healthcare conditions and seek support from local medical services. A letter submitted during the planning application from Leeds GATE confirmed registration with a local GP surgery.
28. In the absence of alternative sites, the appellant and his family could potentially be homeless and have to rely on a roadside existence. In taking these matters together, I am not unsympathetic to these circumstances and having such a base would clearly be advantageous to the occupiers, and their dependants, as well as serving the best interests of the children. This also carries very significant weight in my decision.

Temporary Permission

29. The justification that has been put to me for a temporary permission is twofold. Firstly, that it would enable for the review of the development plan to progress so that further sites could be identified. There are however inherent uncertainties over timescales, especially as the review seems to be at a relatively early stage, and with potentially unknown outcomes, including for the Gypsy and Traveller communities.
30. The grounds which concern the best interests of the child, in particular the child of primary school age, is considerably more compelling. Attendance at the primary school has clearly been of great benefit. For a temporary permission to be considered, it has to be expected that the planning circumstances at the end of the permission period would have changed. Based on the evidence before me, the 3 year length of the permission that has been suggested would enable the primary school education to be completed.

Other Matters

31. The site has been the subject of an appeal where an enforcement notice² was upheld that concerned the removal of a steel framed building. I understand this was removed from the site by the appellant, who was not the landowner at the time of the notice. While it did also concern the loss of allotments and Local Green Space, it did not involve the residential use of the site by a Gypsy and Traveller family.
32. A planning appeal³ further along Sandgate Terrace (Land north of Sandgate Terrace appeal) did concern a change of use to a Gypsy and Traveller pitch. The conclusions I reach on the effect on Local Green Space are consistent with that Inspector in that case, who also considered that the need for Gypsy and Traveller Sites weighed in favour of that development. He also considered the amount of land in the Green Belt should not itself attract weight. I agree, not least because the policies for managing Local Green Space should be consistent with those for Green Belts. That appeal decision attracts significant weight in these respects.
33. Where the development which is for my consideration though differs from the Land north of Sandgate Terrace appeal is over the personal circumstances. In my case, these are less stable because the appellant and his family do not have anywhere else they can reside, apart from the roadside. This was not the case with the Land north of Sandgate Terrace appeal, based on the information before me. The circumstances are therefore not comparable and so this aspect of that decision does not attract weight.
34. Interested Parties have also raised concerns over traffic and junction visibility at the corner of Sandgate Terrace and Gibson Lane, which is also close to a school and a community centre. The traffic generation from one pitch is though likely to be low and this would not unduly add to traffic safety issues in the area. As the development would be fairly modest, the comings and goings are unlikely to create unacceptable noise and disturbance. In relation to whether the development would be visually in keeping and lighting concerns, the site is well maintained and much of the development would be positioned well back from the more prominent site frontage. The entrance gates can be moved further back into the site to mitigate against their height, as can be ably controlled through a planning condition.
35. The keeping of animals on the site would not be unacceptable as it is not evident what undue harm would arise. While the dogs may bark, this can occur on many a residential property. As regards drainage, there is no substantive evidence this presents any particular risk and does not need to be the subject of further controls. The Council's Flood Risk Management consultation to the planning application confirmed that the site is in an area of low flood risk. Nor is there firm evidence over anti-social behaviour. The planning system also permits development to be applied for retrospectively or before it is complete, as the appellant has done in this case. None of these matters alter my conclusion.

² APP/N4720/C/21/3273574

³ APP/N4720/W/20/3249610

Planning Balance

36. The development would constitute inappropriate development and it would not preserve the openness. Paragraph 153 of the Framework states that substantial weight is to be given to any harm to the Green Belt, including harm to its openness. 'Very special circumstances' will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations. These controls also apply to the Local Green Space allocation. I have also identified harm by way of the effect on green infrastructure by way of recreational use.
37. It is necessary then to appraise the other considerations. These include the outstanding need and lack of supply of Gypsy and Traveller pitches. The accommodation needs of the Gypsy and Traveller communities have not been met through the development plan and any remediation through the review process appears to be some way off. The Council recognise that Green Belt, but not Local Green Space sites, will need to come forward on a temporary basis. However, under supply still persists. The situation does not seem to have improved to any great degree since the Land north of Sandgate Terrace appeal. Alternative sites are not available. The bringing forward of a further pitch would also accord with the pitch needs identified under Policy H7.
38. The personal circumstances centre on the need for a settled base for the appellant and his family. The appellant could also face homelessness and they could all be left with nowhere to reside, other than by the roadside. This would be highly unsatisfactory, especially as there would be children involved.
39. As the site is Local Green Space, the harm that would arise from a permanent permission would not be clearly outweighed by other considerations. However, a temporary permission for 3 years would limit this harm to a lesser time period and it would enable a child to finish primary school education, when considering the best interests of the child.
40. Looking at the case as a whole and the use of a temporary permission, I consider that very special circumstances exist which justify the development. The development would therefore comply with Policy GE1, the Framework and the PPTS in relation to their overall approach as regards inappropriate development, openness and very special circumstances.
41. Whilst I have found conflict with other policies of the development plan, I am not persuaded this amounts to not complying with the development plan as a whole. Nor does my decision seek to lessen the importance of neighbourhood planning because Policy GE1 includes the consideration of very special circumstances, as are persuasive in this case. It would not set a precedent because my decision ultimately rests on the appellant's particular circumstances. Overall, the balance favours the grant of temporary planning permission for the development.

Conditions

42. I have imposed a condition concerning the approved plans in the interests of certainty. I have also imposed conditions in respect of the occupancy of the site to meet the needs of Gypsies and Travellers, and as a temporary and personal permission to reflect the reasoning and justification for the decision.

In the interests of the Local Green Space allocation, a condition is also imposed concerning site restoration, once the permission expires.

43. I have also imposed a condition concerning caravans and a single pitch, in the interests of character and appearance. A condition concerning commercial activities and vehicles is also imposed with respect to living conditions and highway safety. A condition keeping the paddock and agricultural (grassed) areas open is applied in the interests of character and appearance.
44. While the development has commenced, a condition requiring a scheme is necessary so that a number of landscaping, repositioned gates/highway safety and biodiversity related matters are dealt with satisfactorily. I explained at the Hearing that such a condition would have to deal with matters such as if the timetable is not complied with, what happens if the condition has not been discharged after its submission/appeal, and a legal challenge in the period of the condition.
45. The condition requires the appellant to adhere to a timetable for dealing with these matters in order to make the development acceptable in planning terms. In the event that the matters are not submitted for approval in the timescale set by the condition, approved and then implemented in accordance with the approved timetable, the planning permission would then be lost. While the planning application predated the introduction of statutory Biodiversity Net Gain requirements, the Framework still sets out that development should provide net gains for biodiversity and so this is included in the condition.
46. A condition is imposed requiring the implementation of a cycle store in the interests of promoting non-motorised modes of transport, and a bin collection point due to public health and pollution control. As the development has commenced, a condition concerning the statutory timescale for implementation is not necessary. Where I have altered the wording of the remaining conditions put forward by the parties, I have done so in the interests of precision and without changing their overall intention.

Conclusion

47. For the reasons set out above and having regard to all matters raised, the appeal should be allowed, subject to the conditions.

Darren Hendley

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall be carried out in accordance with drawing nos 3835/01/000 Site Location Plan, 3835/03/000 Rev C Site Plan as Proposed, 3835/01/000 Plans and Elevations of Static Caravan, 3835/01/000 Plans and Elevations of Touring Caravan.
- 2) The site shall not be occupied by any persons other than Gypsies and Travellers, defined as persons of nomadic habit of life whatever their race or origin, including such persons who on grounds only of their own or their family's or dependants' educational or health needs or old age have ceased to travel temporarily or permanently, but excluding members of an organised group of travelling showpeople or circus people travelling together as such.
- 3) The use hereby permitted shall be carried out only by Mr Adam Smith and Mrs Mary Ann Price and their resident dependants, and shall be for a limited period of 3 years from the date of this decision, or the period during which the site is occupied by them, whichever is the shorter.
- 4) When the site ceases to be occupied by those named in condition 3 or at the end of 3 years, whichever shall first occur, the use hereby permitted shall cease and all caravans, buildings, structures, materials and equipment brought on to the land, or works undertaken to it in connection with the use, shall be removed and the land restored to its condition before the development took place.
- 5) There shall be no more than one pitch on the site and no more than 2 caravans as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 as amended shall be stationed at any time, of which only 1 caravan shall be a static caravan.
- 6) No commercial activities shall take place on the land, including the storage of materials. No commercial vehicle over 7.5 tonnes shall be stationed, parked or stored on this site.
- 7) No structures, vehicles or caravans shall be sited, parked or stored within the agricultural and paddock land to the south of the hardstanding on the site in accordance with drawing no 3835/03/000 Rev C Site Plan as Proposed.
- 8) 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 for: a. proposed soft boundary treatments to the site edges including proposed species and a minimum retention height, b. details of a vehicular gate, including its height, materials, siting and location, c. a plan clearly identifying the division of hard surfacing and planted areas within the site, and d. details of biodiversity net gain (hereto referred to thereafter as the scheme) shall have been submitted for the written approval of the local planning authority and the scheme shall include a timetable for its implementation.
 - ii) If within 11 months of the date of this decision the local planning authority refuse to approve the 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) 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 for the duration of the permission.

Any trees or plants under the approved scheme which within the period of the duration of the permission, die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.

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.

- 9) Within one month of the date of this decision the cycle store and bin collection point shown on drawing no 3835/03/000 Rev C Site Plan as Proposed shall be implemented and retained for the duration of the permission.

APPEARANCES

FOR THE APPELLANT:

Mark Scatchard

MAS Design Consultants Ltd

Ellie Rogers

Chief Executive Officer, Leeds
GATE

Adam Smith

Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Jessica Thomas

Principal Planner

Dan Golland

Senior Planner

INTERESTED PARTIES (spoke at the Hearing):

Councillor James Lewis

Ward Member, Leeds City
Council

Gerry Whitfield

Chair, Castleford and District
Allotment Federation Ltd

Kelly Camille Rantz-Mc Donald

Student