



Appeal Decision

Hearing held on 15 January 2025

Site visits made on 14 & 15 January 2025

by **JP Sargent BA(Hons) MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 21st February 2025

Appeal Ref: APP/B0230/W/24/3345594

Hillside Caravan Park, 93 Bramingham Road, Luton, Bedfordshire LU3 2SL

- 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 Ned Doherty against the decision of Luton Borough Council.
- The application Ref is 23/01107/COU.
- The development proposed is material change of use of land as a residential caravan site for 4 gypsy families, each with 2 caravans, including no more than one static caravan.

Decision

1. The appeal is dismissed.

Preliminary Matters

2. When I visited there were 4 static caravan homes on site, and I understood they were all being used for residential purposes. I have therefore treated the appeal as being for retrospective planning permission.

Main Issues

3. The main issues are
 - a) whether the scheme harms the significance of the Waulud's Bank Scheduled Monument (the Monument),
 - b) whether it is intentional unauthorised development,and, if harm would result from either of these considerations,
 - c) whether there are any public benefits that outweigh that harm.

Reasons

Effect on the Monument

4. I was told that the Monument is a Neolithic feature, and it comprises a bank with an external ditch, which enclose a large area next to the River Lee. Historic England said that this is probably one of only 4 henge-enclosures of this type across the country, and it highlights various archaeological finds that have been made at excavations here. Drawing on these comments, I therefore consider the Monument's significance lies in a combination of the preservation of good archaeological remains and a rare and striking form.
5. It is probable that, when originally created, the Monument was a dominant and isolated feature, but over time the built-up area of Luton has expanded to surround

it. As a result, when on the site there is now an awareness of the adjacent buildings and urban environment, and especially the neighbouring tall flats and traffic noise. Furthermore, the bank and ditch have suffered through limited maintenance, reducing the scale and impact of both. I was also told part of the Monument had been denuded by ploughing in the past, while, more recently, material was dumped on a portion of it when the adjacent housing estate was built. For these reasons, the significance of the Monument has been compromised to a degree. However, its size, the visible presence of its earthworks, and the extensive open grassed area within the bank/ditch, when taken together, mean a sense of the scale and nature of the asset can continue to be appreciated, while some archaeological evidence could, no doubt, be still beneath. As such, despite these changes its significance has not been diminished unacceptably.

6. The majority of the designated Monument is within the enclosure created by the bank/ditch, and this area enjoys public access. However, the designation also includes the triangular appeal site, which lies to the south-east, outside of the bank/ditch arrangement. Unlike the rest of the Monument, this is private land and is not open to the public. It is screened to a great extent from the area within the enclosure by woodland running along the bank/ditch, and from outside of the Monument by terraces of houses fronting Bramingham Road. As such, it is not so prominent or noticeable. Furthermore, a rubble surface was laid across much of the appeal site at some point in the past, seemingly without any permissions or consents (whether necessary or not). This surfacing is generally not so readily apparent now, because, although devoid of notable planting, it is quite broken with earth. As a result, the appellant's land has a relatively uniform, flat functional appearance. The parties provided me with no substantive evidence to show that any use or works on the site were lawful under planning legislation.
7. Assuming the rubble surface is to remain, but disregarding for now the impact of the use before me, the appeal site's openness means it creates a separation between the bank/ditch arrangement and the Bramingham Road houses, thereby allowing some appreciation of the enclosure's original sense of isolation. Furthermore, it is within the designated extent of the Monument, and there could well be archaeological evidence beneath, under the rubble. Accordingly, the appeal site continues to make a positive contribution to the significance of the asset.
8. Turning now to the scheme, when I visited 3 of the caravans were against the north-western boundary by the woodland that is on the ditch/bank, while the fourth was behind the houses on Bramingham Road, next to the site's south-eastern boundary. The layout plan submitted with the appeal shows the use being implemented in a different arrangement with the 4 pitches gathered in the centre of the site, separated from the boundaries by access roads and, to the north-west and south-east, by further strips of land that are identified for no specific purpose. The appellant is content for the siting of caravans to be in accordance with that layout plan, and so I have determined the scheme accordingly. This plan shows nothing to the rear of 75 Bramingham Road and the rest of the housing to its west, and this is reflected on site now, where that area is used for the keeping of horses.
9. No intended below-ground works have been specified and in the Grounds of Appeal the appellant says there is to be no excavation. If an improved surfacing is needed, and by commenting on the inadequacy of the current situation at the Hearing and on the site the appellant gave the impression it was, he contended this could be laid over the existing rubble surface. At the Hearing though he added

that, while little evidence was submitted about services, if new ones were needed they could be set within the bed of rubble that makes up the existing surface (which he said was about 1m thick), or possibly laid over the top under protective covers. Moreover, he supported a suggested condition that prohibited any excavation works on site without the local planning authority's prior consent. He therefore contended the scheme need not disturb any archaeological evidence that may exist below ground.

10. The legal status of the rubble surface is unclear, and I was made aware of no formal confirmation that it could remain. However, assuming it could, for privacy reasons fencing or some other means of enclosure can be anticipated, and it is fair to assume this could well involve the sinking of fence posts or similar. Furthermore, with regard to services, I had no substantive evidence to show they were positioned already to serve the pitches in the locations on the layout plan, and so it is reasonable to expect new lengths of service piping would have to be formed. The thickness of the rubble surfacing though seems to have been only estimated, and I have little to show the accuracy of that or whether it is of that minimum depth over the entirety of the site. As a result, it cannot be assumed that any works below current ground level could be confined only to the rubble layer, and they could need to be lower. Although I accept that sometimes services can be run over the surface with suitable protection, to my mind that is a temporary arrangement and it would not be reasonable to pursue it as a long-term solution. For these reasons it has not been shown the scheme could not result in damage to archaeological remains that might be below the site.
11. In coming to this view I have taken into account the suggested condition restricting excavation. However, having regard to the requirements for conditions found in the *National Planning Policy Framework* (the Framework), in my judgement it would not be 'reasonable in all other respects'. This is because it would be unduly onerous for future residents, requiring submissions to the local planning authority for even the most minor works if they involved any element of excavation. Moreover, given the uncertainty over the depth of the surfacing there is little confidence that any necessary excavation could be undertaken without affecting remains beneath.
12. It is reasonable to expect some form of resurfacing would be necessary in connection with the development, as at the moment the site is muddy and, in certain weathers, could be unsuited for traffic movement or children's play. Indeed, the road layout on the layout plan is not readily apparent now so would have to be re-established to a degree, while the appellant said the hardstanding under one of the caravans has had to be upgraded. In such a situation, and assuming it was laid only on top of the existing rubble surface as stated by the appellant, while it may leave any archaeological evidence below ground unaffected, it would mean access to it, and the historical record it contains, at some future date would be increasingly difficult.
13. Overall, on the evidence before me I find it has not been shown the proposed use would not result in an adverse effect on any archaeological evidence beneath the site.
14. Turning to the above-ground effects, the 4 caravans, with their associated parked vehicles and other paraphernalia placed on the rubble surfacing, constitute an urbanisation of the site, and bring the residential nature of the surroundings onto

the designated Monument itself and close to the bank/ditch arrangement. Consequently, they harm the asset's significance by further eroding what sense of isolation and separation it still retains. Moreover, if any hardsurfacing were to be laid, and as stated above that appears to be the appellant's intention, this would just compound the situation further.

15. In the past there have been intensive storage uses on the site. These ceased though over 15 years ago and again there is no record of them being authorised, and so they are given no meaningful weight as a fallback option or a reflection of how the site has been experienced in the recent past. Moreover, as there is nothing to show another use could take over the land, I accept that if this scheme is dismissed and the caravans removed, the site would be vacant and possibly overgrown. Given my concerns above though I consider that would result in less harm to the asset than what is now before me.
16. I recognise too that the development is concealed to a degree from within the enclosure, from Bramingham Road, and from the east on Waulud's Bank Drive. However, views of the caravans and an awareness of their presence are nonetheless possible when looking through and when in the woodland to the north-west, which, as stated, runs along the ditch/bank feature. They can also be seen to a degree from the elevated mounding between the east boundary and Waulud's Bank Drive. In any event, monuments such as this are not protected solely from the public domain and so, even if totally concealed, that of itself does not mean harm would not occur. I recognise that if a personal permission were to be granted the development would not be permanent, but it could mean a caravan or caravans, and their associated impact, were present for an appreciable time.
17. Finally, the appellant has said that the appearance of the site would be enhanced by the intended landscaping. I have little though to show the form or location of this and so the weight it can be given is limited.
18. Accordingly I conclude the scheme would cause harm to the significance of this designated heritage asset. Given the overall scale of the Monument, I accept this harm would be less than substantial, but the nature of the impact means I would place it towards the middle of that range.

Intentional Unauthorised Development

19. On the evidence before me I have no reason to consider the occupation of the site was undertaken without knowing that it required planning permission. I therefore consider it to be intentional unauthorised development, and so, in accordance with the Government's Written Ministerial Statement of December 2015 this is a material consideration.

Other Matters

20. The Council said the development was in a County Wildlife Site, but confirmed that any effects the scheme would have on this could be addressed by condition. On the evidence before me I have no reason to come to a different view. The site is also within an area of Local Landscape Value, but I consider this would not be adversely affected to any material degree.

Other considerations

21. Accordingly I have found harm, albeit less than substantial, would be caused to the designated heritage asset, while being intentional unauthorised development is also a material consideration
22. As a scheduled monument, the Framework says this is a heritage asset of the highest significance. It states that heritage assets are an irreplaceable resource, and great weight should be given to an asset's conservation (the more important the asset the greater the weight). It adds that any harm to the significance of a designated heritage asset requires clear and convincing justification. Moreover, if less than substantial harm is caused to the significance of any asset, that harm should be weighed against the public benefits in what I shall call the heritage balance. If benefits are cited that are not 'public', they should still be considered under section 38(6) of the *Planning and Compulsory Purchase Act 2004*, which says development should be in accordance with the development plan unless material considerations indicate otherwise (the planning balance).
23. In his submissions and the comments made at the Hearing, a number of such benefits have been highlighted.

Re-using previously developed land & prevention of anti-social uses

24. The appellant said the scheme would be finding a use for previously developed land. A neighbour contended that the site used to be subject to anti-social behaviour such as drug abuse, fly-tipping and sexual activity, but this stopped when it was occupied by the current residents. Reusing such land and ceasing such a behaviour is therefore offered as public benefits of the scheme.

Suitability for Gypsy pitches

25. I recognise that the site has much to commend it for Gypsy pitches, being in the urban area, well related to services, facilities and public transport, and enjoying safe access.

Considerations relating to the delivery of Gypsy sites in the Borough

26. Addressing the needs of groups with specific housing requirements, such as Gypsies, is a public benefit.
27. Government guidance for assessing Gypsy development is found in *Planning policy for traveller sites* (PPTS). As the parties accept the occupiers present now fall under the definition found in the Annex to that document, I have no reason to consider the scheme should not be assessed against its guidance. The PPTS says Councils should identify and update annually a supply of specific deliverable sites sufficient to provide 5 years' worth of sites against their locally set targets.
28. With regard to the need, the most recent assessment, which dates from 2017, identifies a need in the Borough of a single pitch. This figure though was based on the much more restrictive definitions of Gypsies that were in the PPTS at that time. Since then, legal judgements and revisions by the Government to that document have broadened out the people to whom the PPTS should be applied. Neither party could put a figure on the size of the need now. However, the passage of time and the new definitions mean little weight can be placed on the 2017 assessment, and I consider the need is now likely to be significantly higher. The

Council used the absence of planning applications for such development as a support for its view that demand was very low, but there are many reasons why such applications might not have been forthcoming and this evidence provides little support for that position.

29. The Council could also identify no alternative sites for Gypsy development in the Borough. The currently adopted *Local Luton Plan*, which dates from 2017 (the Local Plan), allocates no sites for Gypsy development. Rather, that matter was put aside, and intended to be part of a bespoke local plan, but, despite the passage of time and despite the examining Inspector into the 2017 Local Plan saying it should be given '*prompt*' attention, that has not materialised. As a result, there remain no allocated sites in the Borough. I was also told that whilst work had started on a new local plan, it was at a very early stage and it was still unknown if the Council intended to meet its need, whatever that may be, through allocations, through a criteria-based policy, or through a hybrid of the two.
30. To my mind the Council has therefore not shown it has identified and updated annually a supply of specific deliverable sites sufficient to provide 5 years' worth of sites against its locally set target, as required by the PPTS. In the light of the above, it therefore accepted there had been a failure of policy on this matter and I agree.

Personal circumstances

31. I was given personal circumstances relating to residents of 3 of the 4 pitches on site now, and I acknowledge that ensuring the populace can have access to good education and health care is a public consideration. Resident adults on 2 of the pitches have health needs. Consistent access to health provision is therefore important and facilitated by a settled base, and as one of these residents is being cared for by someone in the third pitch, those 2 pitches being close together is also of great benefit.
32. Moreover, 2 children live on one of the pitches. At the outset I have regarded no other consideration as more important than their best interests, or, in advance of the subsequent assessment of the individual circumstances, I have given none greater weight. However, these best interests will not always outweigh other considerations including those that impact negatively on the environment. I have nonetheless kept the best interests of the children at the forefront of my mind in reaching my decision.
33. I fully accept that they need a settled base for social, educational and health reasons. I recognise that this site provides such a base and I understand they are thriving in a local school. Beyond those needs, which could be applied to all children, I was told being on the site meant the children could live near both parents, but otherwise no further considerations were highlighted.
34. For both the adults and the children I have no reason to question that, if the appeal is dismissed and they are no longer able to live on this site, they are likely to have a nomadic existence, quite probably relying on roadside encampments. Such a lifestyle would impede health care, educational provision and social development, as well as introducing an appreciable element of stress.

Human rights

35. Dismissing this appeal would interfere with the right the residents enjoy under Article 8 of the *European Convention on Human Rights* for respect for their private and family lives and their homes.

Balance

36. I accept that the other considerations cited are sufficient to outweigh this being intentional unauthorised development, when that matter is considered just in isolation.
37. However, assessing those considerations against the heritage impacts and the heritage balance, the anti-social behaviour is due, in part, to the maintenance and monitoring of the site, so the weight I afford this is limited to moderate. With regard to it being previously developed land, I have no evidence to show the rubble surface on the site has been lawfully developed. I also understand it was overgrown until it was recently cleared to facilitate the unauthorised occupancy subject of this appeal. In any event, even in its cleared state, when taking the site as a whole the rubble is not so readily seen in casual view, with an earthen surfacing being more apparent. Therefore, putting aside the caravan occupation I am now considering, to my mind even in its current cleared condition it is not perceived as a large area of hardstanding, but would be better considered as blending into the woodland on the ditch/bank. Noting these various reasons, I find it does not fall under the definition of previously developed land found in the Framework and so any benefit from its use in this regard does not accrue.
38. Mindful of the suitability of the location in the urban area close to services, I afford significant weight though to the Council's failure of policy, its failure to identify alternative sites, and its failure to identify and update annually a supply of specific deliverable sites sufficient to provide 5 years' worth of sites against its locally set targets. I also afford significant weight to the personal circumstances of the adults on site now with health needs, and I have regarded no other consideration as more important than the best interests of the 2 children. Finally, significant weight is given to these 4 households facing the prospect of a nomadic existence.
39. These public benefits are to be balanced against the great weight I am to afford to the harm, albeit less than substantial, that I have found the scheme would cause to the significance of a designated heritage asset of the highest significance. In making this balance, I find there is still inadequate justification to support this use in such a sensitive location and to outweigh the harm. Indeed, even if I were to accept there would be no excavation works at all, and even if could be defined as previously developed land in its current condition, I would still find these benefits did not outweigh the harm caused by the scheme's above-ground effects.
40. Accordingly, although I have given due weight to the stated benefits they do not outweigh the harm I have identified to the significance of the designated heritage asset. As such, the scheme would be contrary to Local Plan Policy LLP30, and the Framework, which seek to protect and conserve the historic environment. It would also not comply with Policy LLP20 in the Local Plan, which says Gypsy development will be permitted if 3 basic criteria are met. These criteria are not exhaustive though, and issues can readily arise in connection with such development that they do not cover but which could be determinative. As such, this policy has to be read alongside the other policies in the Local Plan. Having

said that, criterion (iii) requires hardstanding and basic facilities such as sewerage to be provided on site, but the evidence before me does not allay my concerns about the effect the delivery of such services could have on the Monument.

41. Turning to the matter of human rights, if this is to be deemed a public benefit and so within the heritage balance, I am aware Article 8 is qualified, and interference may be permissible in certain circumstances. In this instance such interference would be proportionate on the rights of the adults and the best interests of the children given the public aim of safeguarding the significance of this heritage asset of the highest significance. However, if it is not deemed a public benefit then, for the reasons above, when assessed in the planning balance it would not be sufficient to justify a decision otherwise than in accordance with the development plan.

Conclusion

42. For the reasons given I therefore conclude the appeal should be dismissed.

JP Sargent

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

P Brown	Agent
J Casey	Site resident
N Doherty	Appellant

FOR THE LOCAL PLANNING AUTHORITY:

J Hill	Planning Officer
K Owen	Planning Policy Officer
S Richardson	Team Manager – Planning Applications

DOCUMENTS SUBMITTED AT THE HEARING

BY THE APPELLANT

APP1: Site plan

APP2: Letter from a neighbouring resident

APP3: Letter from the school (dated 4 June 2024)

APP4: Letter from Impakt (dated 14 January 2025)

BY THE COUNCIL

LPA1: Human Rights Act Considerations (dated 14 February 2025 but received on 15 January 2025)