



Appeal Decision

Hearing and site visit held on 4 March 2025

by Martin Allen BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 02 April 2025

Appeal Ref: APP/C3105/W/24/3352105

Land at Manor View, Hampton Poyle, Kidlington OX5 2PW

- 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 Michael McDonough against the decision of Cherwell District Council.
 - The application Ref is 22/01293/F.
 - The development proposed is the change of use of land for the creation of 2 Gypsy/Traveller pitches, comprising the siting of 1 mobile home, 1 touring caravan, and the erection of 1 dayroom per pitch.
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Decision

1. The appeal is allowed and planning permission is granted for the change of use of land for the creation of 2 Gypsy/Traveller pitches, comprising the siting of 1 mobile home, 1 touring caravan, and the erection of 1 dayroom per pitch at Land at Manor View, Hampton Poyle, Kidlington OX5 2PW in accordance with the terms of the application, Ref 22/01293/F, subject to the conditions in the attached Schedule.

Preliminary Matters

2. At the hearing, the appellant submitted a note addressing revisions to the National Planning Policy Framework (the Framework) as well as the Council's latest information in respect of the need and supply of sites. The Council were given the opportunity to respond to this note, in writing, following the hearing.

Background and Main Issues

3. Within the submitted statement of case the appellant accepted that the scheme would comprise inappropriate development in the Green Belt. However, at the hearing, and following the revisions to the Framework the appellant rescinded this acceptance and contended that the revisions in respect of grey belt land resulted in the proposal not being inappropriate development.
4. In light of the above, the main issues to be considered are:
 - Whether or not the proposal is inappropriate development in the Green Belt, and this turns on whether there exists a demonstrable need for the development,
 - The effect on the openness of the Green Belt,
 - The effect on the character and appearance of the area, and
 - If the proposal is inappropriate development whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other

considerations so as to amount to the very special circumstances necessary to justify the development.

Reasons

Whether or not inappropriate development

5. Paragraph 155 of the Framework explains that the development of homes, commercial and other development in the Green Belt should not be regarded as inappropriate where:
 - It would utilise grey belt land and would not fundamentally undermine the purposes (taken together) of the remaining Green Belt across the area of the plan;
 - There is a demonstrable unmet need for the type of development proposed; and
 - The development would be in a sustainable location, with particular reference to paragraphs 110 and 115 of the Framework.

The appellant argues that the development accords with paragraph 155, while the Council take an opposing view.

6. Grey belt is defined within the glossary to the Framework as, *“land in the Green Belt comprising previously developed land and/or any other land that, in either case, does not strongly contribute to any of purposes (a), (b), or (d) in paragraph 143. ‘Grey belt’ excludes land where the application of the policies relating to the areas or assets in footnote 7 (other than Green Belt) would provide a strong reason for refusing or restricting development.”*
7. Thus, the question to be asked is whether or not the site strongly contributes to any of purposes (a), (b), or (d) in paragraph 143, and these are:
 - a) to check the unrestricted sprawl of large built-up areas;
 - b) to prevent neighbouring towns merging into one another; and
 - d) to preserve the setting and special character of historic towns.
8. From the submissions of the appellant at the hearing, and those of the Council which were made in writing following the hearing, there is now an agreement between these two parties that the appeal site falls within the definition of grey belt. Moreover, both parties also agree that the development would not fundamentally undermine the purposes (taken together) of the remaining Green Belt across the area of the plan. The Council also raised no objection to the development on the grounds of it being at an unsustainable location, a position that has been re-affirmed in further written submission. Based on the information that I have seen I find no reason to find differently on these matters. Accordingly, the only matter that is in dispute between the parties is whether or not there exists a demonstrable need for the type of development proposed, and the Framework clarifies that in the case of traveller sites this requires there to be a lack of a five-year supply of deliverable traveller sites, assessed in line with Planning Policy for Traveller sites (the PPTS).

9. The Council relies on the Cherwell, Oxford City, South Oxfordshire, Vale of White Horse and West Oxfordshire - Gypsy and Traveller, Travelling Showperson and Boat Dweller Accommodation Assessment 2024 (December 2024) (the GTAA) as its most recent assessment of need in the district. This sets out that currently the Council has an 8.23-year supply of deliverable gypsy traveller pitches.
10. The appellant has sought to challenge this by criticising the contents of the GTAA on a number of issues. One of these criticisms' centres on the matter of the assessment pre-dating the change to the definition of gypsy travellers as set out in the latest publication of the PPTS. However, Appendix B: Glossary of Terms to the GTAA sets out the definition that was used when considering the contents and methodology of the GTAA and this reflects that which is stated in the latest version of the PPTS. As such, I find that there is no deficiency in this respect.
11. The appellant also raises concerns in respect of the manner in which the GTAA addresses the matter of households that are currently living in bricks and mortar accommodation. It is identified that in Cherwell district there are 43 households currently living in bricks and mortar. The GTAA makes an assumption, which is based on national survey evidence experienced by the author of the assessment that 5.3% of households in such accommodation would prefer to move to a culturally traditional pitch, rather than remain in bricks and mortar. This would result in two pitches contributing to the identified need.
12. The current PPTS definition of gypsies and travellers means:

"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, and all other persons with a cultural tradition of nomadism or of living in a caravan, but excluding members of an organised group of travelling showpeople or circus people travelling together as such".

In the appellant's view, the reference to "*all other persons with a cultural tradition of nomadism or of living in a caravan*" results in the need to account for all those households currently in bricks and mortar accommodation within the figure for the need for pitches (whereas the GTAA includes a figure of two pitches within the identified need in this respect).

13. However, I find nothing in the PPTS that would justify such an approach. The definition as set out is for the purposes of establishing eligibility for the policy in the PPTS. It does not establish the specifics of how need is to be assessed. While there may be households currently in bricks and mortar accommodation that may wish to move to a pitch, this cannot be assumed for all such households. It is acknowledged that some gypsy travellers have a genuine aversion to living in such housing, but equally there are those that are willing to live in bricks and mortar. The GTAA sets out the approach taken, and the appellant has not provided any substantive evidence to demonstrate that this is incorrect or unreliable. As such, there is nothing to lead me to conclude, on the evidence that is before me, that the estimation of need in respect of movement from bricks and mortar accommodation is incorrect.
14. The appellant has also sought to challenge the information that has been provided in respect of the existing supply that is detailed in the list of existing sites (as of

September 2024). This has variously asserted that a number of pitches included are not subject to any restriction on occupancy, that a condition in respect of a site development scheme has not been discharged thereby rendering that scheme unlawful, that one included pitch is personally restricted, as well as that a number of sites have more units on them than is identified in the list.

15. Addressing these matters the Council highlighted that the pitches stated to not be subject of an occupancy restriction are separate from the identified pitches and thus this does not affect the authorised part of the site, which is that which is referred to. Where the site development scheme has not been discharged, a breach of condition notice has been served to address this. The identification that there are more pitches on some sites than is included in the assessment of existing sites is, in the appellant's view, indicative of a need that is not being addressed. When I asked about how the additional pitches were identified, it was stated that this was done through aerial photographs only. As such, there is no assessment as to whether these comprise part of separate households and genuinely result in any additional need. Moreover, the appellant conceded that the number of these may be overestimated in the note that was provided.
16. The level of the information that has been put before me by the appellant in respect of these matters is insufficiently robust to counter the information within the GTAA, and a more detailed assessment of these matters would be required to do so.
17. There is a further contention that the GTAA fails to correctly identify that there are a number of pending/refused applications and appeals, one of which is the appeal that I am considering. However, even if that were the case, there is very little information in respect of the specifics of these and whether or not they would be reflective of any increase in need.
18. In light of the above, I find that there is insufficient information to cast necessary doubt on the findings of the GTAA. I am also conscious that the GTAA has not been subject to an Examination in Public as of yet and this is the appropriate forum for a full and detailed analysis of its methodology and findings. Furthermore, given that the Council states that it can demonstrate an 8.23-year supply, there would need to be a significant reduction in the supply figure to result in the deliverable supply of sites falling below the 5-year level. Therefore, the Council is able to demonstrate a minimum of a five-year supply of deliverable traveller sites, assessed in line with the PPTS and thus there is no demonstrable need for the type of development that is proposed.
19. Accordingly, there is conflict with paragraph 155 of the Framework and the development comprises inappropriate development in the Green Belt. The scheme also therefore conflicts with policies PSD1, ESD14 and BSC6 of the Cherwell Local Plan 2011-2031 (adopted July 2015) (the Local Plan). Together, and amongst other things, these policies seek to ensure that development accords with the policies of the Framework, in particular in respect of development in the Green Belt, and to resist the development of gypsy traveller sites in the Green Belt.
20. The Council's reason for refusal refers to policy ESD1, however the Delegated Report states that the scheme complies with this policy. I have therefore found no conflict with this policy.

Effect on openness

21. In terms of the effect on openness, the scheme would result in the stationing of both static and touring caravans within the site, as well as the construction of dayrooms and areas of parking. This would inevitably lead to a loss of openness in spatial terms. However, owing to the small scale of the development, together with its limited physical extent, this would be minimal. In addition to the spatial consideration of openness, there is also a visual element. In this case, the site is well screened from all directions. The only public view possible would be very limited glimpses from the adjacent road, and longer distance views. Consequently, in my view, the loss of openness in this case would be very limited.

Character and appearance

22. The appeal site comprises a currently open field located adjacent to an existing gypsy traveller site. It is enclosed along all boundaries by hedging of varying heights and density. The proposed development would be located to the southwest corner of the field with an access off the existing access road serving the adjacent development. There are limited views into the site from vantage points within the immediate vicinity, principally due to the presence of mature vegetation and trees positioned around the vehicular access. As such, close-up direct views into the site are only generally available when passing this access point.
23. The Council contend that the principal views of the development would be longer distance views, possibly available from footpaths within the area but it accepted that there are limited public rights of way in the locality, as well as limited viewpoints in the public domain, from which the development would be visible. It was accepted by the Council at the hearing that the development would be visible to, and affect, a “small/middle” number of people. In any event, the Council also accepted that the development would result in limited visual harm.
24. I am conscious that the PPTS accepts, in principle, the location of sites within the countryside and as such there will be some inevitable visual effect of this. The location is near to an existing site, and the development is limited in its extent. Moreover, I observed there to be very limited views into the site from the surrounding area and these were heavily filtered by existing vegetation. I therefore find that while there would be some limited visual effect arising from the development, this would be within the bounds of what is acceptable, given the in-principle acceptance of sites in rural areas, together with that additional landscaping can be secured to aid in assimilating the development into the landscape.
25. Accordingly, the scheme would have no unacceptable effect on the character and appearance of the area. Thus, it would accord with policies ESD13 and ESD15 of the Local Plan, insofar as they seek to ensure that development should respect landscape character by not causing undue visual intrusion and complement the existing character of an area.
26. The Council refers to saved policy C8 of the Cherwell Local Plan - November 1996 which seeks to resist sporadic development in the countryside. However, given the location of the appeal site adjacent to an existing gypsy traveller site, I do not consider the development to be sporadic and thus this policy is of little relevance.

Other considerations

Personal circumstances

27. I heard at the hearing about the personal circumstances of the prospective occupiers of both of the proposed pitches. I note the Council's comment that little information was provided in this regard at application stage. However, I note that a Statement of Personal Circumstances was submitted. While this may have been explored in further detail at the hearing, it is a matter that has been put before the Council previously.
28. It was detailed that the prospective occupiers of the site do not currently benefit from any settled base or permanent residence, and current arrangements include staying in hotels as well as pulling up at the roadside.

Lack of alternative sites

29. At the hearing, there was some discussion in respect of whether there were any alternative sites that the proposed occupiers could move to in the alternative to the appeal site. Various options were put before me, including moving to a pitch on the adjacent Manor Park gypsy traveller site. However, there was nothing persuasive to show that this was a viable option or that either of the households could realistically occupy this site. I also heard that part of this site, as well as others in the district were occupied by individuals who did not comply with the definition of gypsy travellers and that the Council was taking action to remove such occupants from the sites. This was however ongoing, and I am not aware of any immediate prospect of pitches becoming available as a result of this.
30. I specifically asked the Council at the hearing whether it was able to draw my attention to any available, alternative site that could be occupied at this time by the intended occupiers, and it was unable to do so. As such, I find that there is no suitable, alternative site at this time that could serve the needs of the prospective occupiers.

Best Interests of the Children

31. It is clear that it is intended that children will occupy the proposed pitches as part of family groups. As a consequence, the best interests of the children intending to live at the site are a primary consideration in the determination of this appeal and I have kept these best interests at the forefront of my mind.
32. Currently these children are exposed to unsatisfactory living arrangements, in that they are in temporary or unstable accommodations. The ability to occupy a settled base would bring clear benefits to these children, including access to stable education and health facilities. This would be particularly important given the health conditions of some occupants that have been set out. I also heard that there was a wish for these children to live according to their culture and I consider this to be a significant benefit of the development also.

Likely location of sites within the Green Belt

33. The appellant contended at statement stage that 25% of the district was located within the Green Belt, and as a result it was inevitable that sites will be within this designation. However, the Council has since clarified that less than 14% actually lies within the Green Belt. As such, I find that it is likely that there may be sites

outside the Green Belt. The appellant has not sought to undertake an assessment of any other locations.

Failure of Policy

34. The Council's development plan contains no site allocation policy for gypsy traveller sites. There is only a criteria-based policy, against which individual sites that come forward are assessed. I was told that an allocation policy was to be drafted as Part 2 of the development plan, but this was never produced. While the current level of need is not excessive, there is still a need with the Council accepting at the hearing that the criteria-based policy could have performed better. Within this context, I find that there has been an ongoing failure of policy to address the full accommodation needs of gypsy travellers within the area.

Other matters

35. I have found above that the Council can demonstrate a five-year supply of deliverable sites going forward, notwithstanding that there are currently none that are available for occupation. It was also put to me that a general compliance with policy, as well as the lack of any longstanding harm from the development, should be accorded positive weight. However, I find these matters to be neutral factors.
36. The appellant contends that a matter weighing in favour of the development is compliance with paragraph 27 of the Framework, which advocates the use of untidy or derelict land. This is principally due to there having been instances of fly-tipping on the site previously. However, given that the appeal site comprises an open field which has not been subject to any previous lawful development, I find that it is not derelict in its appearance. Moreover, the fly-tipping has had little effect in making the site untidy. In any case, it is the owner's responsibility to ensure that such occurrences do not occur. Nonetheless, the site could ensure adequate landscaping and play areas for children. Thus, there is some accord with this paragraph.

Planning Balance

37. The Framework requires that substantial weight be given to any harm to the Green Belt. Very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations.
38. The scheme is inappropriate development in the Green Belt, which is by definition harmful. There would also be a small loss of openness. This harm is accorded substantial weight.
39. There are however benefits that would result from the scheme, and these must be balanced against this harm. There are currently no available, alternative sites in the district and there has been a failure of policy. These matters carry moderate weight in favour of the proposal.
40. I am mindful of the personal circumstances of the families that are intended to occupy the site, including the health circumstances that were discussed. In addition to this, I am also particularly conscious of the best interests of the children that will occupy the site. In my view, collectively, these matters carry considerable and decisive weight, and comprise very special circumstances sufficient to outweigh the harm to the Green Belt.

41. I am aware that the Council is currently preparing an emerging development plan. This document will be required to assess and provide for the needs of gypsy travellers within the district. In addition, I am conscious that the Council is taking action to remove non-gypsy travellers from existing pitches. As such, I consider there to be a reasonable likelihood that within the foreseeable future, circumstances will change and that the provision of more sites, in more suitable locations, will come forward, as well as that more pitches will become available. In such circumstances, I find that it would be appropriate to grant a temporary planning permission, for a period of two years.
42. Should a temporary permission result in the eventual loss of their home, this would represent an interference with the human rights of the occupants of the appeal site. However, I do not consider that this interference would be disproportionate, having regard to the legitimate aim of protecting the Green Belt.

Conditions

43. I have imposed the standard time limit for commencement and in the interests of clarity, a plans condition.
44. I have found that the personal circumstances of the intended site occupiers are a justification for granting planning permission. In such situations, a personal condition is necessary. I have also found that a temporary permission is justified and have imposed a condition in this respect.
45. In order to safeguard the character and appearance of the area, I have included conditions in respect of the number of caravans permitted on the site, as well as preventing commercial activities taking place and the size of vehicles that can be parked on site. In the interests of preventing clutter within the site, I have removed permitted development rights for the erection of further means of enclosure and in the interests of visual amenity, a condition requiring details of lighting to be agreed.
46. To ensure the site remains safe from any flooding, I have imposed a condition in respect of finished floor levels. So that the development does not have an adverse effect on matters of ecological importance, I have imposed a condition requiring details of ecological and environmental mitigation to be submitted. In addition, to ensure that the development has a satisfactory appearance, I have imposed a condition in respect of landscaping.
47. A condition had been recommended to require any clearance works to avoid the bird nesting season, however as this is covered by separate legislation such a condition is not necessary. The Council also suggested a condition in respect of noise levels, however agreed at the hearing that this was not necessary.

Conclusion

48. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should succeed, and that temporary planning permission should be granted.

Martin Allen

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Brian Woods	Managing Director, WSP Planning
Mr Maughan	Prospective Site Occupier
Miss McDonaugh	Prospective Site Occupier

FOR THE LOCAL PLANNING AUTHORITY:

Maria Dopazo	Principal Planning Policy Officer
Rebecca Morgan	Principal Planning Officer
Amy Sedman	Principal Planning Enforcement Officer
Olga Thomas	Health, Protection and Compliance Team

DOCUMENTS

Submitted at Hearing

Note provided by appellant on Green Belt and Need matters

Submitted following Hearing

Response from Council to appellant's note

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following plans:
Drawing number J004070-DD-01 – Site Location Plan
Drawing number J004070-DD-02 – As Existing Block Plan
Drawing number J004070-DD-03 – As Existing Site Plan
Drawing number J004070-DD-04A - As Proposed Site Block Plan
Drawing number J004070-DD-05B – As Proposed Site Plan
Drawing number J004070-DD-06 – As Proposed Plans and Elevations
- 3) The occupation of the site hereby permitted shall be carried on only by:
Pitch One
Michael Maughan and Martina Maughan, and their resident dependants.
Pitch Two
Marie McDonagh and her resident dependants.
- 4) When the site ceases to be occupied by those named in condition 3 or at the end of two 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) No more than 4 caravans as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 as amended, of which no more than 2 shall be static caravans, shall be stationed on the land at any time.
- 6) No commercial activities shall take place on the land, including the storage of materials.
- 7) No vehicle over 3.5 tonnes shall be stationed, parked, or stored on the site.
- 8) Notwithstanding the provisions of Schedule 2, Part 2, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking or re-enacting or amending that order), no gate, fence, wall or other means of enclosure, other than those that have been approved as part of the application shall be erected, constructed or placed on the site.
- 9) Prior to its installation, details of the external lighting/security lighting/floodlighting including the design, position, orientation, and any screening of the lighting shall be submitted to and approved in writing by the Local Planning Authority. The lighting shall be installed and operated in accordance with the approved scheme at all times thereafter.
- 10) Prior to its installation, details of a scheme for the provision and implementation of foul and surface water drainage shall be submitted to and approved in writing by the Local Planning Authority. The drainage works shall be constructed and completed in accordance with the approved plans before the first occupation of any of the buildings or structures hereby approved and shall be maintained as such thereafter.

- 11) Finished Floor levels shall be set above the 1% annual exceedance probability (AEP) plus an appropriate allowance for climate change flood level, in accordance with details that have been submitted to and approved in writing by the local planning authority, prior to the first occupation of the site.
- 12) Prior to the commencement of the development hereby approved, including any demolition and any works of site clearance:

- an ecological mitigation strategy, which shall include timing of works, and all proposed mitigation measures, and
- a Landscape and Ecology Management Plan (LEMP)

shall be submitted to and approved in writing by the Local Planning Authority. Thereafter, the development shall at all times be carried out in accordance with the approved details.

- 13) Prior to the commencement of any works above slab level, a scheme for landscaping the site shall be submitted to and approved in writing by the Local Planning Authority, which shall include:
- details of the proposed tree and shrub planting including their species, number, sizes, and positions, together with grass seeded/turfed areas and written specifications (including cultivation and other operations associated with plant and grass establishment i.e. depth of topsoil, mulch, etc.),
 - details of the existing trees and hedgerows to be retained as well as those to be felled, including existing and proposed soil levels at the base of each tree/hedgerow and the minimum distance between the base of the tree and the nearest edge of any excavation,
 - details of the hard landscaping including hard surface areas, pavements, pedestrian areas, and steps,
 - details of the enclosures along the boundaries of the site, and
 - a scheme for the maintenance and management of the landscaping for the life of the development.

All planting, seeding, or turfing included in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the first occupation of the site. Any trees and/or shrubs which within the lifetime of the development, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species. The approved hard landscaping and boundary treatments shall be completed prior to the first occupation of the development and shall be retained as such thereafter.

End of Schedule