The Planning Inspectorate

Appeal Decision

Site visit made on 6 July 2023

by D Hartley BA (Hons) MTP MBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10th July 2023

Appeal Ref: APP/R4408/W/22/3308862
Land off Clayton Lane, Thurnscoe, Barnsley S63 0RU

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (the Act) against a refusal to grant planning permission.
- The appeal is made by Mr Andrew Smith against the decision of Barnsley Metropolitan Borough Council.
- The application Ref 2022/0766, dated 20 July 2022, was refused by notice dated 14 September 2022.
- The development proposed is described as a retrospective application for siting of caravans for residential purposes.

Decision

1. The appeal is dismissed.

Main Issues

2. The appeal site falls within land designated as Green Belt. The main issues are:

    - whether the proposal is inappropriate development in the Green Belt including its effect on openness and the purposes of Green Belt,
    - whether the site is sustainably located,
    - the effect of the development on biodiversity,
    - whether there would be adequate foul drainage,
    - the provision and need for Gypsy and Traveller sites,
    - the personal circumstances of the family, and,
    - whether any 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

Site and proposal

3. The planning application has been submitted on a partly retrospective basis, i.e., the land is already being used for the siting and use of residential caravans and a hardstanding area has been formed. However, I was able to see on my site visit that some of the proposed caravans as shown on the submitted 'existing part site plan' drawing had in fact been positioned on different parts of the site. Furthermore, there appeared to be a wooden amenity type building

close to the entrance to the site, a wooden shelter type structure at the bottom of the site and alongside the boundary with the field, and there was a mixture of wooden post and rail, closed boarded and concrete post and wooden fencing and entrance gates around the residential part of the appeal site. At the time of my visit, there were four vehicles parked on the hardstanding area. One vehicle belonged to the appellant's planning agent.

4. For the avoidance of doubt, I have determined this appeal based on what is specifically shown on the submitted plans. The submitted site layout drawing shows four caravans, two utility blocks and a generator positioned on a gravel and black hardcore hardstanding and enclosed by a barb wire and timber post fence. This development would be positioned in the eastern section of the red edged site location plan. The remainder of the land within the red edged site location plan appears to be in agricultural use. The local planning authority (LPA) raise no objection to use of this part of the site for agricultural purposes and I have no reason to disagree.

5. The residential element of the mixed-use site is positioned immediately adjacent to Clayton Lane, which includes a mature hedgerow, and is opposite the Robert Ogden School. Immediately to the south of the utility block and generator, it is proposed to erect three kennels and an area for the parking of a horse box. There are no scaled drawings submitted relating to the height and appearance of the utility blocks or kennels. Nonetheless, photographs have been submitted as part of the 'existing part site plan' drawing showing touring caravans, a mobile utility building and a metal utility building mounted on bricks. I have determined the planning application based on the photographs and the remainder of the details shown on the submitted 'existing part site plan' drawing.

6. The appellant's supporting statement indicates that the site would be occupied by him, his wife, his two children and his six grandchildren.

Whether inappropriate development

7. There is no dispute between the main parties that when the mixed-use appeal development is considered as a whole, it is inappropriate development in the Green Belt. Indeed, the Government's Planning Policy for Traveller Sites 2015 (PPTS) states, at paragraph 16 (Policy E), that traveller sites (temporary or permanent) in the Green Belt are inappropriate development.

8. Paragraphs 147 and 148 of the National Planning Policy Framework 2021 (the Framework) state that inappropriate development is, by definition, harmful to the Green Belt and that substantial weight should be given to any harm caused to it. This is a matter therefore that weighs against allowing the appeal and, in this regard, there is conflict with the PPTS, the Framework and policy GB1 of the adopted Barnsley Local Plan 2019 (LP) which seek to protect the Green Belt from inappropriate development.

Effect on openness and the purposes of the Green Belt

9. The essential characteristics of Green Belts are their openness and their permanence. The Court of Appeal[1] has confirmed that the openness of the Green Belt can have both a spatial and visual dimension.

[1] *Turner v SSLG & East Dorset Council [2016]*

10. I recognise that other built development exists in the immediate area, but the evidence is that prior to the unauthorised development taking place on the appeal site, it was predominantly green and devoid of structures and caravans. Considering the caravans, structures, likely parked vehicles and domestic paraphernalia, I find that modest harm would be caused to the Green Belt in spatial terms.

11. While there is a mature hedge running alongside Clayton Lane, which partly screens the site from public view, there are nevertheless some open views of the site from this road, particularly at the site access. The hardstanding area and associated fencing can be seen from Clayton Lane when the entrance gates are open. Furthermore, the tops of the caravans, which owing to their white colour appear stark in the landscape setting, can also be seen above the existing boundary fencing in this part of Clayton Lane. Such views of the residential part of the appeal site would be even more apparent than now given that a barb wire and timber post fence is proposed to be erected on the boundary near to the site access with Clayton Lane. Therefore, some harm would also be caused to the openness of the Green Belt in visual terms.

12. I acknowledge the appellant's point that the caravans on the site would be tourers and hence would not always be in situ given that the family leads a nomadic lifestyle. Nonetheless, I find that it is likely that the caravans would be on the site for prolonged periods of time, particularly given the comment made by the appellant that *'this cultural lifestyle is presently restricted to periods when the young children are in school, and a return to a travelling way of life would resume once the children are beyond school age or within school holidays.'*

13. Overall, I find that the proposed development would have a moderately adverse localised impact on the openness of the Green Belt. In addition, and, as experienced as part of my site visit, the caravans, vehicles, utility blocks, kennels and hard surfacing would unacceptably urbanise this part of the countryside. While it is accepted that there are other developments in the immediate area, including a school, warehouse and agricultural building, the environment is nonetheless experienced by the passer-by as including more sporadic development and one which is more rural and open in character when compared to the built-up settlement of Thurnscoe. I therefore find that the appeal proposal would conflict with one of the purposes of the Green Belt, i.e., safeguarding the countryside from encroachment.

Whether sustainably located

14. Policy GT1 of the LP states that sites should be *'primarily located within urban areas.'* While the site is not within an urban area, the policy does not state that all Gypsy and Traveller sites should be located within an urban area. Therefore, I do not find any material conflict with this part of policy GT1 of the LP.

15. There is dispute between the main parties as to whether the site would be sustainably located from the point of view of accessing amenities and services by sustainable modes of transport.

16. The appeal site is not far away from the settlement of Thurnscoe in terms of travel distance. In this respect, I do not find that it is *'away from'* the settlement of Thurnscoe for the purposes of applying PPTS Policy H.

17. Notwithstanding the above, it was clear from my site visit that there are no footpaths or lights for a section of Clayton Lane from the site access until Robert Ogden School. Given this, I agree with the LPA that journeys on foot to and from amenities and services in Thurnscoe would be unlikely to be frequented on foot. While it would be possible to use a bicycle on occasion, I find that journeys to and from Thurnscoe would be likely to be heavily car dependant.

18. I have not been provided with detailed information from either of the main parties about the frequency of bus services in the area, although the LPA comments that the nearest bus stop is in Houghton Road. Even if bus services were frequent from this bus stop, it would be necessary to use Clayton Lane, which, in part, does not have a footpath or streetlights. I find that walking to this bus stop would be unlikely therefore to be frequent and, furthermore, would not be safe. Indeed, on my site visit I noticed high vehicular speeds within the vicinity of the site access. This is because a national speed limit of 60 mph is in operation in this part of Clayton Lane. Consequently, there would be conflict with paragraph 110 (b) of the Framework which states that safe and suitable access to a site should be achieved for all users.

19. While it is noteworthy that Thurnscoe has a railway station and hence some trips could be undertaken by public transport to places that are further afield, it is nonetheless likely that occupiers of the site would be first dropped off using a private motor vehicle given poor pedestrian connectivity within part of Clayton Lane.

20. I acknowledge that paragraph 105 of the Framework states that '*opportunities to maximise sustainable transport solutions will vary between urban and rural areas, and this should be taken into account in both plan-making and decision-making'*. In this case, however, the potential to reach amenities and services in Thurnscoe on foot would be significantly inhibited owing to the absence of footpaths within part of Clayton Lane. Furthermore, the evidence does not indicate that opportunities have been reasonably explored by the appellant to improve pedestrian connectivity from the site to existing public footpaths in Clayton Lane. Car dependency is very likely for day-to-day activities and there would not be suitable access to the site for all users. These are matters of overriding concern even accounting for the above flexible approach to addressing sustainable transport and accessibility matters as outlined in the Framework.

21. For the above reasons, I conclude that the appeal development would not be sustainably located. Overall, it would conflict with the sustainable transport and accessibility requirements of the Framework and with policy GT1 of the LP which states that sites should *'have good access to facilities'* and *'good vehicular and pedestrian access from the highway'*.

Biodiversity

22. The evidence is that prior to development taking place on the site, most of it was devoid of built and engineered form. The planning application form states that the former use of the land was agricultural. The site has already been hard surfaced. It is possible that this has had some adverse impact on the biodiversity value of the land.

23. The appellant has not provided an ecological survey as part of the planning application or the appeal. In the absence of further information about the baseline biodiversity position prior to the unauthorised development taking place, and, if necessary proposed biodiversity mitigation measures, I cannot conclude that the proposal would accord with policy BI01 of the LP, or paragraph 174(d) of the Framework, which seek to conserve biodiversity and deliver biodiversity net gain. This is a matter that goes to the heart of the acceptability of the proposal and, in the absence of baseline information and possible mitigation details from the appellant, it would not be appropriate to deal with this matter by way of the imposition of a planning condition.

Foul drainage

24. A holding objection has been received from Yorkshire Water on the basis that no information has been submitted to determine how foul drainage would be contained and treated. The planning application form states *'unknown'* in respect of the disposal of foul waste and whether it is proposed to connect to the existing drainage system. Furthermore, the appellant has not provided detailed information about this matter as part of the appeal.

25. I have considered whether this is a matter that could be addressed by planning condition, but in the absence of at least basic information about this matter from the appellant, I cannot be certain that it would be possible, in principle, to continue to occupy the site in a safe and environmentally acceptable manner from the point of view of foul drainage.

26. For the above reason, I cannot therefore conclude that the proposal would be capable of according with the amenity and infrastructure requirements of policy GT1 of the LP.

Other Considerations

Gypsy and Traveller pitch need and provision

27. The adopted 2019 LP makes provision for Gypsy and Traveller pitches taking into account the Barnsley Gypsy, Traveller and Travelling Showperson Accommodation Assessment 2015 (GTAA). The GTAA identified a total demand for 73 pitches over the five-year period between 2014/15 and 2018/19 compared with a supply of 58 authorised pitches with no turnover assumed. The result at the time was an overall shortfall of 15 pitches across Barnsley. Based on five-year requirements for 2019/20 to 2023/24 and 2024/25 to 2028/29 the evidence is that there is a further requirement for 5.6 pitches and a hence total requirement for 78.6 pitches.

28. The evidence is that 11 pitches were developed between 2015 and 2022 and the LP allocations would deliver a further 19 pitches. In this context, a total supply of 88 pitches can be demonstrated against an identified need of 78.6 pitches. Hence, there is a surplus capacity of 9.4 pitches.

29. The evidence, as detailed at paragraph 1.3 of the GTAA, is that the identified need and provision in the LP considered those Gypsies and Travellers who on grounds of their own or family's dependants' educational or health needs or old age had ceased to travel permanently. This is a relevant consideration given the Court of Appeal judgement of Smith v SSLUHC & Ors (2022) EWCA (Smith judgement). Indeed, the judgement confirms that the definition of Gypsies and Travellers in annex 1 of the PPTS is discriminatory.

30. While the LPA intends to update the GTAA, it is nonetheless the most up to date and objective assessment of need that is before me. In the absence of any objective assessment to the contrary, I find that the evidence does demonstrate that the LP suitably plans and meets the need for Gypsy and Traveller pitches in the area. I do, nonetheless, accept that it is incumbent on the LPA to review need annually. Hence, it is possible that need may have changed since 2015. I deal with this matter further as part of by planning balance below.

Five-year supply

31. The appellant claims that the LPA cannot demonstrate a five-year supply of deliverable Gypsy and Traveller sites. This is not supported by any objective evidence from the appellant. Furthermore, the appellant does not cast doubt about any of the specific findings in the 'Barnsley Gypsy and Traveller five-year deliverable land supply report April 2022 – March 2027' (Land Supply Report) which indicates that the LPA can demonstrate more than a five-year supply of deliverable Gypsy and Traveller sites.

32. The LPA states that it is not clear whether the GTAA accounted for the required six pitches arising from the waiting list at the 'Smithies Lane' site. However, the evidence is that even if this had not been accounted for there would still be a surplus capacity of 3.4 pitches. I find that the evidence indicates the LPA can demonstrate a five-year supply of deliverable Gypsy and Travellers sites. However, and as detailed above, I do accept that this is based on the GTAA published in 2015 and so there remains some uncertainty in terms of whether need could have changed and hence whether the LPA's supply position is in fact up to date.

Alternative sites

33. The appellant states that there are no available alternative Gypsy and Traveller sites to accommodate the needs of the family. However, this comment appears to have been made by the appellant on the basis that some of the children are at the local school and so occupation of an authorised site, were it to be available to them, would be disruptive to family life and the continued education of the children.

34. I deal with the latter below, but the appellant does not provide any other reason why it would not be possible to explore working towards occupying Gypsy and Traveller sites 'TS1' or 'TS2' as detailed in policy GT2 of the LP, while also ensuring that the children stay at the same school. Indeed, the appellant states *'the sites identified within site policy GT2 (TS1 land north of Industry Road, Carlton up to 11 pitches and TS2 Burntwood Cottages extension, Brierley 8 pitches) are noted but these sites fall outside geographical boundaries for the educational and medical provision for the applicant's children'.* I recognise that the Land Supply Report indicates that the allocated sites in the LP *'have not yet been developed'*. It is therefore reasonable that I conclude that such sites are not currently available.

35. Even if allocated Gypsy and Traveller sites were unlikely to be immediately available for occupation, it is nevertheless noteworthy that policy GT1 of the LP permits windfall Gypsy and Traveller sites in the area subject to meeting detailed criteria. The evidence is that acceptable windfall sites have come forward in the area since 2015. There is no evidence before me to suggest that

it would not also be possible for the appellant to find and occupy a new policy compliant windfall Gypsy and Traveller site elsewhere in the area. Consequently, it is not certain that dismissing this appeal, and potentially having to vacate the site, would inevitably lead to a roadside existence.

36. While I appreciate that catchment areas are important in terms of children and local school placements, in this case the evidence is that three of the children are already in the local school. Therefore, potentially moving to a different site or area, while possibly less convenient in terms of travel distances, would not necessarily mean that the named children had to leave their existing school.

Family circumstances including the best interests of the children

37. Article 8 of the European Convention on Human Rights as incorporated into the Human Rights Act 1998 (HRA) states that everyone has a right to respect for private and family life, their home and correspondence. This is a qualified right, whereby interference may be justified in the public interest, but the concept of proportionality is crucial.

38. I am also mindful that Article 3(1) of the United Nations Convention on the Rights of the Child provides that the best interests of the child shall be a primary consideration in all actions by public authorities concerning children.

39. Furthermore, in exercising my function on behalf of a public authority, I have had due regard to the Public Sector Equality Duty (PSED) contained in the Equality Act 2010, which sets out the need to eliminate unlawful discrimination, harassment and victimisation and to advance equality of opportunity. The Act recognises that race constitutes a relevant protected characteristic for the purposes of PSED. Romany Gypsies and Irish Travellers are ethnic minorities and thus have the protected characteristic of race.

40. The LPA does not dispute that the appellant is nomadic and is, by definition, a Traveller. I have no reason to reach a different conclusion on this matter. It is clear that a more settled base has allowed his family to register with the local General Practitioner and children in his care to enrol at a local school.

41. I have no doubt that a settled base for the purposes of continuing the children's education is advantageous. However, the evidence is not persuasive in terms of there being no possibility of a policy compliant pitch coming forward on Gypsy sites 'TS1' or 'TS2', or on a windfall site that complies with policy GT1 of the LP. I accept that the evidence is that the allocated sites are further away from the local school than the appeal site, but there is nothing to suggest that the children would have to leave their school if the family were required to vacate the appeal site. Furthermore, it may also be possible for the children to attend a different school, although I do acknowledge that this would have some disrupting impact.

42. As regards General Practitioner surgery enrolment and hence the provision of health care, I accept that this is a matter which weighs in favour of continued occupation of the site for residential purposes. However, there is nothing before me to suggest that such benefits could not also be secured from the occupation of an alternative and policy compliant site, and which does not result in the same level of harm in planning terms.

Planning balance

43. I have found that the appeal development would amount to inappropriate development in the Green Belt. Harm would be caused to the openness of the Green Belt and there would be conflict with one of its purposes. These are matters to which I afford very substantial adverse weight in decision making terms. In this regard, the proposal would not accord with policy GB1 of the LP, the PPTS and the Framework which seek to protect the Green Belt from inappropriate development.

44. Furthermore, I have concluded that modest adverse weight should be attributed to the fact that it has not been demonstrated that the proposal would conserve biodiversity and deliver biodiversity gain. In this regard, I cannot conclude that the proposal accords with policy BIO1 of the LP. In addition, insufficient information is before me to conclude that the proposal would be acceptable in terms of foul drainage. Therefore, I cannot conclude that the proposal would accord with policy GT1 of the LP. I have also found that the site is not sustainably located in so far that it does not have good access to amenities and facilities by a choice of means of transport and as pedestrian access to the site from Clayton Lane is poor. To this extent, there is conflict with policy GT1 of the LP.

45. Set against the identified conflict with the development plan, are the personal circumstances of the family, including the best interests of the children, and the identified other considerations above. I afford limited weight to the impact of potentially occupying a different site on the education of the children for the reasons outlined. While I do not have any evidence that an alternative site is currently available for the family, there remains the potential to occupy a policy compliant windfall site elsewhere. Therefore, I afford limited weight to the evidence which indicates that there is not a known site which can be immediately occupied by the appellant and his family.

46. In my judgement, the best available objective evidence indicates that the LPA can demonstrate a five-year supply of deliverable Gypsy and Traveller sites. This is based on need identified in 2015. While the need is based on information which is now of some age, this nevertheless continues to be the most objective evidence that is before me.

47. Notwithstanding the above, even if I were to proceed on the basis that Gypsy and Traveller pitch need is greater than stated in the GTAA, and hence the LPA could not demonstrate a deliverable five-year supply of Gypsy and Traveller sites, paragraph 16 of the PPTS states that subject to the best interests of the child, personal circumstances and unmet need *'is unlikely to clearly outweigh harm to the Green Belt and any other harm so as to establish very special circumstances*'. In this case, the potential for unmet need would not, in itself, or in combination with the other considerations identified above, clearly outweigh the identified harm to the Green Belt and the other identified harm.

48. On balance, I therefore find that the harm to the Green Belt by reason of inappropriateness, and the other identified harm, is not clearly outweighed by the other considerations so as to amount to the very special circumstances necessary to justify the development.

49. For the above reasons, I do not find that the grant of permanent planning permission is justified. I have considered whether a temporary planning

permission would be appropriate, but it remains possible that an alternative site could be available for the family within the near future, whether on an allocated site or taking pro-active action to secure occupation on a policy compliant windfall site. In respect of the latter, there is no evidence before me to indicate that such an option would not be possible within a period of months rather than years. Furthermore, and, in any event, the harm that would be caused to the Green Belt, and the other identified planning harms, while for a limited period, would nonetheless still be significant and hence a temporary planning permission would not be justified on this basis.

50. I acknowledge that in dismissing the appeal it would mean that the family continued to occupy the site on an unauthorised basis. To this extent, my decision could, in turn, have enforcement implications and the family may lose their home. In this regard, my decision may lead to a significant interference of rights under Article 8 of the European Convention on Human Rights as incorporated into the HRA. However, the collective planning harm that I have identified is of such weight that a refusal of planning permission is a proportionate, legitimate, and necessary response that would not violate those persons rights under Article 8. I find that the protection of the public interest cannot therefore be achieved by means that are less interfering of the rights of the family.

Conclusion

51. For the reasons given above, I conclude that the development would not accord with the development plan for the area taken as a whole and there are no material considerations that indicate the decision should be made other than in accordance with the development plan. Therefore, the appeal should be dismissed.

D Hartley

INSPECTOR