



Appeal Decision

Hearing Held on 29 November 2022

Site visit made on 29 November 2022

by Mark Dakeyne BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 December 2022

Appeal Ref: APP/Z3635/W/22/3292634

**1 Minerva Close, Horton Road, Stanwell Moor, Staines-upon-Thames
TW19 6DA**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr D Paul against the decision of Spelthorne Borough Council.
 - The application Ref 21/01163/FUL, dated 8 July 2021, was refused by notice dated 6 September 2021.
 - The development proposed is use of land as a travellers caravan site consisting of 1 no mobile home, 1 no touring caravan, 1 no utility dayroom and associated works.
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Decision

1. The appeal is dismissed.

Background and main issues

2. A Statement of Common Ground (SOCG) between the appellant and the Council sets out the matters that are agreed and those that are disputed. The site lies in the Green Belt. The main parties agree that the proposal is inappropriate development in the Green Belt, as set out in paragraph 16 of 'Planning policy for traveller sites' (PPTS).
3. The application was promoted on the basis that it is a pitch for the daughter of the appellant. She is already living on the site in a touring caravan to the rear of the house, 1 Minerva Close, which is occupied by the appellant and his wife. She intends to marry and start a family of her own. She has travelled with both her father and partner for work purposes. The appellant claims that the new household would meet the definition of gypsies and travellers in Annex 1 to the PPTS and this was not disputed by the Council. Based on the information before me I see no reason to take a different view.
4. Before the hearing, the Court of Appeal¹ (CoA) found that the above PPTS definition was unlawfully discriminatory. The main parties were given the opportunity to comment on the implications of the judgement before and during the hearing. The PPTS, which sets out the Government's policy for traveller sites, remains extant, albeit some parts of it are affected by the judgement. I address the implications of the CoA judgement later in this decision.

¹ Smith v SSLUHC & Ors [2022] EWCA Civ 1391

5. Having regard to the SOCG and the above background, the main issues are:
 - (1) the effect on Green Belt openness and purposes;
 - (2) whether the proposal would result in a suitable living environment for future occupiers, with particular reference to noise levels; and,
 - (3) whether the harm to the Green Belt and any other harm is clearly outweighed by other considerations, so as to constitute very special circumstances.

Reasons

Green Belt openness and purposes

6. The site forms part of a large, enclosed garden to the rear of No 1 Minerva Close. The Green Belt boundary cuts across the garden such that the house and the land immediately behind and alongside it is beyond the Green Belt whereas the bottom part of the garden where the pitch would be formed would be in the Green Belt. The formation of the hardstanding, the stationing of a mobile home and touring caravan and the erection of the day room would result in development on an area of open garden land where there was none before. Occupation of the plot by an additional family would bring with it further vehicles, more activity, and the other accoutrements of day-to-day living.
7. The daughter is already occupying a touring caravan on the site so, in that respect, the touring caravan is already there. Moreover, the tourer would be off-site during periods when members of the family are travelling. However, the tourer would move from beyond to within the Green Belt.
8. The development would lead to a modest increase in the quantum of development in the Green Belt through the additional area of hardstanding, the stationing of the mobile home and touring caravan, and the erection of the day room building.
9. Openness has a visual as well as a spatial dimension. The pitch would be contained within the enclosed garden with a fence and trees immediately behind and houses forming a backdrop. That said, although well-enclosed and not prominent, the structures and building on the pitch would still be visible from the road in glimpsed views through and over the gates and would be seen from neighbouring properties.
10. The mobile home and day room would be alongside an existing small stable block/workshop building. There are already other structures and vehicles in the garden. As such the development would physically and functionally relate to the house and other nearby built development on Horton Road and Vine Close outside the Green Belt rather than to the open Green Belt land to the west and north-west. In this respect the Green Belt boundary is somewhat arbitrary hereabouts, not following clear physical features that are readily recognisable.
11. Because the development would be within the enclosed garden and not extend into the open land to the west, there would be no encroachment into the countryside. There would be no effect on the other four Green Belt purposes.
12. All in all, the development would lead to a modest loss of openness but no adverse impact on Green Belt purposes.

Noise

13. The appeal site lies not far to the west of the southern runway of Heathrow Airport. Based on information supplied by the airport, the site lies within the 69-72 dB L_{Aeq} contour line with daytime noise levels around 70 dB L_{Aeq} 16 hour and night time noise levels below 65 dB L_{Aeq} 8 hour. These most recently published contours are from 2018 when activity was at its pre-Covid 19 pandemic peak level and is likely to represent a worst case scenario. The noise levels are towards the top of the scale set out in guidance². It is predicted that full operations may return by around 2025-2026, but for the reasons referred to below, noise levels experienced at Stanwell Moor would be unlikely to reach the 2018 levels again.
14. The appellant's noise assessment of November 2021 shows noise levels from aircraft departing from the southern runway for a little under a 2 hour period on the morning of Friday 22 January 2021 of between about 74 and 90 dB $L_{Amax F}$. These represent single noise events. Whilst this monitoring was undertaken during a period when operations were affected by the Covid 19 pandemic, it includes a range of aircraft types. I noted noisy take offs at regular intervals when I visited the site and surroundings.
15. The two runways are generally rotated during the day such that take offs and landings are switched midway through the day to provide relief. There are other noise measures that are being implemented by the airport, including a voluntary Quiet Night Charter whereby the operation of quieter aircraft is promoted between 2300 and 0700 hours. There is also a trend towards quieter aircraft as older models are phased out. Should a third runway go ahead there would be reduced flights from the southern runway.
16. Notwithstanding the above measures and overall trends, the figures are reflective of an area which suffers high levels of noise. The Spelthorne Core Strategy³ (SCS) recognises that Stanwell Moor is one of the areas within the Borough which is worst affected by aircraft noise.
17. In terms of mitigation, British Standard (BS) 8233:2014 recommends noise levels to be achieved within new buildings. For residential properties these equate to 35 dB $L_{Aeq T}$ for living rooms and bedrooms for the daytime period (0700 to 2300 hours) and 30 dB $L_{Aeq T}$ for bedrooms at night (2300 to 0700 hours). However, the guidance referred to in Footnote 2 indicates that, where development is considered necessary or desirable, the internal levels referred to above may be relaxed by up to 5 dB. BS 3632:2015 for residential park homes provides a specification such that they are designed to achieve a minimum sound insulation for external walls and roof of 35 dB R_w .
18. The appellant's calculations indicate that noise levels of 42 dB L_{Aeq} 16 hour for the daytime and 36 dB L_{Aeq} 8 hour for night time would occur in a mobile home. Thus a standard construction mobile home would result in internal noise levels above the relaxed criteria. However, measures could be implemented by the introduction of additional higher density plasterboard and thicker glazing. Alternative forms of ventilation than the standard could also be deployed such as passive attenuated in-wall vents. Calculations indicate that such additional mitigation could achieve 35 dB L_{Aeq} 16 hour for the daytime and 29 dB L_{Aeq} 8 hour

² Professional Practice Guidance on Planning and Noise: New Residential Development May 2017

³ Spelthorne Core Strategy and Policies Development Plan Document adopted February 2009

for night time which would meet the BS 8233 requirements. This would depend on windows and doors being kept shut.

19. In terms of maximum noise levels from departures overnight, as quieter aircraft are likely to be used, an upper limit of 80 dB $L_{Amax, F}$ would be a reasonable basis. The construction of the mobile home would seek to reduce maximum noise levels internally to 45 dB $L_{Amax, F}$. But occupiers could be subject to a number of individual noise events at night over this figure whereby risks to health and well-being are not negligible, based on the guidance referred to in Footnote 2.
20. Moreover, the external noise environment could not be mitigated significantly. The possibility of providing a covered structure within the garden was discussed at the hearing. However, such mitigation, whilst providing some relief, would not prevent residents of the pitch experiencing daytime noise levels well in excess of the World Health Organisation Guidelines for gardens and outdoor living areas.
21. As the appellant's daughter is living on the site in a touring caravan she is already experiencing the high noise levels referred to above. Indeed the touring caravan will not achieve the sound reduction which would be provided by a mobile home. The appellant argues that the development would provide a clear benefit in noise terms for the daughter. However, the pitch would be likely to be occupied, in due course, by a family so more people, including probably children, would be subject to the high external noise levels.
22. All in all the proposal would result in an unsuitable living environment for future occupiers, with particular reference to noise levels. Whilst mitigation would be likely to reduce most internal noise levels to an acceptable level, the external noise environment would lead to the potential for adverse impacts on health and the quality of life. There would be conflict with Policy EN11 of the SCS as aircraft noise levels exceed 66 L_{EQ} . I do not regard the case to represent a one-to-one replacement dwelling as the touring caravan comprises ancillary living accommodation to the house whilst the proposal would result in a new separate household unit.
23. The proposal would not follow policy in the National Planning Policy Framework (the Framework) in that it would result in new development being adversely affected by unacceptable levels of noise pollution. Whilst part of the Plan-making section of PPTS, paragraph 13 refers to local environmental quality, such as noise, being a consideration in planning for traveller sites.
24. In arriving at my conclusions on the issue of noise I have had regard to the 2010 appeal decision at Little Hallingbury, Uttlesford. The circumstances are not directly comparable as the principal source of noise was from the M11 motorway not a major international airport, the policy context has changed and the decision was made on the basis of a temporary permission.

Other considerations

The need for and provision of sites

25. The Council's Gypsy and Traveller Accommodation Assessment (GTAA) of 2018 found a need for 3 pitches for those gypsies and travellers who met the PPTS definition; 7 pitches for households whose status was unknown; and 17 pitches for those households who did not meet the PPTS definition. The need

for all ethnic gypsies and travellers is likely to have been no less than 27 pitches in January 2017, the base date of the GTAA.

26. Meeting the total need would be a reasonable objective having regard to paragraph 62 of the Framework and the housing needs of different groups. In addition the CoA judgement suggests that it is not lawful to distinguish between those who have temporarily or permanently ceased travelling. Moreover, the Housing Acts place a duty on local authorities to consider the needs of people residing or resorting to their District in caravans.
27. No pitch provision has been made since the base date of the GTAA so none of the needs have been met. The emerging Spelthorne Local Plan (eSLP) proposes the allocation of a site for 3 gypsy and traveller pitches on London Road, Staines. The eSLP has very recently been submitted for examination. At this stage it is not clear whether the site would be considered deliverable or developable. There is no 5 year supply of deliverable traveller sites or longer term supply. The appeal proposal would make a small but important contribution to the above unmet need.

Alternative sites

28. I was not made aware of any alternative suitable sites that are currently available to the new household either within the Borough or further afield. For example, there are no vacancies on the public site in Shepperton. Although not supported by any documentary evidence, it was stated that there is no pitch available to the daughter's partner whose family are on a site in Mill Lane, Datchet in the Borough of Windsor and Maidenhead.

Failure of policy

29. The requirement to plan for pitches for gypsies and travellers has been around since Circular 1/94⁴. Other than the potential site in the eSLP, it does not appear that any allocations have been made in Spelthorne over the 28 year period since 1994. Based on the evidence before me, there has been a persistent failure of the Council to put policies in place to meet the accommodation needs of travellers and a corresponding long-standing unmet need for sites.

Sustainability in the round

30. Although the household has not yet formed, when it does so the provision of the pitch would realise the well-documented benefits of a settled base in terms of education and access to health care. There would also be advantages for the general well-being of the family in being settled, and having continual access to basic amenities and a secure living environment. In particular a settled base would be in the best interests of any children and their education, health, safety, and welfare, albeit that the noise environment could have some adverse impacts on the health and well-being of any children who occupy the pitch.
31. A settled base would also achieve the other sustainability benefits set out in paragraph 13 of PPTS, in particular reducing the need for long-term travelling and environmental damage caused by unauthorised encampment, and reflect the traditional lifestyles of living and working from the same location. The

⁴ Department of Environment Circular 1/94: Gypsy Sites and Planning

single pitch development would not result in the site dominating the local community or putting undue pressure on local infrastructure and services. Peaceful and integrated co-existence between the site and local community would be maintained.

Personal circumstances

32. No specific personal circumstances were put forward by the appellant. That said, allowing a pitch very close to her parents would facilitate mutual support between the extended family which is part of the gypsy tradition.

Other matters

33. It was confirmed that the site lies outside the Heathrow Airport Public Safety Zone. As the pitch would be within an enclosed garden there would be no material impact on the character and appearance of the area. A single household occupying the site would not give rise to undue noise and disturbance for adjoining residents. There is no evidence of any nature conservation interest on the site or that the development would lead to drainage or flood risk issues.

Planning balance and conclusions

34. 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.
35. The proposal would represent inappropriate development in the Green Belt. There would also be modest harm caused to Green Belt openness. In accordance with the Framework, substantial weight should be given to the harm to the Green Belt. I have also found harm in relation to the provision of an unsuitable living environment for future occupiers because of noise to which I attribute considerable weight.
36. In terms of factors in favour, significant weight should be afforded to each of the following - the unmet need for traveller sites in the Borough, the lack of alternative sites, and the failure of policy. The Council has taken some small steps to meeting the needs by making some progress with the eSLP. But it has taken a long time to make such progress. In relation to failure of policy, the Council has not complied with its duties under the Housing Acts. Questions about whether equality of opportunity have been advanced, as required by the Equality Act 2010, also arise as a result of failure of policy.
37. Meeting the sustainability considerations set out in PPTS is also a factor in favour to which moderate weight should be attached. Putting to one side the particular circumstances of the gypsy household who would occupy the site, there are positive implications for the human rights of travellers and best interests of traveller children in general from increasing the supply of traveller pitches.
38. The personal circumstances of the household, and in particular their need for a settled base, is a consideration in favour. There are close family ties to the occupiers of 1 Minerva Close. However, meeting the health and education needs of the prospective occupants is not dependent on this particular location. There are currently no children so education would not be disrupted. Although the household has a preference to live close to parents, the priority

is to find a settled base. Nevertheless, the personal circumstances should still be afforded moderate weight in the planning balance. A settled base would meet the Article 8 Human Rights Act requirements of the family's right to a home and a private and family life and allow the household to live close to family as part of their traditional way of life.

39. Overall, my conclusions are that the Green Belt harm by reason of inappropriate development and loss of openness, together with the harm caused by an unsuitable living environment, are not clearly outweighed by other considerations - the unmet need for traveller sites in the Borough, the lack of alternative sites, the failure of policy in providing sites and a 5 year supply, the sustainability benefits, and the personal circumstances of the prospective site occupants. These considerations, taken together with the equality, human rights and best interests of the children benefits which flow from additional provision, are not sufficient to constitute the very special circumstances necessary to justify permission. My conclusions have taken into account that, subject to the best interests of the child, personal circumstances and unmet need are unlikely to clearly outweigh harm to the Green Belt and any other harm so as to establish very special circumstances.
40. Although substantial weight should be afforded to Green Belt harm, this in itself would be clearly outweighed by other considerations because the level of harm is towards the bottom of the scale. However, in this case there is a clear policy imperative to preventing additional residential development, however modest, where noise levels from Heathrow are excessive, notwithstanding that one of the future household has lived on the site for 6-7 years. In respect of noise, Stanwell Moor is singled out as being particularly badly affected. Whilst trends are likely to see an overall reduction in aircraft noise, levels will still remain high.
41. The proposal would conflict with Policy HO6 of the SCS as very special circumstances have not been demonstrated and the location would not be environmentally acceptable. There would also be conflict with Policy GB1 of the Spelthorne Borough Local Plan⁵ as openness would not be maintained. I have also found conflict with Policy EN11 of the SCS.
42. The above policies relate to travellers, the Green Belt, and noise. They are the most important policies for determining the application. The proposal would conflict with the development plan overall. However, Policy HO6 is not consistent with national policy as it does not set pitch targets for gypsies and travellers or identify deliverable and developable sites. Policy GB1 was formulated over 20 years ago and is not consistent with Green Belt policy in the Framework. These policies should be afforded only limited weight. That said, the policies of the Framework relating to Green Belt provide a clear reason for refusing the development. Material considerations do not indicate that the proposal should be determined other than in accordance with the development plan.
43. In reaching the above conclusions, I have considered whether conditions could make the development acceptable. However, although internal noise could be combated to an extent, conditions could not mitigate the harm caused by the external noise environment to make the development acceptable overall.

⁵ Adopted April 2001

44. I have also considered whether a temporary permission would be appropriate as an alternative to dismissing the appeal on the basis that planning circumstances may change at the end of such a period. A temporary permission would time-limit the Green Belt harm and that caused by the noise climate.
45. The eSLP, thus far, has only proposed to allocate one small site. However, the examination of the eSLP may result in a change in approach, such as the introduction of further site allocations, taking into account the CoA judgement and updated evidence or representations. Therefore, planning circumstances might change in the next year or so.
46. However, I am mindful of paragraph 27 of the PPTS in relation to temporary planning permissions in the Green Belt. A period of occupation of the site would still lead to harm to the Green Belt and other significant harm which would not be outweighed by other material considerations.
47. Dismissal of the appeal would be unlikely to lead to the household forming and resorting to a roadside existence. Nonetheless there would still be interference with the Human Rights of the household. I have carefully considered whether such a result would be proportionate in the circumstances having regard to Human Rights provisions, including the right to a home and family life and the positive obligation to facilitate a gypsy way of life. However, the environmental harm which would continue to be caused by the development would be considerable. Taking into account all material considerations I am satisfied that these legitimate objectives can only be adequately safeguarded by dismissal of the appeal.
48. I have also had due regard to the public sector equality duty at Section 149 of the Equality Act 2010. However, the Green Belt and other objections are strong countervailing arguments.
49. I have carefully considered all matters raised. Based on the evidence before me, I conclude that the appeal should be dismissed.

Mark Dakeyne

INSPECTOR

