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# Appeal Decision

Hearing held on 22 November 2022

Site visit made on 22 November 2022

**by Zoe Raygen DipURP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 14 December 2022**

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## **Appeal Ref: APP/V1505/W/21/3266538**

### **Windsor Lodge, Windsor Road, Bowers Gifford, Basildon SS13 2LH**

- 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 John Temple against the decision of Basildon Borough Council.
  - The application Ref 19/01642/FULL, dated 29 November 2019, was refused by notice dated 9 July 2020.
  - The development is two mobile homes, toilet block and hardstand area.
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### **Decision**

1. The appeal is allowed, and planning permission is granted for two mobile homes, toilet block and hardstand area at Windsor Lodge, Windsor Road, Bowers Gifford, Basildon SS13 2LH in accordance with the terms of the application Ref 19/01642/FULL, dated 29 November 2019, subject to the conditions set out in the schedule to this decision notice.

### **Preliminary Matters**

2. Prior to the Hearing, on receipt of appeal decisions<sup>1</sup> from the Council relevant to this case, it became apparent that the site is within the Zone of Influence of the Blackwater Estuary Special Protection Area and Ramsar site (the SPA). As such, I heard evidence at the Hearing regarding this matter and was presented with a Unilateral Undertaking (UU) which secured a contribution of £275.42 to be spent on the SPA. This is a material consideration to which I return to later.
3. Prior to the Hearing, the Court of Appeal issued a judgement regarding the interpretation of the Planning Policy for Traveller Sites 2015 (PPTS) and the application of that policy to Gypsies and Travellers who have ceased to pursue nomadic lifestyles<sup>2</sup>. The Court of Appeal found that the PPTS definition change was unlawfully discriminatory with its main objective to make it harder for elderly and disabled ethnic Gypsies and Travellers to obtain planning permission. The case, and its implications for the Council's case for the need for Gypsy and Traveller pitches and the imposition of conditions, was discussed at the Hearing.
4. The appeal is for the provision of two gypsy and traveller pitches. It was clear at my site visit that one pitch has already been provided. Furthermore, it has been done so differently to how proposed in the submitted plan 3483-11. More hardstanding has been implemented around the mobile home which is situated

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<sup>1</sup> APP/V1505/C/20/3264991, APP/V1505/W/21/3278587

<sup>2</sup> *Smith v SSLUHC & Ors [2022] EWCA* (the 2022 judgement)

in a different position to that proposed, and there are a number of small outbuildings not shown on the plan. However, the day room and the second pitch have not yet been implemented and the remainder of the site remains laid to grass. The development is still essentially a proposal in the sense that it is far from being completed. What is for my consideration is as shown on the submitted plans and not any alternative development which has, or has alleged, to have taken place. Accordingly, I have considered the appeal on this basis.

5. The Council has withdrawn its emerging Local Plan. The only relevant Green Belt policy within the Basildon District Local Plan Saved Policies 2007 (The Local Plan) is GB1 which references the boundaries of the Green Belt only. There are no specific policies regarding Gypsies and Travellers. Notwithstanding the contents of the Statement of Common Ground regarding the Local Plan, the Council confirmed at the Hearing that it relies on Section 13 of the National Planning Policy Framework (the Framework) regarding Protecting Green Belt Land and the PPTS in its defence of this appeal. I have therefore considered the appeal against the requirements of the Framework and the PPTS.

### **Procedural Matter**

6. Planning appeal decision APP/V1505/C/20/3265750 was issued on 16 November 2022 regarding enforcement appeals concerning Gypsy and Traveller pitches at land west of Hillview, Southend Arterial Road, Wickford. On the morning of the Hearing the Council advised that it was considering challenging this decision due to issues around the need for Gypsy and Traveller pitches which it considered had not been covered appropriately in the decision. Therefore, it requested that the Hearing be adjourned and the procedure changed to a Public Inquiry as there may be evidence that would require cross examination regarding need. The appellant strongly resisted both the adjournment and change to procedure.
7. The appeal, the subject of this Hearing, was submitted in January 2021, nearly two years ago. The Council has not submitted a statement and a Statement of Common Ground, which includes matters relating to need, was signed and submitted on the day of the Hearing. There is no evidence before me that is particularly complex or requires cross examination by advocates and it would be inappropriate to change the procedure on the premise that some may come forward in the future. Furthermore, I was satisfied those matters relating to need could be explored in full based on the evidence before me within the Hearing. I considered that the fact that an appeal decision may be challenged and that the Council wished to consider matters raised in the decision was not sufficient reason to adjourn matters particularly given the decision was issued nearly a week prior to this Hearing. I therefore proceeded with the Hearing.

### **Main Issues**

8. The appeal site is located within the Green Belt and the parties agree that by virtue of paragraph 16 of the PPTS the proposal is inappropriate development. In that context, the main issues are:
  - the effect of the development on the openness of the Green Belt;
  - the effect of the development on the purposes of including land within the Green Belt and;

- would the harm by reason of inappropriateness and any other harm, be clearly outweighed by other considerations so as to amount to the very special circumstances required to justify the proposal.

## **Reasons**

### *Openness*

9. Prior to the development on site taking place the appeal site was open and undeveloped. The stationing of two mobile homes, a day room and the layout of hardstanding and car parking would spatially and visually have an impact on openness. However, the site is located within a residential street which is a mix of brick built bungalows and mobile homes mainly set back from the road in relatively large plots.
10. The mobile homes would be small scale, single storey and be sited such that the majority of the site would be free from development. There are no long views of the site due to the existing residential properties . Hence visually the effect on openness is contained and limited to the immediate area.
11. Parties agree in the SOCG that the effect on openness is limited and localised. Based on the above I would agree and the development is in conflict with fundamental aim of Green Belt policy within the Framework to prevent urban sprawl by keeping land permanently open, albeit harm in this respect would be minor.

### *Purposes*

12. Although not contained in its reason for refusal the Council considers that the proposal would encroach into the countryside thereby conflicting with one of the purposes of the Green Belt.
13. The appeal site is located within parcel 74 of the Council's Green Belt Review (GBR) which was undertaken in 2017. The Council stated that within the GBR this parcel of land contributed positively to the purpose of preventing neighbouring towns from merging and hence would assist in safeguarding the countryside from encroachment.
14. While the parcel of land may have been open, it formed a small plot within an otherwise residential setting. From my observations on site there would be no unacceptable encroachment on the countryside.
15. I am satisfied therefore that the proposal would not conflict with the purposes of the Green Belt and would accord with the Framework in this respect.

### *Other considerations*

#### *Need*

16. The SOCG agrees that the Gypsy and Traveller Accommodation Assessment 2020 (the GTAA) establishes a need for 85 additional pitches for those who meet the definition of Gypsies and Travellers within the PPTS. The appellant drew my attention to figure 14 of the GTAA which details that there were a further 93 who did not meet the definition within the PPTS and who, given the 2022 judgement, should now be considered within the need figure creating a

total of 178. However, as the needs of those 93 would be met through other Local Plan housing policies, the Council is satisfied that the figure of 85 stands.

17. As things currently stand, the SOCG agrees that the Council does not have an up to date 5 year land supply for pitches. Furthermore, the withdrawal of the emerging local plan means that there are currently no allocated sites. I heard though that as part of a much larger development the Council had secured, via a legal agreement, the delivery of 10 pitches by 2026. This was achieved through the use of emerging local plan policy. Although this demonstrates a commitment by the Council to securing future delivery of sites, that emerging policy has been withdrawn. The Council confirmed at the Hearing that an issues and options paper would hopefully be produced by the second quarter of 2023 to start the local plan process. There is still though a long way to go before any plan is adopted.
18. The SOCG also agrees that the bi-annual count figures for August 2022 shows that there were at least 284 unauthorised caravans occupied by Gypsies and Travellers in the Borough. However, the Council confirmed at the Hearing that it does not ask residents if they meet the PPTS definition or not. Therefore, this does not tell me if they meet any definition of Gypsies and Travellers or indeed if they are Gypsies and Travellers.
19. Even if I were to take the Council's figure of 85 pitches required, based on the evidence presented to the Hearing, there is still an outstanding need for pitches to which I give significant weight.

#### *Alternative sites*

20. The appellant and his family were previously living with the appellant's father, also on Windsor Road. Due to ill health the family considered moving out and a planning application was submitted for the appeal site to accommodate two pitches. After the planning application was refused, due to continuing ill health, and the overcrowded circumstances of the existing site, the family were evicted and moved onto the appeal site albeit in the knowledge that planning permission did not exist.
21. The Council confirmed at the Hearing that there was no availability at its site within the Borough. There is no requirement for the appellant to demonstrate that no other sites are available, but no suggestions were made at the Hearing. Based on the evidence before me, I am satisfied that if the appellant and their family were not able to live on the appeal site then they would have nowhere else to go. I give the lack of suitable and available alternative sites considerable weight.
22. Whilst this is a case of intentional unauthorised development, given the circumstances of the previous existence on the appellant's fathers site and the lack of alternative pitches I give this limited weight.

#### *Failure of Policy*

23. There is no dispute between the parties that the Council cannot demonstrate a 5 year supply of pitches for Gypsies and Travellers.
24. That in itself though is not sufficient to demonstrate that there has been a policy failure by the Council. There must be evidence of a persistent failure of the Council to put policies or other measures in place to meet the

accommodation needs of Gypsies and Travellers and of a corresponding long-standing unmet need for sites.

25. The Council confirmed at the hearing that it has no current policies relating to the provision of Gypsy and Traveller pitches and indeed has not done for a considerable time. I acknowledge that emerging policy within the local plan demonstrated a commitment by the Council to meeting the need for pitches in the Borough and indeed that policy was successfully used to secure 10 pitches. However, that plan has been withdrawn and there is no certainty as to when a new one would be in place and what the level of allocations would be in that plan.
26. In the meantime, any need would require to be met through the determination of planning applications on an ad hoc basis with no development plan policy direction. With the exception of the recent emerging plan, on which there is no longer a reliance, there has been a persistent failure of development plan policy to meet the needs of Gypsies and Travellers in the Borough over a significant time to which I give significant weight.

#### *Personal circumstances*

27. At the Hearing, the appellant confirmed that the family between them have seven children, six of whom live permanently on the site and one at the weekend only. The children range in age from 5 to 19. Of the younger children, one is enrolled at, and attends a school about 2 miles from the appeal site. The others of school age are home tutored. Some of the older children attend or intend to attend the local college in Basildon.
28. The education of the children would clearly be disrupted if the family had to rely on a roadside existence, given their inability to return to previous accommodation and the lack of alternative accommodation to the detriment of the children's education. I consider therefore that it is in the best interests of the children to continue that education and to benefit from a stable and secure base. I give this matter substantial weight.

#### **Other Matters**

29. Interested parties have raised the issue of the removal of trees from the site when the family moved onto the site. The Council has suggested a condition requiring a landscaping scheme to be submitted and implemented. The front gardens in this area are a mixture of hard surface and planting. Most of the hedge along the front of the appeal site has been retained and a landscaping scheme to supplement the hedge would ensure that the character and appearance of the area would be maintained. Drainage matters, also raised as a concern, can also be dealt with through the imposition of a condition.
30. I saw that there are rocks sited alongside the front boundary which, according to an interested party, have interfered with access to the residential property on the opposite side of the road. However, I saw that the width of the surfaced highway has been maintained and is typical of the whole residential street. Although mostly single carriageway, passing places are available along the length of the street. I also note that the Highway Authority has raised no objections to the development. I see no reason to disagree.
31. The development is for residential use and I have no substantive reason to believe that noise levels would be any higher here than elsewhere on the

street. A condition is proposed to ensure that there would be no commercial activity and no vehicle over 3.5 tonnes stationed, parked or stored on the appeal site. Consequently, residents living conditions would not be materially harmed.

32. The Essex Coast Recreational Disturbance Avoidance and Mitigation Strategy (RAMS) sets out a strategic approach to manage mitigation measures associated with development which has the potential to have significant effects through increased recreational pressure.
33. It was confirmed at the Hearing that the development is within the Zone of Influence of the SPA, as defined by the RAMS. I appreciate that the family have been living on the site for some time. Nevertheless, the proposal is for two pitches and there could, in time, be an increase in the number of residents on the site. Therefore, I consider that there has been and would be an increase in the local population due to the development which would add to the recreational pressure on the SPA. Consequently, based on the evidence before me it is likely that, in the absence of mitigation measures, the proposal would have a significant adverse effect on the integrity of the SPA. Accordingly, I have carried out an Appropriate Assessment, including consultation with Natural England.
34. The RAMS seeks to avoid and mitigate likely significant effect on the SPA by securing a financial contribution towards a range of measures including education, fencing, screening, enforcement and habitat creation. In my view if such mitigation were provided then the significant adverse effect caused to the SPA would be appropriately mitigated. Natural England is of the same view. The UU would deliver the agreed sum of money within two weeks of the date of this decision. I am therefore satisfied that the development would not adversely affect the integrity of the SPA.

*Whether the harm is clearly outweighed by other considerations*

35. I have found that the development is inappropriate within the Green Belt and causes minor adverse harm to the openness of the Green Belt. Together these attract substantial weight. The development is also a case of intentional unauthorised development. However, given the circumstances I outline above this carries limited weight. With the appropriate mitigation in place, no unacceptable harm would be caused to the SPA and this carries neutral weight.
36. Set against this, I have found that there continues to be an unmet need within the Borough, whether I use the Council's or the appellant's figures. In addition, the Council is unable to demonstrate an adequate supply. There has been a failure of policy over a number of years to deliver the needs of Gypsies and Travellers, which means that there are no alternative or available sites for the appellant and their family to move to. It is uncertain when any would be available in the future. Furthermore, it would be in the best interests of the children to remain on the appeal site.
37. I have had regard to the PPTS that states that subject to the best interests of the child, personal circumstances and unmet need are unlikely to clearly outweigh the harm to the Green Belt and any other harm so as to establish very special circumstances. However, in this instance, the matters I have identified above together, including the best interests of the child, carry very great weight such that they clearly outweigh the harm to the Green Belt.

Looking at the case as a whole, I consider that very special circumstances exist which justify the development. As such there would be no conflict with the requirements of the Framework.

### **Conditions**

38. Eight agreed conditions are contained within the SOCG which formed the basis of the discussion at the Hearing. I have had regard to those conditions and considered them against the tests in the Framework and the advice in the Planning Practise Guidance (PPG), making such amendments as necessary to comply with those documents.
39. There is justification for the site to be occupied by Gypsies and Travellers to safeguard the supply of the site for this purpose and as such a condition is necessary to restrict occupation. In order to avoid discrimination to the elderly or disabled, the condition should include those Gypsies and Travellers who have ceased to travel permanently. Even though I am not aware that any of the current occupants have ceased to travel due to age or disability, that may not always be the case and to apply such a condition restricting their occupation of the site would, in the light of the 2022 judgement, be unlawfully discriminatory. A personal condition is not necessary as I have already found that there is an outstanding need for Gypsy and Traveller pitches.
40. It is necessary to restrict the number of pitches and caravans to protect the character and appearance of the area. It is also reasonable to impose a condition to ensure that commercial activities do not take place on the site and no vehicle over 3.5 tonnes is stationed, parked or stored on the site to protect the character of the area and residents' living conditions.
41. Although I have considered the development on the basis of the submitted plan, a condition is imposed to ensure that details of the internal layout of the site, all boundary treatments, means of foul and surface water drainage, external lighting and landscaping are submitted, implemented and maintained to give the Council certainty as to how the development is implemented on the site. There is a strict timetable for compliance because permission is being granted retrospectively, and so it is not possible to use a negatively-worded condition to secure the approval and implementation of the matters outlined in this condition before the development commences. The condition will ensure that the development can be enforced against if the details are not submitted for approval within the period given by the condition, or if the details are not approved by the local planning authority or the Secretary of State on appeal, or if the details are approved but not implemented in accordance with an approved timetable. A further condition restricting external lighting is necessary to protect the character and appearance of the area.
42. The Council also requested a condition preventing the erection of buildings, fences or other structures on the appeal site in the interests of the proper planning of the area and the openness of the Green Belt. The PPG states that area-wide or blanket removal of freedoms to carry out small scale domestic and non-domestic alterations that would otherwise not require an application for planning permission are unlikely to meet the tests of reasonableness and necessity<sup>3</sup>. While the openness of the Green Belt is imperative, given the relationship of the proposal to surrounding residential development which,

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<sup>3</sup> Paragraph: 017 Reference ID: 21a-017-20190723

according to the Council, do not have permitted development rights restricted I see no particular reason to do so. I have not therefore imposed the condition.

### **Conclusion**

43. For the reasons given above I conclude that the appeal should be allowed.

*Zoe Raygen*

INSPECTOR

### APPEARANCES

#### **FOR THE LOCAL PLANNING AUTHORITY**

Katie Ellis	Principal Planning Officer, Basildon Borough District Council
Adeola Pilgrim	Planning Policy Officer, Basildon Borough Council
Christine Lyons	Head of Planning, Basildon Borough Council

#### **FOR THE APPELLANT**

Dr Angus Murdoch	Planning Consultant
Mr John Temple	Appellant
Mrs Cherie Temple	Appellant's wife

#### **DOCUMENTS SUBMITTED AT THE HEARING**

- 1 Signed copy of Statement of Common Ground
- 2 Unilateral Undertaking for a contribution to the RAMS
- 3 Plan showing land parcel 74 of the Council's Green Belt Review 2017
- 4 S106 agreement relating to land off of Gardiners Lane, Basildon

#### CONDITIONS

- 1) The site shall not be occupied by any persons other than Gypsies and Travellers, defined as persons of nomadic habit of life whatever their race

or origin, including such persons who on grounds only of their own or their family's or dependants' educational or health needs or old age have ceased to travel temporarily or permanently, but excluding members of an organised group of travelling showpeople or circus people travelling together as such.

- 2) There shall be no more than two pitches on the site and on these pitches hereby approved no more than two caravans, shall be stationed at any time, of which only one shall be a static caravan as defined by the Caravan Sites and Control of Development Act 1960 and the Caravan Site Act 1968 as amended.
- 3) The use of the land hereby permitted shall cease and all caravans, structures, equipment and materials brought onto the land for the purposes of such use shall be removed within 28 days of the date of failure to meet any one of the requirements set out in i) to iv) below:
  - i) Within 3 months of the date of this decision a scheme, including a proposed timetable for implementation, with details of:
    1. the internal layout of the site including the extent of the residential pitch/es, the location of the caravans and vehicle parking, any buildings, hard standings and external lighting;
    2. all boundary treatments and all other means of enclosure (including internal subdivision) and incorporating the retention (and augmentation where necessary) of the existing hedgerow around the site;
    3. the means of foul and surface water drainage of the site;
    4. proposed and existing external lighting on the boundary of and within the site; and
    5. hard and soft landscaping and screen planting including details of species, plant sizes and proposed numbers and densities; (hereafter referred to as the 'site development scheme')shall be submitted to and approved in writing by the Local Planning Authority;
  - ii) If within 11 months of the date of this decision the local planning authority refuse to approve the scheme or details or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
  - iii) If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.
  - iv) The approved site development scheme shall have been carried out and completed in accordance with the approved timetable. Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter be retained.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

- 4) At the same time as the site development scheme required by condition 3 above is submitted to the local planning authority there shall be submitted a schedule of maintenance for a period of 5 years of the

proposed planting beginning at the completion of the final phase of implementation as required by that condition. The schedule shall make provision for the replacement, in the same position, of any tree, hedge or shrub that is removed, uprooted or destroyed or dies within 5 years of planting or, in the opinion of the local planning authority, becomes seriously damaged or defective, with another of the same species and size as that originally planted. The maintenance shall be carried out in accordance with the approved schedule.

- 5) With the exception of the buying and selling of horses and ponies, no other commercial, industrial or business activities shall take place on any part of the site, including the storage of materials and goods.
- 6) No vehicle over 3.5 tonnes shall be stationed, parked or stored on this site.
- 7) No external lighting shall be put in place or operated on the site at any time other than that which has been previously submitted to and approved in writing by the Local Planning Authority as part of the scheme approved under Condition 3 of this permission.

\*\*\*\*\*END OF CONDITIONS\*\*\*\*\*