



## Appeal Decision

Hearing Held on 21 December 2017

Site visit made on 21 December 2017

**by David Murray BA (Hons) DMS MRTPI**

an Inspector appointed by the Secretary of State

**Decision date: 26<sup>th</sup> January 2018**

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**Appeal Ref: APP/N1920/W/17/3173518**

**Woodlands Yard, Shenleybury, Shenley, Radlett, Hertfordshire, WD7 9DJ.**

- 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 M Casey against the decision of Hertsmere Borough Council.
  - The application Ref. 16/0445/FUL, dated 16 June 2016, was refused by notice dated 19 October 2016.
  - The development proposed is the construction of an additional hardstanding, utility building, and small shed, and to vary condition 4 on TP/10/1826, granted on appeal on the 16 January 2012 (superseding the decision issued on 22 December 2011), to increase the number of caravans stationed on the land from 2 to 6.
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### Decision

1. The appeal is dismissed.

### Procedural matter

2. The application initially put forward purported to be on the basis that it sought a variation of a condition on a previous permission as set out in the final bullet point above, notwithstanding that an application form for 'full' planning permission was used. However, the appellant's current agent Mr Brown accepts that it is more of a hybrid application in that the proposal now involves the use of the land for a gypsy and traveller site involving the siting of three static mobile homes and three touring caravans, together with a utility building and the erection of a shed. These are proposed as shown on the submitted site plan - 'Plan 2 Proposed Site Layout', but none of these units or structures are proposed to be sited in accordance with the layout previously approved. The nature of the proposal would therefore be substantially and materially different to the earlier scheme and I propose to deal with the proposal as a full application in its own right.

### Main Issues

3. The main issues are:
  - Whether the principle of further traveller accommodation on this site accords with the development plan;
  - Whether the proposal amounts to 'inappropriate development' in the Green Belt and the effect on its openness;
  - The effect on the character and appearance of the area;

- The effect on the living conditions of the occupiers of neighbouring properties;
- The need for gypsy and traveller sites locally and whether the Council can demonstrate a 5 year supply of deliverable new sites; and
- The appellant and families' personal circumstances including the best interests of the child.

## **Reasons**

### *Background*

4. The appeal site comprises a 'L' shaped area of land which lies at the entrance to Shenleybury Cottages, a small estate of some 50, mainly semi-detached, properties grouped around a central oval grassed area, which lie in an area of countryside to the north of Shenley. The site has a belt of conifer trees, subject to a Tree Preservation Order (TPO), along the eastern boundary forming a frontage to Shenleybury Road (B5378) and there is a public footpath alongside the southern boundary of the site. Part of the northern and western boundaries of the site lie adjacent to the houses and gardens of No's 1, 3 and 5 Shenleybury Cottages. Access to the site is obtained from the housing estate road and while the access is enclosed by high solid entrance gates with brick piers and side walls I was advised that this structure is subject to enforcement action by the Council and a separate appeal and so is not a matter before me.
5. The appeal site and the surrounding area including Shenleybury Cottages are within and 'washed over' by the Green Belt which extends over about 80% of the Borough.
6. The planning history of the site is relevant to the appeal. It is common ground that the site was previously a communal garage court, and the concrete bases of the block of garages are still evident, but the garages were demolished at least 15 years ago. Also planning permission was granted on appeal in January 2012 under ref. APP/N1920/C/11/2151458 for the change of use of the land to a gypsy and traveller site for residential purposes with the siting of two caravans, a 'portaloo' and parking of associated vehicles (now referred to as the 2012 appeal). The permission is subject to 6 conditions No.1 of which limits occupation to gypsies and travellers as defined in Circular 01/2006 (as applicable then), and condition No.4 limits the caravans to only one static caravan and one touring caravan. It is apparent that the appellant bought the site in 2014.
7. At the time of the site visit, there was a large static caravan and two touring caravans on the site together with a 'portaloo' block but these were not in the positions shown on the submitted Plan 2 Site Layout Plan or the plan agreed pursuant to the 2012 appeal.

### *Policy Context*

8. The development plan documents that make up the Hertsmeare Local Plan 2012-2027 are the Council's Core Strategy (CS) adopted in 2013 and the Site Allocations and Development Management Policies (SADM) adopted in November 2016. Policies in this latter plan have varied between the Submission document, Main Modifications identified by the Inspector following Examination, and as adopted, and in part the policies applicable now differ

from those specified in the reasons for refusal of this application. For the avoidance of doubt, I have only referred to the policy numbers and the details of the SADMP as adopted.

9. The Council has commenced a Review of the Core Strategy in the formal plan making process with the intention that the plan will be submitted for examination in late 2018/early 2019.

*Whether the principle of the development accords with the development plan*

10. Policy CS6 relates to Gypsy and Traveller sites and the first part of the policy indicates that the Council will identify and allocate land to meet their identified needs up to 2017 in the SADM. I will deal with this under a subsequent main issue. The policy goes on to specify 11 criteria that will be used in identifying such land and determining applications and these are relevant to the appeal and this issue.
11. The policy does not put forward a specific criterion against the location of a new gypsy or traveller site in the Green Belt although the Council refers to criterion (x) which mentions a risk of flooding but indicates that other adverse effects on the built or natural environment are avoided and /or mitigated including compliance with the other key environmental policies in the CS. The Council says that this includes Policy CS13 on the Green Belt but it appears to me that criteria (x) is concerned with localised adverse effects comparable to the risk of flooding, and does not establish an objection in principle to the development of a gypsy or traveller site in the Green Belt. If that had been the clear intention of the policy it is likely to have been made an explicit criterion.
12. In terms of the other relevant parts of the policy, subject to the criteria (v), (vi) and (ix) concerning the effect on the nearest settled community which will be looked at under a separate issue, the proposal in principle meets criterion (ii) and its emphasis in using previous developed land. Further, the Council accepts that the location of the site broadly accords with the criteria (iii), (vii) and (viii) in terms of the proximity to key local services, the accessibility of the location and the access to the road network.
13. Subject to the caveats I have mentioned on the site specific impacts, I find that the principle of the development proposed does not conflict with the main locational criteria set out in the Core Strategy.

*Whether 'inappropriate development' in the Green Belt and the effect on openness*

14. Policy CS13 restates the presumption against inappropriate development in the Green Belt advanced in the National Planning Policy Framework (the Framework) which indicates that such development will not be permitted unless very special circumstances exist. The proposal does not form one of the local exceptions of 'appropriate' development as the site does not form part of any of the defined village envelopes as per Policy SADM23 nor does it lie in an area where the local boundary will be reviewed as per Policy SADM22. Therefore, if the proposal is inappropriate development there is a conflict with these parts of the development plan.
15. In terms of the Framework, the appellant accepts that the change of use proposed constitutes 'inappropriate development' in the Green Belt contrary to the provisions of paragraph 87 of the Framework and reiterated in paragraph 16 of the 'Planning policy for traveller sites' (PPTS). Further there is also a

need to consider the effects on the openness of the Green Belt and this includes a spatial as well as a visual aspect. In assessing this I will have regard to Policy SADM26 and the principles put forward particularly regarding the comparative scale of the existing and proposed development.

16. In assessing the effect on openness I have also borne in mind that the appeal site involves previously developed land but as the physical form of the garages is long gone I have taken as the baseline the form of development approved in the 2012 appeal. In this the Inspector concluded that the one static and one touring caravan would result in some actual harm to openness but it would be slight in extent. I have also taken account of the fact that the site lies alongside existing housing development.
17. The proposal would result in the number of caravans on site being increased to three static and three touring vans together with the ancillary structures of the utility room and the shed. Although the static vans would fall within the definition of a caravan, and would be capable of being moved, they would be likely to have a greater degree of permanence and visibility than touring vans. Compared to the form of the 2012 appeal scheme, the extent and degree of 'structures' proposed would have a materially greater effect on the openness of the Green Belt.
18. In terms of visibility, I noted at my site visit that while there is an extensive belt of mature trees along the boundary with the B5378, the canopies of the trees have risen so that some of the existing caravans on the site are visible from the public realm of the road. The presence of the static mobile home on the site was also visible above the boundary fence in views from the public footpath to the south of the site. Overall, while I acknowledge that at present the appeal site is reasonably well screened by vegetation, the existing caravans and screen fencing are visible from outside of the site and the visual impact of the proposed additional static and touring vans will be greater. Given that the screening effect of the mature trees cannot be relied on in the long term, the proposal would need considerable mitigation in the form of additional planting to screen the visual impact of the trappings of the site in the long term.
19. Overall on this issue, I conclude that the proposed use with the stationing of 6 caravans, ancillary structures, vehicles and associated paraphernalia would have a moderate harmful effect on the openness of the Green Belt. While the harm in terms of the visual aspect of Green Belt openness would not be substantial, there would need to be extensive additional planting/screening within the site to maintain this state in the long term.

*The effect on the character and appearance of the area*

20. The effect on the general character and appearance of the area is separate to the effect on the openness of the Green Belt but similar factors arise. Generally the site is screened by vegetation from views from the public realm and from the private gardens of neighbouring properties. However, one of the static mobile homes would be sited fairly close to the side boundary of No.3 Shenleybury Cottages and the scale of soft landscaped area shown on the site adjacent to the side garden of No.5 is not present on the ground. In my view the layout of the site shown on the submitted plan does not provide the best solution to minimise the effect of the caravans on the character and appearance of the area and if other aspects of the proposal were acceptable, an amended layout could be agreed and its implementation required by

condition. Such a layout could also make provision for more effective landscaping. With appropriate conditions I am satisfied that the proposal would not have a harmful effect on the general character and appearance of the area and I see no fundamental conflict with the requirements of part (ii) of the first element of Policy SADM30 regarding *Design Principles*.

*The effect on living conditions*

21. At the Hearing, residents raised their concerns about the impact of the current use by Mr Casey and the proposal for 6 caravans on the living conditions of their adjacent properties and emphasised that the inspector in the 2012 appeal had limited the scale of the use to a single household with a single static caravan and a touring caravan sited in the middle of the site leaving space around it. The concerns raised were mainly about the noise and disturbance arising from an intensive gypsy/traveller use and about this being at odds with the general housing next door. There was also an allegation about the appellant running a business from the site but Mr Casey said that he did not bring materials from his business home with him and there was no indication of such a use taking place when I did the site visit.
22. In assessing the impact of the proposed development I visited No. 5 and considered the proposal from the garden of this property and looked at the appeal site from a first floor room with a window facing south. There is some intervisibility between the houses at No.3 and 5 and the appeal site although there is much vegetation along the boundary with these properties. Some of the existing caravans are seen from the first floor window and the proposed 6 caravans would be more apparent but the view is at an oblique angle. From the ground floor windows and from the rear garden there would only be a limited view of the top of the caravans.
23. In terms of noise and disturbance, the residents refer to considerable disturbance when the static caravan was delivered to the site, but it appears to me that such disturbance would be limited in frequency and be similar to the temporary upheaval caused when a new house is built. It is unlikely that the movement of touring caravans would cause similar disturbance though their 'coming and going'. Separate to the movement of the caravans, the proposal would be likely to involve three households living on the appeal site and a general increase in activity and circulation around the residential occupation of the static caravans, tourers and the utility building compared to the scale of the lawful use as regulated by conditions. This activity would be in very close proximity to the adjacent gardens and houses.
24. Overall on this issue, I conclude that the visual effect of the proposal on the living conditions of the occupiers of the neighbouring properties would be slight, and this relationship could be further mitigated by additional planting and the repositioning of the static vans further away from the party boundary from the positions shown on the submitted layout plan. However, even taking account of this potential change, there would be likely to be a material increase in activity around the site which would have an adverse effect on the living conditions of immediate neighbours, in terms of noise and disturbance, and this would exceed the 'limited impact' on the amenity of neighbours put forward in criterion (ii) of the second part of Policy SADM30.

*Need and supply of new sites*

25. The PPTS requires Councils to identify and annually update a supply of specific and deliverable sites sufficient to provide 5 years worth of sites set against locally derived targets and identify broad locations for growth in future years. The Council refers to the Gypsy and Traveller Accommodation Assessment (GTAA) 2015 which indicated a need for an additional 25 pitches in the period 2014 to 2028. The Policy CS6 indicates that 2 pitches per year up to 2017 will be allocated in the SADM, and Policy SADM4 identifies the 9 pitches that are to be provided to meet this requirement.
26. The Council published in September 2017 an updated GTAA prepared by Opinion Research Services (ORS) and this differentiates between those gypsy and traveller households who continue to have a nomadic habit of life, as set out in the definition in the annex to the PPTS, and those who have ceased to travel on a permanent basis. The updated GTAA concludes that there is an outstanding need for 26 additional pitches for households who meet the PPTS definition in the period 2017-2036 which gives rise to an immediate need for 13 pitches in the five year period 2017-22. This is coupled with the needs of households who are said not to travel as 33 pitches over the period 2017-22.
27. The Council indicates that the process of finding land to accommodate future gypsy and traveller needs is best met through the Core Strategy (Local Plan) Review because there is a high likelihood that such sites, along with new housing and employment land allocations, will have to be found on land that is presently Green Belt. Therefore, a comprehensive review of the Green Belt boundary is necessary and is underway. In these circumstances it appears to me that the allocation of land for new sites will be unlikely prior to the adoption of the Review Plan in 2019 at the earliest.
28. Mr Brown for the appellant and Mr Jarman for the Council dispute the appropriateness of the distinction in gypsies and travellers and who are classed as no longer travelling, and appeal decisions and inspector reports on examinations are referred to in support of the different positions. In principle, the distinction does not appear to me to be inconsistent with the national guidance in the PPTS but, subject to legal judgements, this is principally a matter for discussion and assessment at examination into a development plan document. Further, while other detailed parts of the GTAA and the underpinning survey work are disputed, the simple fact is that a clear immediate need for additional pitches has been established and the Council cannot demonstrate how that need will be accommodated and will not be able to do so for at least another year.
29. I conclude on this issue that at the moment the Council cannot demonstrate a five year supply of deliverable sites in accordance with the PPTS and there is an unmet need for gypsy and traveller accommodation in the Borough.

*Personal circumstances and best interests of children.*

30. Before the part of the Hearing where the personal circumstances were discussed Mr Casey had felt unwell and had left, therefore Mr Brown put forward the appellant's circumstances as he recalled them.

31. The appeal site is occupied by the appellant, who is an Irish Traveller, his wife, a son aged 21 and a daughter aged 25, together with the appellant's cousin. The site is also intended to accommodate the appellant's son+ and his partner who are understood to be in temporary accommodation at the moment; together with another son and wife and their infant child. When touring these families stop at the site from time to time.
32. In terms of personal circumstances it appears that the appellant's immediate family care for the cousin who has a history of chronic illness and medical evidence of this illness was produced which goes back to 2004. In relation to children, there is one child in a family who occupies/or would occupy the site, but that child is below school age at the moment.
33. In assessing the personal circumstances, I have taken into account that the use of the site for residential purposes as a gypsy and traveller site is lawful subject to the conditions imposed. The Council also does not contest the appellant's status as a gypsy or traveller as defined in the PPTS. It is also a strongly held belief in the traveller community that elderly, sick or disabled members are cared for within the family rather than in separate institutional care.
34. In relation to the child, although the infant is not of school age, in years to come it would be in his best interest to have a stable base from which he could regularly attend the same local school for educational and social development. A permanent base would also aid post-natal and early year development with access to local permanent health facilities and home visits.
35. The availability of alternative sites for the appellant was also discussed at the Hearing. The Council suggested possible sites with vacancies but Mr Brown's knowledge of these sites suggested that there were no pitches available on these private sites outside of the immediate families involved. On the evidence put to me I am satisfied that there are no other alternative sites locally that are reasonably available to the appellant and the other households.
36. Bringing these strands together, the lawful use of the site would be able to accommodate some but not all of the appellant's wider family needs. However, if the appeal is dismissed, there is a clear likelihood that the households that now make up the wider family would be dispersed and some of the family would be faced with a life on the roadside. This would not support a gypsy or traveller way of life and would be likely to harm the best interest of the child in the long term and the medical needs of one individual for family support.

#### *Other matters*

37. At the Hearing some residents raised concern about highway matters and adequacy of the access to the site particularly for vehicles towing caravans. I considered this at the site visit and I noted that there is good visibility of the side road junction with the B5378. The access to the appeal site is located not far off this junction, therefore I can understand that from time to time there may be difficulties in manoeuvring a static caravan here. However the site access has been in place for many years and previously served about 20 garages. Given that the highway authority do not raise objection to the proposal I am satisfied that there is not a clear objection on highway grounds.

*Planning balance*

38. At the start of the planning balance I have borne in mind the duty placed on me within the Public Sector Equality Duty (PSED). I have also considered the best interests of the child in the appellant's wider family as a primary concern.
39. Bringing together the conclusions I have reached on the main issues I have found that, Green Belt issues aside, the proposed use of the existing gypsy and traveller site accords with some of the criteria set out in the relevant policy for the consideration of such new sites, Policy CS6, but I have fundamental concerns about the scale and activity arising from the proposed use with 6 caravans which would harm the living conditions of neighbours.
40. Moreover, the site lies in the Green Belt and the proposal is recognised to be 'inappropriate development' in the context of the Framework. I have also found that the proposed additional caravans, structures and the associated paraphernalia would have a moderate harmful effect on the openness of the Green Belt although the visual harm is partly addressed at the moment by screening from existing vegetation. Substantial weight has to be given to this harm to the Green Belt in accordance with paragraph 88 of the Framework.
41. These factors constitute significant adverse effects but they have to be balanced with those considerations which support the proposal.
42. I have found that while the Council has been able to show that in the last few years provision has been made to accommodate the needs of gypsies and travellers, at the moment there is a lack of demonstrable supply pending the preparation, examination and adoption of the Local Plan/Core Strategy Review. There is therefore unmet need at the moment.
43. In terms of personal circumstances, the proposal would enable the appellant's wider family to live together and provide care to each other and the settled base would be likely to support the present child in the family and his development and education in the long term. A refusal of permission would be likely to result in some of the family having to live on the roadside.
44. In weighing up the planning balance, the Framework makes clear that inappropriate development should not be approved unless very special circumstances exist and the PPTS indicates that in the Green Belt, subject to the best interests of the child, unmet need and personal circumstances are unlikely to clearly outweigh harm to the Green Belt and any other harm.
45. In this case, the local harm to neighbours that I have concluded the proposal would cause means that the proposal would conflict with the development plan when this is read as a whole. Even if I was to consider the use involving the residential occupation of 6 caravans on a temporary basis and require some limited change to the proposed layout of the site, such scale of use with 6 caravans is still likely to have a local harmful effect on the living conditions of neighbours.
46. Overall, I find that the other considerations raised, including the best interests of the child, do not clearly outweigh the harm to the Green Belt and the other harm in this case, and that as such very special circumstances do not arise. I conclude that the conflict with the development plan is not outweighed by other

consideration and this indicates that planning permission should not be granted on either a temporary or permanent basis. I also find that while the refusal of permission would be an interference with the appellant's property and his ability to further develop his home there, and therefore affect his Human Rights, these rights are qualified rights and such interference is necessary and proportional in the public interest.

### **Conclusions**

47. For the reasons given above I conclude that the appeal should be dismissed.

*David Murray*

INSPECTOR

## **APPEARANCES**

### FOR THE APPELLANT:

Mr P Brown, BA (Hons) MRTPI	Managing Director, Philip Brown Associates
Mr M Casey	Appellant

### FOR THE LOCAL PLANNING AUTHORITY:

Ms C Lyons, RTPI.	Head of Planning, Hertsmere Borough Council.
Mrs A Darnell,	Planning Policy Officer, Hertsmere Borough Council
Mr S Jarman, BSc, Dip TP.	Senior Research Executive, Opinion Research Services.
Mr G Atkinson.	Of Counsel, instructed by the Solicitor to the Council, Hertsmere Borough Council.

### INTERESTED PERSONS:

Cllr A Spencer	Local ward councillor
Cllr P Waine	Local ward councillor
Mrs R Gilligan	Parish councillor and local resident
Mr C Bourne	Local resident

(Other observers at the Hearing chose not to have personal information recorded.)

## **DOCUMENTS HANDED IN AT THE HEARING**

- 1 Copy of Appeal decision APP/P240/W/17/3167872 - from Mr Brown.
- 2 Copy of Mrs Heine's letter of 10 April 2016, from the Council.
- 3 Copies of aerial photographs of the site and its surroundings (undated), from the Council.