



Appeal Decision

Inquiry held on 15 and 16 June 2010

Site visit made on 16 June 2010

by **Susan Heywood BSc(Hons) MCD**
MRTPI

an Inspector appointed by the Secretary of State
for Communities and Local Government

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Decision date:
24 August 2010

Appeal Ref: APP/C3430/A/10/2122649

Pool House Barn, Slade Heath, Staffordshire, WV10 7PH

- 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 Steven Davies against the decision of South Staffordshire Council.
- The application Ref 09/00522/FUL, dated 13 July 2009, was refused by notice dated 6 November 2009.
- The development proposed is the use of land for the stationing of caravans for the residential purposes for 4 no. gypsy pitches together with the formation of additional hard standing and communal utility / day room ancillary to that use.

Summary of Decision: The appeal is allowed subject to the conditions set out in the formal decision below.

Application for costs

1. At the Inquiry an application for costs was made by Mr Steven Davies against South Staffordshire Council. This application is the subject of a separate Decision.

Preliminary Matters

2. The appellant and his wife are already living on the site in a mobile home while the conversion of Pool House Barn is underway. One of the appellant's daughters, Charlene Biddle, also lives on the site with her husband. The appellant's remaining daughter (Stacey Hodgkins) and her family and the appellant's son (Steven Davies Jnr) and wife are not currently living on the site.

Main issues

3. There is no dispute that the appellant and family are gypsies as defined in Circular 1/2006 'Planning for Gypsy and Traveller Caravan Sites' (Circular 1/06). The parties agree that the development constitutes inappropriate development in the Green Belt and I concur. Accordingly, the main issues are:
 - i. the impact of the development on the openness of the Green Belt and on the purposes of including land within it;
 - ii. the impact of the development on the character and appearance of the surrounding countryside;
 - iii. whether the harm to the Green Belt by reason of inappropriateness and any other harm, is clearly outweighed by other considerations, so as to
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amount to the very special circumstances necessary to justify the development.

Reasons

Impact on Green Belt, openness and purposes

4. Policy D5B of the Staffordshire and Stoke-on-Trent Structure Plan advises that inappropriate development within the Green Belt will not be approved except in very special circumstances. Policy GB1 of the South Staffordshire Local Plan advises that inappropriate development will not be in accordance with the Plan. Paragraph 3.2 of Planning Policy Guidance Note 2 'Green Belts' (PPG2) advises that inappropriate development is, by definition, harmful to the Green Belt and substantial weight will be attached to that harm.
5. PPG2 advises that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open and that the most important attribute of Green Belts is their openness. I acknowledge that the amount of development on the site would be less than many other 4 pitch gypsy sites, which would be likely to require 4 separate utility rooms in addition to static and touring caravans. Nevertheless, the development would introduce a number of structures and features onto land which would otherwise have been undeveloped. I consider that the amount of development proposed would cause significant harm to the openness of the Green Belt.
6. PPG2 also sets out the five purposes of including land in the Green Belt. The parties agree that the development would only affect one of those purposes, that of safeguarding the countryside from encroachment and I agree with this view. The site lies adjacent to a ribbon of buildings on the north eastern side of Old Stafford Road. The westernmost pitch and the utility building would lie within the general building line at the rear of those buildings and the adjoining development at The Spinney. However, the remainder of the development on the eastern portion of the site would extend beyond this general building line and would project towards the surrounding countryside. I therefore consider that the development on the easternmost part of the site would have the most impact in terms of encroachment. This part of the development would cause a moderate amount of harm to the purpose of safeguarding the countryside from encroachment.
7. I note the appellant's argument that the westernmost part of the site is previously developed land and cannot therefore result in encroachment. I deal later in this decision with the advice in Circular 1/06 in relation to the use of previously developed land. As I have concluded that the westernmost part of the site does not result in harm to the purpose of preventing encroachment in any case, it is not necessary for me to deal with this issue further.
8. The significant harm to the openness of the Green Belt and the moderate harm caused by conflict with one of the purposes of including land in the Green Belt add to the substantial harm by reason of inappropriateness.

Character and appearance

9. The appeal site is screened to a large degree by existing substantial vegetation on its northern and southern boundaries and the southern boundary of the

adjoining site at The Spinney. This screening would ensure that only glimpses of the development would be gained from open land to the north. The roofs of the three mobile homes at the eastern end of the site would be visible from the open land to the south. Two of the mobile homes (those already sited on the land) are also visible from Old Stafford Road.

10. The frontage of the appeal site lies adjacent to a cluster of dwellings alongside Old Stafford Road. Accordingly, residential development of the appeal site is in keeping with the character of surrounding uses. In addition, the development is of a similar design to that on The Spinney (a separate gypsy site) to the south. The structures which are (and which would be) visible on the appeal site are not unduly large, prominently sited or intrusive in their surroundings.
11. I note that the site is located within a Landscape Improvement Area as defined in the South Staffordshire Local Plan. Policy LS10 requires that in such areas existing landscape features and wildlife habitats should be conserved and native planting incorporated. The Council accepted that the development would not conflict with that policy. A landscaping condition can be imposed to ensure that the development complies with this policy and on this basis I agree with the Council on this matter.
12. I therefore conclude that the development would not cause harm to the character and appearance of the surrounding area. It would not therefore conflict with the design criteria contained in Local Plan policy BE26.

Previously developed land

13. Paragraph 55 of Circular 1/06 advises that in some cases, perhaps involving previously developed land, gypsy sites can be seen as enhancing the environment and increasing openness. I have concluded that the development would cause no harm to the surrounding area. However, I do not consider that its design or layout would be such that it could be considered to enhance the environment, particularly as there is no suggestion that the land was in an unsightly state prior to the development commencing. In addition there is no suggestion in this case that the development would increase openness. Accordingly, even if I were to decide that part of the site is previously developed land, I do not consider that additional weight would be afforded to the development as a result of the advice in paragraph 55 of Circular 1/06.

Other considerations

Need and Alternative Sites

14. There are no policies contained in the South Staffordshire Local Plan specifically relating to development for gypsies.
15. The South Staffordshire Local Development Framework Core Strategy (CS) Development Plan Document Policy Choices Consultation proposes Policy H4 in relation to gypsies, travellers and travelling showpeople. Policy H4 identifies a need for 30 pitches from 2007-2012, 12 pitches from 2012-2017, 15 pitches from 2017-2022 and 17 from 2022-2027. However, little weight can be given to this policy as it has only reached an early stage in its adoption.
16. At the time of the Inquiry, the Government had indicated its intention to abolish Regional Strategies, but the abolition took place after the close of the

Inquiry. However, notwithstanding the (then proposed) abolition, the Council accepted that there is an immediate and substantial need for the provision of gypsy pitches in the District. They accepted the assessment of need as demonstrated in The Southern Staffordshire and Northern Warwickshire Gypsy and Traveller Accommodation Assessment (2008) (GTAA), which identifies a need for 32 pitches in South Staffordshire between 2007 and 2012.

17. The Government's guidance document on the revocation of Regional Strategies advises that GTAAs form a good starting point for any review of levels of provision. I am therefore satisfied that the figures in the GTAA and accepted by the Council, provide a good indication of the level of need in the District.
18. The Council state that a total of 24.5 pitches have been approved since 2007 leaving an unmet need for 7.5 pitches¹. 6 of the pitches in the Council's figure of 24.5, on a site at Hospital Lane, were granted a temporary consent to 2011. I do not consider that these pitches count towards meeting the need to 2012 as there is no guarantee that the site will be granted a permanent planning permission at the end of the temporary period. I note that the Hospital Lane site has now been put forward for consideration as part of the Council's call for gypsy sites. But the Council's witness estimated that the site allocations Development Plan Document (DPD) would not be adopted until mid 2013. This document is at such an early stage in its preparation, that very little weight can be attached to it in the consideration of whether the Hospital Lane site will meet part of the long term need. Accordingly I have discounted the 6 temporary pitches from the figure of those approved and consider that the unmet need is for 13.5 pitches (or 13 on the appellant's figures) to 2012.
19. The Council indicated that there are a number of outstanding appeals and an undetermined planning application which, if they are all approved, would lead to a substantial oversupply of gypsy pitches in the District. Whilst I acknowledge the Council's concern in this regard, not all of those developments will necessarily be granted planning permission. I have assessed the appeal before me having regard to the circumstances which now exist. Any subsequent proposals should be assessed having regard to the up to date situation at the time of their determination.
20. I consider that it is clear that the appellant and family have a need for a site, given their cultural background. I also note their desire to live together as a family unit. I acknowledge that the appellant does not appear to have searched for an alternative site prior to making an application to live on the appeal site permanently. Circular 1/06 advises that alternatives should be explored before Green Belt locations are considered. However, I am mindful of the judgement in *South Cambridgeshire v SSCLG & Brown [2008]* in which it was held that there is no requirement on the appellant to prove non-availability of alternative sites. Furthermore, a large proportion of the District is in the Green Belt, so even if the appellant had searched for an alternative site, there is a high probability that the alternative site would also be in the Green Belt. I therefore give very little weight to the lack of a search for alternative sites.

¹ There is a dispute between the parties as to the 0.5 pitch. The appellant states that this relates to one site which has 3 caravans for a large family, but is only one pitch. The Council have assessed the site as providing 1.5 pitches.

21. The Council say that there may be pitches available at the Oak Tree site which could accommodate the appellant and family, but they presented no evidence to support that view. The appellant's evidence is that due to a dispute with the owner of that site, pitches would not be available to him at Oak Tree. I therefore give very little weight to the Council's assertion of the availability of pitches on that site.
22. There is no evidence before me that there are any other sites available for the appellant and his family to move to if planning permission for this site is refused. Charlene and her husband would, in all likelihood, be required to vacate the site (which has to be regarded at their home) without any certainty of suitable alternative accommodation being readily available. This would represent a significant interference with their home and family life.
23. Stacey and her family and Steven (Jnr) and his wife do not currently live on the site, but they would be required to continue their existing itinerant lifestyle if this appeal is dismissed. It may be the appellant's intention for him and his wife to remain on the site in the mobile home connected with the conversion of the barn if this appeal is dismissed. But I consider that it would be unsatisfactory that they would find it necessary to 'bend' planning rules in order to remain in their home and this would also create uncertainties for them as to the lawful status of their home in the long term. I consider that dismissal of this appeal would represent an interference with the home and family life of the appellant and his wife and that of Stacey, Steven (Jnr) and their families, although to a lesser degree than for Charlene and her husband.
24. The undisputed need for gypsy sites in the District and the lack of available alternative sites both attract substantial weight in favour of allowing the appeal. The likelihood of an alternative site also being in the Green Belt adds a moderate amount of weight in its favour.

Education and Health Needs

25. There are currently no school age children living, or proposed to be living on the site. I acknowledge that Stacey's child will require schooling in the next few years and it is also possible that the young married couples will have additional children in the coming years. At present though, there are no existing or imminent education requirements for the families which lend weight in favour of the appeal development.
26. The appellant and his wife both have health needs and therefore benefit from having a settled site from which to gain access to medical care. Indeed all of the existing and proposed residents would benefit from this. However, the health needs of the families could equally easily be met from any settled site. That having been said, the evidence does not demonstrate that there are any other sites for them to move to. Accordingly, the health needs of the appellant and his wife and the benefits of a settled base in terms of access to healthcare for all existing and proposed residents of the site provide some weight in favour of this appeal.

Policy considerations

27. The Council stated that they consider the application and appeal to be premature in that Core Strategy policy H4 is still in the process of preparation.

However, ODPM publication 'The Planning System: General Principles' advises that where a DPD is at consultation stage, as is the case with policy H4, then prematurity should not be advanced as a reason for refusal due to the delay which this would impose in determining the future use of the land in question.

28. The Council's current estimate for adoption of their Core Strategy (including policy H4) is mid 2012 with the site allocations DPD adopted in mid 2013. These timescales represent a considerable slippage on those identified in the Local Development Scheme and are themselves uncertain given the likely impact on the production of these documents caused by the revocation of Regional Strategies. On this basis, I give very little weight to the argument that the development is premature.
29. One of the aims of Circular 1/06 was to increase significantly the number of gypsy sites with planning permission over a period of 3-5 years from the date of the Circular ie. by 2011. It is clear that this will not be achieved in the District through the development plan process. The failure of the development plan to meet the identified need provides significant weight in favour of the appeal.

Whether the harm is clearly outweighed by other considerations

30. PPG2 (paras. 3.1 and 3.2) sets out the general presumption against inappropriate development within the Green Belt. It states that such development should not be approved except in very special circumstances. Very special circumstances to justify inappropriate development will not exist unless the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations.
31. I have concluded that the development would cause substantial harm by reason of inappropriateness. It would also cause significant harm to the openness of the Green Belt and moderate harm to one of the purposes of including land within it. No harm would be caused to the character and appearance of the surrounding area, but this is not a positive benefit in favour of the development, it merely adds no additional weight against it.
32. On the other hand, I have given substantial weight in favour of the development to the need for gypsy sites in the District and substantial weight to the lack of available alternative sites. The failure of the development plan to meet the identified need attracts significant weight in favour of the appeal. The high likelihood of alternative sites also being in the Green Belt attracts a moderate amount of weight in its favour. I have also given some weight in favour of the development to the health needs of the appellant and family.
33. Taken together I consider that the other considerations in favour of the development clearly outweigh the harm to the Green Belt. In my view, looking at the case as a whole, very special circumstances exist to justify the development. The development would not therefore conflict with the advice in PPG2 or Structure Plan policy D5B.
34. In undertaking my duties under Article 8 of the Human Rights Act, I find that the significant interference with Charlene and her husband's rights and the lesser interference for the remaining existing and proposed occupants if I were

to dismiss the appeal, would be disproportionate to any public benefit arising from such a decision.

35. I have noted the appeal decisions provided by the Council in which proposals for a two pitch gypsy site (APP/C3430/A/09/2114192) and for an amenity building (APP/C3430/A/09/2103240) were dismissed. In those cases, the Inspectors found that other considerations did not outweigh the identified harm and that very special circumstances did not exist to justify the development. A finding of very special circumstances applies to the consideration of the case as a whole and the weight given by the decision maker to the harm and other considerations will differ in each case. Accordingly, there is no conflict between my decision and those identified above, where the weight of the other considerations were not found to clearly outweigh the harm in those cases.
36. I have noted the concerns raised by interested parties relating to flooding, safety issues and property values. The Environment Agency raises no concerns in relation to flooding subject to the imposition of conditions which is dealt with below. On this basis, I do not consider that potential flooding is an issue which lends weight against the development. Matters raised in relation to site safety are covered by other legislation and reduction in property values are not a material planning consideration.

Conditions

37. A condition is required restricting the use to gypsies and travellers only, due to the special considerations applying to development by the gypsy and traveller community. A condition is also required to ensure that the development is constructed in accordance with the submitted plans, for the avoidance of doubt and in the interests of proper planning. In order to protect the appearance of the area and the living conditions of nearby occupiers, it is necessary to impose conditions covering the following matters: the submission of details of materials for the utility building; restricting commercial vehicles and activities; controlling the siting of caravans / mobile homes and restricting their number and type; requiring the submission of lighting details; re-surfacing and maintenance of the access; landscaping and boundary treatments and parking and turning areas. Drainage details and finished floor levels should be submitted to ensure that the site is properly drained and that flood risk is mitigated.
38. The Council suggested that the development should be allowed for a temporary period only. However, I have concluded that very special circumstances exist to justify this development on a permanent basis and as such, it is not necessary to restrict the permission to a temporary period.

Overall Conclusion

39. I conclude that the other considerations in favour of the development clearly outweigh the harm to the Green Belt. Looking at the case as a whole, I have concluded that very special circumstances exist to justify the development. Accordingly, having regard to all other matters raised, I conclude that the appeal should be allowed.

Formal Decision

40. I allow the appeal, and grant planning permission for the use of land for the stationing of caravans for the residential purposes for 4 no. gypsy pitches together with the formation of additional hard standing and communal utility / day room ancillary to that use at Pool House Barn, Slade Heath, Staffordshire, WV10 7PH in accordance with the terms of the application, Ref 09/00522/FUL, dated 13 July 2009, subject to the following conditions:
- 1) The site shall not be occupied by any persons other than gypsies and travellers as defined in paragraph 15 of ODPM Circular 01/2006.
 - 2) The development hereby permitted shall be carried out in accordance with the plans numbered 08_238_001, 08_238_002 and 08_238_003.
 - 3) Before the utility / day room is constructed, details of its external materials shall be submitted to and approved in writing by the local planning authority. The building shall be erected in accordance with the approved details.
 - 4) No more than one commercial vehicle per plot shall be stationed, parked or stored on the land for use by the occupiers of the caravans hereby permitted. No more than one such vehicle shall be up to 17.5 tonnes. All other vehicles shall not exceed 3.5 tonnes.
 - 5) No commercial activities shall take place on the land, including the storage of materials.
 - 6) The caravans shall be sited in accordance with plan No: 08_238_002. Any material change to the position of a mobile home, or its replacement by another mobile home in a different location shall only take place following the written agreement of the Council.
 - 7) No more than 8 caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 (of which no more than 4 shall be static caravans or mobile homes) shall be stationed on the site at any time.
 - 8) The use 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 for: the means of foul and surface water drainage of the site; the finished floor levels of the caravans and utility / day room; proposed and existing external lighting on the boundary of and within the site; resurfacing and maintenance of the existing access 6 metres from the rear of the carriageway edge; landscaping and boundary treatment; parking and turning areas (hereafter referred to as the site development scheme) shall have been submitted for the written approval of the local planning authority and the said scheme shall include a timetable for its implementation.
 - ii) if within 11 months of the date of this decision the site development scheme has not been approved by the local planning authority or, if the local planning authority refuse to approve the scheme, 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 site development scheme shall have been approved by the Secretary of State.
 - iv) the approved scheme shall have been carried out and completed in accordance with the approved timetable.
- 9) At the same time as the site development scheme required by condition 8 above is submitted to the local planning authority there shall be submitted a schedule of maintenance for a period of five years of the proposed planting commencing at the completion of the final phase of implementation as required by that condition; the schedule to make provision for the replacement, in the same position, of any tree, hedge or shrub that is removed, uprooted or destroyed or dies 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.

Susan Heywood

INSPECTOR

