
Appeal Decision

Inquiry held on 8 and 9 December 2015

Site visit made on 14 December 2015

by **S J Papworth DipArch(Glos) RIBA**

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

Decision date: 10 February 2016

Appeal Ref: APP/P0119/W/15/3065767

Land at Shortwood Road, Pucklechurch, Bristol BS16 9PQ

- 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 J McDonagh against the decision of South Gloucestershire Council.
 - The application Ref PK14/2889/F, dated 18 July 2014, was refused by the Council by notice dated 4 March 2015.
 - The development proposed is the use of land for the stationing of caravans for residential purposes for 2No gypsy pitches together with the formation of additional hardstanding and utility/dayrooms ancillary to that use.
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Decision

1. I allow the appeal and grant planning permission for the use of land for the stationing of caravans for residential purposes for 2No gypsy pitches together with the formation of additional hardstanding and utility/dayrooms ancillary to that use at Land at Shortwood Road, Pucklechurch, Bristol BS16 9PQ in accordance with the terms of the application, Ref PK14/2889/F, dated 18 July 2014, and the plans submitted with it, namely 14_617_001, 002, 003 and 004, and subject to conditions 1) to 7) on the attached schedule.

Procedural and Preliminary Matters

2. The Inquiry sat on 8 and 9 December but due to the lack of natural light at the end of proceedings at the venue, it was necessary to carry out the site inspection in the following week. Also, to avoid delay through the need to resume the Inquiry at a later date, final submissions were sent in writing to an agreed timetable. The Inquiry was adjourned on 9 December in case this process led to the need for a further sitting. In the event this was not necessary and the Inquiry was closed in writing on 29 December 2015.
 3. The parties have agreed that the proposal would be inappropriate development in the Green Belt, but that conditions could sufficiently mitigate the effects on the character and appearance of the area alleged in the Council's second reason for refusal. The Council no longer rely on that aspect of the reason, but retain their other objections. Following the site inspection, those conclusions as to the use of conditions are concurred with now and will inform the main issues that follow.
 4. The gypsy status of both James and Jason McDonagh is not at issue, and having mind to the definition in Annex 1 of the August 2015 Planning Policy for
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Traveller Sites this appears correct. The Council do not agree a similar status for the other family members, including children, but the circumstances of the families will be considered as part of the reasons to this Decision.

Main Issues

5. The main issues are;

- The effect of the proposal on the openness of the Green Belt and the purposes of the Green Belt.
- The effect of the proposal on the aims of Planning Policy for Traveller Sites and the National Planning Policy Framework on the location and sustainability of development.
- Would the harm by reason of inappropriateness, and any other harm, be clearly outweighed by other considerations. If so, would this amount to the very special circumstances required to justify the proposal.

Reasons

Policy

6. South Gloucestershire Local Plan Core Strategy 2006-2027 Policy CS5 on the location of development states that in the open countryside, new development will be strictly limited and the extent of Green Belt will remain unchanged. Proposals for development in the Green Belt other than small scale infill within certain settlements and community right-to-build orders will need to comply with the provisions in the NPPF or relevant policies in the Core Strategy. Policy CS21 is specific to gypsy and traveller accommodation and states that provision will be made through the Policies, Sites and Places Development Plan Document, or a replacement Local Plan, whichever is the sooner, following a review of the need for further pitches up to 2027. Applications for windfall sites will be considered having regard to the outstanding level of need and in accordance with the most recent Government guidance. Sites are to meet various criteria, all of which are agreed in the Statement of Common Ground to be met, and preferably be within a reasonable distance of local services and facilities, though more remote sites may be acceptable. Proposals for sites within the Green Belt or Cotswold Area of Outstanding Natural Beauty will only be acceptable where it can be demonstrated that very special circumstances exist. The rural areas are the subject of Policy CS34 which includes the protection of the Green Belt.
7. The National Planning Policy Framework sets out in section 9, '*Protecting Green Belt Land*' the relevant considerations: The Government attaches great importance to Green Belts; the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; and the essential characteristics of Green Belts are their openness and their permanence.
8. The Planning Policy for Traveller Sites was amended in August 2015 and it is this amended statement of Central Government policy that was addressed by the parties to this appeal and which will be considered in this reasoning.

Openness and Purposes of the Green Belt

9. The site is open land set between an existing traveller's site to the east, which extends from the road frontage to the same rear line as is now proposed; and

a tall hedge to the west, abutting an access track to premises further up the hill, the first part of which would serve the appeal site. To the road frontage a fence in front of the adjoining existing pitch extends across the foot of the appeal site, and to the north there is further open grazing land, rising to a hedgerow. Within that grazing land are some undulations in level that do not appear natural, and may be deposited earth, now grown-over with grass.

10. The wider landscape consists of open land beyond the existing pitches to the built form of Pucklechurch to the east, with further agricultural land to the north and west, with sporadic dwellings along Shortwood Road, and land falling away southwards from that highway.
11. As a matter of fact, the open nature of the land would be adversely affected by the stationing of the proposed caravans and the erection of the utility or day rooms. Whilst the Council confirm that some hardstanding is lawful, the proposed use of the land would provide for other items such as domestic paraphernalia, children's play equipment and the like which would also erode the openness of the area. Whilst the site is shielded from public view to an extent, the loss of openness that the proposal would bring about would be real and would extend over a significant part of the site. The Framework makes clear that an essential characteristic of Green Belts is their openness, and therefore substantial weight attaches to this adverse effect.
12. The Council claims also that there would be harm by reason of encroachment, and one of the purposes of Green Belt set out at paragraph 80 of the Framework is to assist in safeguarding the countryside from encroachment. The Council makes clear that the northern plot is the main concern due to the hardstanding there not being considered lawful and being subject to an extant and effective enforcement notice.
13. As stated with regard to openness, the proposal would place items where none exist at present. However, the extent of encroachment would be tempered and its effect moderated by the existence of the access track to the west and the established and lawful pitches to the east, such that the area of land that comprises the appeal site does not appear to be a substantial part of the countryside, that role being more clearly taken by the continuous land to the north, which extends along the back of both the appeal site and the adjoining pitches. There would be an element of encroachment, but the weight attaching to this harm is limited by the proximity of other development and the narrow width of the site.

Location and Sustainability

14. The second reason for refusal refers to the site being within the open countryside where development should be strictly limited. The 2015 revision to Planning Policy for Traveller Sites has added the word *very* to the previous wording with regard to sites in the open countryside so that the former paragraph 23 now reads in the new paragraph 25 that authorities should very strictly limit new traveller site development in open countryside that is away from existing settlements or outside areas allocated in the Development Plan. The appellant expressed a view as to the reasons for this change, but the intent is clear; the policy is to be applied more strictly than previously.
15. There were differences between the parties over the significance of the *open* countryside rather than the more common usage in planning policy, such as

the Framework, where openness and land being open relate to Green Belt policy but not with reference to the countryside. Be that as it may, the site is in the countryside, away from the existing settlement of Pucklechurch, in that it is outside the settlement boundary and not adjoining it. It is however not a great distance in a direct line from the boundary and from built form, and is adjoining the other previously permitted, and now permanent, pitches. As a matter of fact the site is within open countryside away from the settlement, but as a matter of degree, the harm caused would be limited.

16. It is true that the route to the settlement involves some use of the unlit and narrow part of Shortwood Road, and that part is subject only to the national speed limit. However, the site inspection revealed a dedicated and separate path to the east of the road near the settlement that is continuous with footways near the prison and business properties, and the more recent laying of a generous width of footway and cycle track from opposite the proposed site entry westwards. There is a gap between these two paths, but a sign at the eastern end of the latter made clear the intention to fill the gap, stating that the link to Pucklechurch is under development. There appears room to carry out this work to provide an uninterrupted segregated route for pedestrians and cyclists. As a result, the site is not so distant or so remote from the settlement that it should be regarded as being in an unsustainable location.
17. There is presently therefore some additional harm through the site's location, but there is a distinct likelihood of accessibility to services being improved, and as it is agreed that there is no harm to the character and appearance of the area, subject to conditions, limited weight attaches to this with regard to the aims of paragraph 25 of Planning Policy for Traveller Sites.

Other Considerations

18. Harm has been found by reason of this being inappropriate development in the Green Belt, together with harm to openness, and through some encroachment and the locational shortcomings of the proposal when considered against paragraph 25 of Planning Policy for Traveller Sites, although the latter two matters are limited in effect for the reasons previously detailed. Framework paragraph 88 says that when considering any planning application, substantial weight should be given to any harm to the Green Belt. 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. Those matters put forward will now be considered.
19. *The likelihood of Green Belt land being required.* The appellant claims that there would, in any event, be a certainty of traveller sites being required to be located in the Green Belt as a result of the plan-making process. It does appear to be the case that only some 25% of land within the Council area is outside the Green Belt or otherwise constrained by urban development or the Area of Outstanding Natural Beauty, and that land is mainly to the north of the Council area. It also appears to be the case that all traveller sites in the emerging Policies, Sites and Places Development Plan Document are in the Green Belt as presently designated.
20. However, paragraph 17 of the Planning Policy for Traveller Sites makes clear that Green Belt boundaries should only be altered through the plan-making process and not in response to a planning application. Any alteration to Green Belt boundaries to accommodate traveller sites, as with other development,

should be carried out as part of the plan-making process with all available sites being considered. This application does not seek alteration of any boundary in fact, and whilst the effect of a permanent permission would be similar. Whilst the harm through a temporary permission would persist for the life of that permission, both the Framework and Planning Policy for Traveller Sites provide for use of Green Belt land in very special circumstances. If the appellant were not seeking use of this Green Belt site, it would be quite likely to be another Green Belt site. The progress with the Development Plan Document has been delayed and this fact is a material consideration of moderate weight when considering the immediate needs of the appellant.

21. *Five year supply of sites.* It is an agreed position, as set out in the Statement of Common Ground, that the Council cannot demonstrate a five-year supply in respect of gypsy and traveller sites, as sought in paragraph 10 of Planning Policy for Traveller Sites. Paragraph 27 goes on to state that this is a significant material consideration in any planning decision for the grant of temporary permission, but further states the exception where the site is on Green Belt land, as here. However, the application is for permanent use and the consideration of very special circumstances remains as set out in both the Framework and Planning Policy for Traveller Sites. The effect of the stated exception in the Green Belt is over the weight to be applied, now advised to be less than significant.
22. *Need.* There is unmet need in the Council area, as set out in the '*South Gloucestershire Council and The City of Bristol Council Gypsy, Traveller and Travelling Showpeople Accommodation Assessment*' (January 2014). The appellant has analysed the information used in the document and makes numerous criticisms of the methodology, and hence findings. Consideration of the appellant's evidence, including the Need Statement, would lead to the conclusion that the number of unauthorised households is too low; being stated as a single household there is no room for uncertainty and the appellant suggests figures in the order of 50 to 60 times greater. The number of concealed households is stated to be too low, excludes single people with no children, and is based on a less than 50% sample for interview. There is good evidence of doubling-up on sites which has not been either disputed or taken into account and the loss of four pitches at Tall Trees has not been taking into account, even if that was only four families, which the appellant disputes. The hidden need of those in bricks and mortar accommodation has also been questioned. The situation regarding waiting lists is unexplained, there being 226 stated in the assessment, of which only 8 are considered to be gypsy and travellers. As stated by the appellant, this appears to indicate that 218 families who are not gypsies are on a waiting list for gypsy and traveller sites, although the Council does operate an 'open' list. Lastly the appellant queries the growth rate used of 2.5%, preferring a rate of 3%.
23. Against these assertions, which appear well-researched and well-presented, the Council chose not to put the authors of the assessment forward for cross-examination, and seek to reduce the weight attaching to these matters, rather, relying on the intended refresh of the survey findings and the eventual publication of an update. The Council also place weight on the possibility of numbers, and hence need, reducing as a result of the August 2015 change to the definition of gypsy and travellers in Annex 1 of Planning Policy for Traveller Sites. However, whilst the new definition would be most unlikely to increase numbers, the scope for significant decrease is untested, as is any first-hand

- defence of the figures criticised by the appellant. On the face of the evidence before the Inquiry the assessment appears likely to be an under-estimate of need.
24. *Alternative Sites.* It is accepted that there are no suitable alternative sites available generally, and hence not to the appellant, his brother and their families in particular. Reference was made by the Council to the possibility of a site coming forward at Leachpool Dairy but it is not available now and there is no evidence as to when the pitches would be likely to become available or the intentions of the owner of this private site. As stated in paragraph 24b of Planning Policy for Traveller Sites the availability (or lack) of alternative accommodation for the applicants is a relevant matter to be considered.
25. *Failure of Policy.* The policy situation is unresolved at present, although the Council do have an up-to-date Core Strategy adopted in 2013, after the publication of the Framework. The need to undertake work for the gypsy and traveller accommodation assessment, and then use those findings in the Development Plan Document implies a further delay in addition to delays and failures to make provision of sites from the date of a 2006 Secretary of State Direction. This state of affairs was identified again in an Appeal Decision in July 2015 (APP/P0119/A/14/222812) when the Inspector concluded that the general need for sites in the District was a significant factor weighing in favour of the appeal proposal that was before her, a site within the Green Belt. It is the case that the appeal was dismissed but the facts that led to that finding do not appear to have changed in the short time intervening. There has been a failure of policy over a significant period, and whilst steps are being taken to redress these failings, they persist at present.
26. The Council questioned whether it was correct to aggregate unmet need, a lack of a five-year supply and failure of policy, arguing that they amounted to the same thing. Certainly there are causal links, and one might be said to lead from another, but the unmet need is a current failing, the lack of a five-year supply is indicative of failings to meet that need in the future as well, and the failure of policy that has led to the present situation can be traced back at least to 2006. It would be possible for one or two of these factors to exist without a third and so in the balance, each should be accorded weight where they all occur, as here.
27. *Personal Circumstances.* As suggested by the appellant, this may not be required in the balance, but it is right to consider it now. The named appellant is Jason McDonagh and it is stated that occupation of the site would include also his brother James and both their families. The appellant lists eight children to be accommodated including his new-born child. Both Jason and James supplied witness statements to the Inquiry and gave evidence which was subject to cross-examination. Various assertions had been made as to whether the appellant has lived in a house and whether he could have remained at the transit site, rather than now being on an illegal encampment in Leicester. It is the case that his brother James has stayed at the transit site, but it is clear that this is in contravention of the licence, and is an arrangement that cannot have a long-term future. Evidence was given as to the conditions at the site, and Jason clearly made a personal decision to leave in the interest of his family's health, backed by the requirement of the licence not to stay.

28. The situation with Jason is of life on an illegal encampment, with all that this entails in terms of lack of access to services. The situation with James is different but not acceptable in his view as his family has split-up as a result of the stress of having to leave a previously settled base at Tall Trees, with his wife and children living in a house at Bristol for the last three years and he and a son living on the transit site, occupation of which has been extended for a short while, but in breach of the licence. Neither of the brothers can be said to be in acceptable accommodation, and whilst the family living in Bristol have access to education and healthcare, it is said that their preference is not to be in bricks and mortar. The separation of the family is not likely to be in the best interest of the children. The findings in this Decision on the accessibility of the site to Pucklechurch, with the intention of the missing footpath and cycle link being made-good, provide for users of the site to have access to education and healthcare were they to be living here.
29. The use of the appeal site is stated as providing for Jason to have a settled base rather than on the roadside or illegal encampments, and the family of James to be re-united. James is clear as to this happening, but there is no corroborative evidence from his wife Helen, even as a witness statement. The situation is therefore of a lack of first-hand evidence that could be tested at the Inquiry as to the assertions over Jason having lived in a house, as opposed to the first hand testimony of both James and Jason, set against the lack of first-hand evidence from Helen over her hopes and intentions. The evidence is that the appellant, his brother and their families have been very adversely affected by the situation that they are now in and that there is a distinct possibility of their use of the site improving the situation for the children.
30. With regard to the gypsy status of the other family members, the evidence is of a temporary cessation of travelling resulting from the breakdown in the relationship, this stated to be due to the stress of losing accommodation from which to travel. Access to education and health plays a part in this temporary arrangement and hence the family member's situation is in accordance with the new definition in Annex 1 of Planning Policy for Traveller Sites.

Green Belt and Planning Balance

31. The various matters put forward other than the personal circumstances of the families are in the process of being addressed, albeit with some uncertainty over the figures for need, and the consequent delay. The figures for need will in any event be scrutinised as part of the plan-making examination process. If, as seems possible, this leads to the alteration of Green Belt boundaries, that would be carried out following a proper analysis of the options and the choice of sites would be made in the knowledge of all sites available such that the exceptional circumstances stated in paragraph 83 of the Framework would be considered to exist. The appellant would be able to put the appeal site forward for consideration among others. In the balance it is concluded that these matters do not carry sufficient weight to clearly outweigh the harm identified so as to allow the use of the site for general gypsy accommodation.
32. There is therefore a need to consider the personal circumstances of the appellant and his brother, together with their families. Whilst much has been made of the benefits to James's children of the family living together, the lack of corroborative evidence lessens significantly the weight that can be attached to this; it may not happen or it may not last. Their settled situation at present

- could be in their best interest notwithstanding the lack of frequent access to their father. Without the family, Jason's situation is not particularly unusual or pressing, and the offer of a longer stay on the transit site has been accepted.
33. Jason's situation does appear the more pressing as he and his family are stated as being on an illegal encampment. However, the decision to give up the option of staying at the transit site appears to have been a personal one taken in the knowledge of the option to stay, however short that offer of an extension was to be.
34. Policy E to Planning Policy for Traveller Sites states at paragraph 16 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. In the appeal case that other harm has been found to be limited. However, for the reasons previously stated, what would be in the best interests of the children is uncertain. James is clear that Helen would take the opportunity to be reunited with him, and if this happens, it would be reasonable to conclude that the best interest of the children would be served by the grant of permission on the appeal site, as its accessibility would allow continued access to education and healthcare. The Council on the other hand regard the application as concerning only adults and consider the interest of the children not to be afforded great weight. Whilst there has been some mention of health needs, including that of the new-born baby, these do not appear to be particularly unusual or such that are not presently being attended to.
35. On balance, and having mind to the uncertainties in outcome, the points put forward by the appellant do not clearly outweigh the harm identified, in relation to the establishment of a permanent use of the land for the stationing of caravans, having mind to a stated essential characteristic of Green Belts being their permanence. As a result very special circumstances have not been shown to exist. The possibility or even likelihood of release of Green Belt land to address the need is a matter for the Plan-making process, and is not a reason in the circumstances of this case to grant a permanent permission.
36. However, the uncertainties lead to the conclusion that a temporary permission could be granted. In coming to that conclusion it is acknowledged that temporary harm is of a lesser magnitude in the balance than permanent harm, reducing the harm to be clearly outweighed. There would be an element of a 'trial run' to test the appellant's uncorroborated view of a family reconciliation; and there would be time to allow the needs survey to be refreshed and progress made on the Policies, Sites and Places Development Plan Document. By the expiry of a three year period there should be sufficient clarity in both considerations to inform a decision to extend the period, make the permission permanent, or to refuse an application.
37. It is concluded that the points raised, including as they do considerations as to the best interest of children, are sufficient to clearly outweigh the harm identified so that very special circumstances exist, provided that the use is for a limited period.

Human Rights

38. The appellant made submissions on human rights and the primacy of the child, and the impacts of dismissing the appeal on the ability of the appellant and his

brother to live a traditional way of life, the risk of roadside living and equality in access to services. This refers to Article 8 of the European Convention on Human Rights as enshrined in the Human Rights Act 1998, a right to respect for private and family life, as well as the public sector duties under the Equality Act 2010.

39. The decision that follows from the reasoning above to grant permission for a temporary period of three years would give Jason McDonagh, his brother James and their families a base for the reconciliation of family issues and from which to gain access to education and healthcare. They would have the opportunity to pursue a site through the Council's emerging Gypsy and Traveller Development Plan Document process. This would be a proportionate approach to the legitimate aim of protecting the environment, and granting a permission for a limited period would have no greater impact on Jason McDonagh, his brother James and their families than would be necessary to address the wider public interest.

Conditions

40. With the exception of the hard-standings referred to, the use of the land and the placing of any items on it has not commenced. The reasoning that leads to this Decision is based clearly on personal circumstances justifying a temporary permission, and hence conditions are required to ensure this occurs. It is reasonable to control commercial activities and the parking of commercial vehicles, and the submission of drainage details is required to ensure the control of run-off and to prevent flooding.
41. The agreed position regarding the effect on the character and appearance of the area relies on a condition securing landscaping. A scheme should be submitted and undertaken, but the details of the scheme that the Council accept should take account of the temporary nature of the permission, and this fact has been weighed in the balance in this Decision. With this in mind it is not necessary to require a plan for the re-instatement of the site, the Council's option of requiring it to be restored to the condition before the use commences would provide sufficient control. A condition is required making clear the number of pitches, touring caravans and mobile homes.

Conclusions

42. The proposal is inappropriate development in the Green Belt and the considerations put forward in favour of permanent use do not clearly outweigh the harm. However, having regard to the policy position, the site supply situation and the circumstances of these families, the lesser harm through a three-year temporary use is clearly outweighed, at the end of which time there should be more clarity over the need, the way in which the Council intend to address it, and those personal circumstances. The latter involves the best interest of children and carries significant weight. Whether or not that leads to land being removed from the Green Belt, and whether or not the appeal site is included in any such land is a matter for the Plan-making process. For the reasons given above it is concluded that the appeal should be allowed and temporary permission granted.

S J Papworth
INSPECTOR

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Alexander Greaves he called;	of Counsel
James Cooke	Senior Planning Enforcement Officer South Gloucestershire Council

FOR THE APPELLANT:

Michael Rudd he called;	of Counsel
James McDonagh	Appellant
Jason McDonagh	Brother of appellant
Matthew Green BA	Green Planning Studio

DOCUMENTS

Submitted by Council;

Document	C1	Statement of Common Ground
Document	C2	Opening Submissions
Document	C3	Notice of Inquiry
Document	C4	Closing Submissions

Submitted by Appellant;

Document	A1	Letter Bristol City Council Gypsy and Travellers Liaison Officer re. James McDonagh
Document	A2	Letter Bristol City Council Gypsy and Travellers Liaison Officer re. Jason McDonagh
Document	A3	Witness Statement (amended) of Jason McDonagh
Document	A4	Witness Statement (amended) of James McDonagh
Document	A5	Closing Submissions

SCHEDULE OF CONDITIONS

- 1) The use hereby permitted shall be carried on only by the following and their resident dependants: James McDonagh and Helen Monagan (Plot1), and Jason McDonagh and Theresa McDonagh (Plot 2), and shall be for a limited period being the period of 3 years from the date of this Decision, or the period during which the premises are occupied by them, whichever is the shorter.
- 2) When the land ceases to be occupied those named in Condition 1) above, or at the end of 3 years, whichever shall first occur, the use hereby permitted shall cease and all caravans, buildings, structures, materials and equipment brought on to the land, or works undertaken to it in connection with the use shall be removed and the land restored within a further three months to its condition before the development took place.

- 3) This permission shall authorise only two pitches each comprising the proposed utility buildings of the external dimensions shown on drawing 14_617_004 and no more than two caravans as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968, of which no more than one shall be a static caravan/mobile home, being a total of four caravans and two utility buildings.
- 4) No more than one commercial vehicle per pitch shall be kept on the land for use by the occupiers of the caravans hereby permitted and they shall not exceed 3.5t in weight.
- 5) No commercial activities shall take place on the land, including the storage of materials.
- 6) No development shall take place and the use shall not commence until surface water drainage details including Sustainable Drainage Systems (eg soakaways if ground conditions are satisfactory) for flood prevention, pollution control and environmental protection have been submitted to and approved in writing by the Local Planning Authority. Drainage shall be carried out in accordance with the approved details.
- 7) No development shall take place and the use shall not commence until a landscaping scheme together with an implementation programme has been submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be carried out in accordance with the approved details and programme.