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# Appeal Decision

Site visit made on 24 October 2024

**by Mr C Parker BA(Hons) MA FRGS MRTPI IHBC**

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

**Decision date: 11 December 2024**

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**Appeal Ref: APP/K2230/W/24/3336645**

**Viewpoint Place, Rochester Road, Gravesend, DA12 4TU**

- 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 Ms Linda Harber against the decision of Gravesham Borough Council.
  - The application Ref 20231079, dated 20 October 2023, was refused by notice dated 15 December 2023.
  - The development is described as '*Stationing of an additional mobile home for occupation by the Harber family - creation of an additional traveller pitch.*'
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## Decision

1. The appeal is allowed and planning permission is granted for the stationing of an additional mobile home; including the creation of an additional traveller pitch at Viewpoint Place, Rochester Road, Gravesend, DA12 4TU in accordance with the terms of the application, Ref 20231079, dated 20 October 2023 subject to the conditions set out in the attached schedule.

## Preliminary Matters

2. I saw during my unaccompanied site inspection that what permission is sought for appears to have been carried out. I have proceeded on the basis that the permission sought is to regularise this position.
3. Given the importance of a description of development, I have slightly amended the description of what permission has been granted for. This has omitted personal details but retains the essence of what permission is sought for.

## Main Issues

4. The main issues are:
  - i) Whether or not the proposal constitutes inappropriate development in the Green Belt (including consideration of openness and the purposes of Green Belt), and
  - ii) The effect of the proposal on the character and appearance of the area, and;
  - iii) The effect of the development on highway safety;
  - iv) Whether the proposal is adequately mitigated in terms of the potential impact of occupiers on the Thames and Medway SPA, and;

- v) Whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations, as to amount to the very special circumstances required to justify the development.

## **Reasons**

### ***Whether or not inappropriate development in the Green Belt***

5. The main parties agree that the appeal site is located within the Green Belt. In the absence of any contrary evidence, I concur. Paragraph 16 of the Planning Policy for Traveller Sites (PPTS) states that traveller sites in the Green Belt are inappropriate development. The Appellant indicates, in their Planning Statement<sup>1</sup>, that they do not consider a permanent site is inappropriate as it is should be considered as 'previously developed'. However, on plain reading it is clear that Paragraph 154 of the *National Planning Policy Framework* (the Framework), which refers to the construction of new buildings as in appropriate and provides this exception, relates to new buildings rather than a change of use of land (which is sought in this case for the stationing of a mobile home).
6. Paragraph 155 of the Framework provides an exception for the material change in the use of land provided it preserves its openness and do not conflict with the purposes of including land within it. The five purposes are set out in Paragraph 143 of the Framework and include assisting in safeguarding the countryside from encroachment.
7. In terms of openness, the essential characteristics of Green Belts are their openness and their permanence. Openness typically has a spatial and a visual component. Looking at the submitted drawings, plans and photos, it appears as though the appeal site was previously pasture for horses and access to the Gypsy and Traveller pitches to the southern end of the 'plot' which have permission. It is clear, looking at these various documents, that the appeal site was, in the main, an open grassed area with a tree-lined boundary along the A226 (Rochester Road). Whilst I note that the appeal site is mainly screened along the boundary with Rochester Road, the mobile home has resulted in the erosion of the openness of the Green Belt through the covering of land that was previously devoid of any notable similar structures or features.
8. Furthermore, given the previous nature of the site, as outlined in red on the submitted site plan, what was countryside has now been dramatically and drastically altered into a residential and domesticated mobile home pitch. In doing so, the proposal represent encroachment into the countryside, the safeguarding of which is one of the purposes for including land in the Green Belt.
9. Accordingly, I find the appeal scheme has failed to preserve the openness of the Green Belt and one of the five purposes it serves. It should therefore be considered as inappropriate development in the Green Belt. In doing so, there would be conflict with Policy CS02 of the *Gravesham Local Plan Core Strategy 2014* (CS), which, amongst other aims, seeks to maintain the national and local planning purposes of the Green Belt. The appeal scheme would also fail to accord with the aforementioned policies of the Framework.

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<sup>1</sup> Page 11, Paragraphs 4.6 and 5.1

10. The first reason for refusal also refers to Policies CS12 and CS19 of the CS. However, these do not appear to relate to Green Belt and therefore on this issue I do not find conflict with these policies.

### ***Character and appearance***

11. The street scene is characterised by limited development along the southern edge, with a majority being open agricultural fields. To the south of the appeal site is a small cluster of three Gypsy and Traveller pitches which are occupied by members of the same family as detailed in the Appellant's Planning Appeal Statement January 2024.
12. The appeal site is located at the front of the site, near to Rochester Road in an elevated position. I saw during my site inspection that whilst there is existing hedges and planting between the site and the mobile home on the site, it is still possible to see parts of the mobile home. This was from both along Rochester Road and across from Castle Lane.
13. The appeal scheme has introduced a large mobile home into an area that mainly characterised as open countryside. Whilst the hedging and plants to the front of the site provide a degree of self-containment to the wider existing three pitches, the fact remains that the previously open field that formed a part of the appeal site is now urbanised in terms of the effect on the character and appearance of the area. Accordingly, the appeal scheme would be at odds with Policy H of the PPTS which states at Paragraph 25; that local planning authorities should very strictly limit new traveller site development in open countryside.
14. Taken in the round, I find that the appeal scheme has an adverse effect on the character and appearance of the area. Accordingly, it would conflict with Policies CS02, CS12 and CS19 of the CS, which, amongst other aims, seek to ensure that development conserves and enhance the character of the local natural environment. It would also conflict with Policy H of the PPTS.

### ***Highway safety***

15. The Appellant's submitted pre-existing block plan and the existing block plan (shown on Drawing 001 Revision A) show a trapezium type shape that forms the appeal site near to the A226. This shows the existing access track to the three pitches at the southern end of the wider site and an existing structure on the appeal site, as well as the mobile home.
16. No details are given in terms of parking or turning areas. Nor are any details provided in terms of areas where touring caravan(s) may be stored on site. Whilst I note the Appellant's point that there may be areas for the storage of vehicles in the wider site, there are gates to the front of the site and limited space for pulling off the A226 which is a single carriageway with local signs suggesting a speed limit of 50mph. In practice, I cannot be certain that there is sufficient space within the appeal site area for the safe exit and entry into the site, nor for the parking of vehicles off the main highway as this has not been defined on the submitted drawings.
17. In the absence of such details I cannot be certain that the appeal scheme would not have an adverse effect on highway safety on the basis of the plans submitted. Whilst I note that there may have been the same number of people located on the wider site when it had permission for three pitches, I cannot be

certain that the location of the fourth pitch, which is located close to the exit/entry point off the A226, would not result in adverse impacts on highway safety. This is because the three other pitches on the wider site are located some distance away from the A226 and there is clearly space for turning and parking of vehicles in the southern end of the site, away from the fourth pitch for which permission is sought.

18. Accordingly, the appeal scheme would conflict with Policy CS11 of the CS and Policies T1, T5 and P3 of the *Gravesham Local Plan First Review 1994* (LP), which, amongst other aims, seek to ensure that sufficient parking is provided in new developments and all vehicle parking provision should normally be made on the development site.

### **Thames and Medway SPA**

19. The appeal scheme seeks a net increase of one unit on a site that lies within the Zone of Influence of the Thames Estuary and Marshes Special Protection Area (SPA) and Wetland(s) of International Importance under the Ramsar Convention (Ramsar Site). The *Conservation of Habitat and Species Regulations 2017* (the Regulations) require that the competent authority must ensure that there are no significant adverse effects from the proposed development, either alone or in combination with other projects, that would adversely affect the integrity of the SPA. The effects arising from the proposal need to be considered in combination with other development in the area and adopting a precautionary approach.
20. Since the development is for a single pitch, the number of additional recreational visitors would be limited and the likely effects on SPA from the proposed development alone may not be significant. However, in combination with other developments it is likely that the proposal would have significant effects on the designated site. Given my findings, the Regulations place a duty on the competent authority to undertake an appropriate assessment of the implications of the appeal scheme in view of the site's conservation objectives.
21. The site is within the zone of influence where new residential development is likely to result in recreational pressure, which would, both alone and in combination with other development within the zone of influence, have a likely significant effect on the interest features of the aforementioned site. Therefore, I consider that the development would have an adverse effect on the integrity of the site, but regard can be had to whether these adverse effects can be mitigated.
22. The *North Kent Strategic Access Management and Monitoring Scheme* (the Scheme) sets out a strategic approach to mitigation by several councils across the wider area. The Scheme details mitigation measures that would be funded by financial contributions at a specified tariff per dwelling. A Strategic Access Management and Monitoring (SAMMS) fee for the protection of birds in the SPA and Ramsar Site was sought by the Council in accordance with Policy CS12 of the CS. Since these include a range of habitat-based measures such as education, communication and monitoring, and have been endorsed by Natural England, I am satisfied that the measures would adequately overcome any adverse effects of the proposal on the SPA.
23. The appellants have indicated that they have made a per dwelling contribution of £156.76 to fund the Scheme. The Council have confirmed receipt of the

payment. This approach can be problematic as there is no obligation on the Council to spend the money as envisaged and in a particular timescale. However, the limited evidence before me indicates that as a responsible public body the monies will be used in administering the mitigation strategy. Therefore, I am satisfied that the mitigation measures have been secured and would be used for their intended purpose in this case.

24. The contributions would be necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development, in accordance with Regulation 122 of the Community Infrastructure Levy Regulations. As such, the contributions toward the mitigation schemes would count as mitigation toward maintaining the integrity of the sites.

### ***Other Matters***

25. The establishment of one pitch at the appeal site, without planning permission amounts to intentional unauthorised development, as such the 2015 ministerial statement is relevant<sup>2</sup>. By way of mitigation, the Appellant's relatives sought to utilise part of an existing site (albeit only authorised for three not four pitches) and the appellant has sought to regularise the situation through a planning application.
26. Nonetheless, the works undertaken have gone beyond what is necessary to establish a temporary home pending the outcome of the application. Overall, the undertaking of intentional unauthorised development adds minor additional weight as a material consideration against the proposal.
27. I also note the concerns raised by interested parties in terms of how the wider site has been operated. These are concerns raised at the application and appeal stages. This includes the recent addition of gates to the front of the site facing the A226 and how vehicles access the site; some of which I have considered above. In terms of other development that has occurred on the site, such as the entrance gates, these are not shown on the submitted drawings and would be a separate matter for the relevant organisations to investigate further should they require permission or consent. This does not provide justification for the dismissal of the appeal scheme.

### ***Other considerations***

28. I have found the proposal would constitute inappropriate development within the Green Belt. Paragraph 152 of the Framework makes it clear that substantial weight should be given to any harm to the Green Belt and 'very special circumstances' will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations.

### ***Unmet need***

29. The Officer's Report indicates that there is an identified need for 20 pitches<sup>3</sup> between 2017 to 2023, and for a total of 31 pitches between 2017 to 2037. This is informed by 24 households meeting the planning definition of Gypsy and Traveller in 2017 to 2028, and 7 in the period 2028 to 2037.

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<sup>2</sup> Green Belt Protection and Intentional Unauthorised Development 2015

<sup>3</sup> Page 15 of 17, Report dated 14 December 2023

30. It is not clear as to what extent this need has been translated into specific allocations in the adopted development plan for the area. However, the absence of this within the submitted evidence suggests that there is a limited allocation of pitches within the development plan for the area to meet the predicted need.
31. As such, as set out in Policy H, Paragraphs 24 and 27 of the *Planning Policy for traveller sites* (PPTS), local provision does not meet local need in this instance. The PPTS sets out that if local planning authorities cannot demonstrate an up-to-date 5 year supply of deliverable sites, this should be a significant material consideration in any subsequent planning decision<sup>4</sup>. In light of this local deficit, I afford the provision of a single pitch in this case moderate weight in favour of the proposal.

#### *Personal Circumstances*

32. The Appellant cites the fact that the appeal site is an established Gypsy and Traveller site occupied by members of one (extended) family. The proposal would allow a fourth household, from the same wider family, to reside on the site<sup>5</sup>. This would assist in reducing overcrowding in the three pitches to the south of the wider site. I afford this factor moderate weight in favour of the scheme.
33. The Appellant's Statement of Case indicates that the occupiers of the wider site are part of an extended family group. The occupiers reside in four pitches, with three having planning permission and the fourth the subject of this appeal. Given the evidence before me, I am content that the residents on site meet the definition of Gypsy and Travellers in the PPTS.
34. The Appellant's written submissions confirm that the residents travel for work as well as undertaking landscaping work locally. Others require medical care at nearby hospitals, and in some cases this is ongoing medical care that requires regular access. A settled base would ensure continued access to GP and health facilities, and enable family members to support each other in attending various appointments. I therefore give significant weight to the identified health needs and support of the residents.
35. I also note that the wider site has been occupied by the same family for around 20 years, albeit further accommodation is now required as children of the original occupiers have had children themselves. As such, the evidence suggests that family members rely on each other for support, childminding, health needs and employment. I am also mindful that there are a number of children of school age on the wider site across the four pitches who attend local schools.
36. Article 3(1) of the United Nations Convention on the Rights of the Child provides that the best interests of the child shall be a primary consideration in all actions by public authorities concerning children. The children's best interests are a primary consideration. The best interests of the children would be served by the families continuing to reside at their long-established home and business base. Their needs are being met presently at this base. Should

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<sup>4</sup> Paragraph 27 refers to temporary permission, but the overall thrust is clear towards considering this matter as a significant material consideration.

<sup>5</sup> Though I note that the appeal site comprises a smaller part of the overall site, of which the red line site area does not include the three pitches to the south.

the appeal be dismissed, and the families required to vacate the site, they would be forced to either lead a roadside existence or double-up on pitches elsewhere. This would inevitably impact negatively on the children's education and wellbeing. In addition the loss of the mutual support provided by the extended family would also have a negative impact on the children's wellbeing. The best interests of the children is a factor that attracts significant weight.

37. Article 1 of the First Protocol sets out that a person is entitled to the peaceful enjoyment of his possessions and that no one shall be deprived of his possessions except in the public interest. Article 8 of the *Human Rights Act* states that everyone has the right to respect for his private and family life and his home. Dismissing the appeal would represent an interference with the home and family life of the proposed occupiers, such that both Articles would be engaged. There is also a positive obligation imposed by Article 8 to facilitate the gypsy way of life.
38. The future occupants of the proposed pitches are an ethnic minority, and thus have the protected characteristic of race under s149(7) of the *Equality Act 2010*. The proposal would meet the needs of those persons with a relevant protected characteristic, by reason of race, and so, as required by section 149(1) of the *Equality Act 2010*, the public sector equality duty is applicable.
39. There is therefore a need to have due regard to eliminating discrimination, advancing equality of opportunity and fostering good relations. I attach significant weight to the personal circumstances as a factor in favour of the scheme.

### **Whether the harm is clearly outweighed by other considerations**

40. I have found that the development is inappropriate within the Green Belt and causes significant adverse harm to the openness and purposes of the Green Belt. These attract substantial weight. The development is also a case of intentional unauthorised development. However, given the circumstances I outline above this carries minor weight. The proposals would also cause minor harm to the character and appearance of the area and harm in terms of highway safety; although these carry minor weight.
41. Set against this, I have found that there continues to be an unmet need within the Borough. In addition, the Council is unable to demonstrate an adequate supply and 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. Moreover, the mutually supportive nature of the family relationships with existing families on the site both in terms of the health care and the needs of the children adds considerable weight.
42. 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. The site would be occupied by a number of children having regard to Article 8 of the European Convention on Human Rights. If the appeal was to be dismissed then the family would likely revert to a roadside existence, where it would be difficult for the children to access facilities and support. I consider the best interest of the children would be to remain on the sites with access to educational and health facilities as well as

support from extended family. This would provide a safe and secure base to access facilities, which, due to a lack of alternative sites, is not available elsewhere.

43. Therefore, in this instance, the matters I have identified above together, including the best interests of the child in both appeals, carry very great weight such that they clearly outweigh the harm to the Green Belt and other harm. Looking at the cases 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.
44. As the proposals would meet Green Belt policy, then the requirements of Policies CS12 and CS19 of the CS are met and there would be no conflict in this respect. However, there would still be conflict with Policies CS02, CS11, CS12, and CS19 of the CS and Policies T1, T5 and P3 of the LP in terms of character and appearance and highway safety matters, and thus drawing them into conflict with the development plan as a whole. However, the material considerations I outline above, including the Framework, are sufficient to outweigh that conflict in this instance.

### **Conditions**

45. Ten conditions have been suggested by the Local Planning Authority. I have considered these in light of Paragraph 56 of the Framework, and the Planning Practice Guidance and the use of planning conditions.
46. A condition requiring detailed plans as to how biodiversity will be secured on site is necessary in order to enhance biodiversity as set out in CS Policy CS12 (1). A condition requiring that the site is only occupied by persons defined as gypsy and travellers is reasonable and necessary as residential occupation in this location would not normally be permitted, and to ensure that the accommodation needs of gypsy and travellers are met in this area where there is an unmet need (2).
47. Conditions restricting occupation of the site to members of the Harber family, and for only one mobile home as shown on the submitted drawings, is necessary and reasonable in order to ensure that the mobile home continues to only be occupied by relatives to prevent further encroachment into the countryside and Green Belt (3, 4).
48. A condition requiring the submission and approval of details of parking and turning on the appeal site is necessary to ensure that safe provision is provided within the site for drivers and other road users to operate safely (5). Conditions restricting trade and business occurring on the appeal site, and that no vehicles over 3.5 tonnes are stored on site are reasonable and related to the scheme as the red line site area is drawn closely around pitch four (6, 7). Such conditions would help safeguard the character and appearance of the area.
49. A condition reworded from that suggested by the Council in relation to a detailed scheme to be submitted and approved regarding external lighting is reasonable in order to ensure that the impacts of the scheme on the night-time rural environment, including local ecology, is reasonable (8). A condition restricting bonfires is necessary and reasonable in order to comply with Policy CS19 of the CS and safeguard the residential amenity of the area (9). Lastly, a condition removing permitted development rights in relation to outbuildings

and means of enclosure is reasonable and necessary in this instance because of the sites location in the Green Belt and countryside, where development is subject to stringent policy controls.

### **Planning balance and Conclusion**

50. Paragraph 152 of the Framework requires decision-makers to ensure that substantial weight is given to any harm to the Green Belt. In this case the proposal is inappropriate development and would reduce openness of the Green Belt.
51. Other considerations weighing in favour of the development must clearly outweigh this harm. Principal among these are the benefits of providing a Gypsy and Traveller pitch in an area where there is an unmet need, and the personal circumstances of occupiers; including the Best Interests of the Child.
52. In light of this, I conclude that those considerations put forward which weigh in favour of the proposal clearly outweigh the substantial harm by reason of inappropriateness. The very special circumstances needed to justify the proposal therefore exist in this case.
53. Whilst I find that the proposal would not accord with the adopted development plan for the area when considered as a whole, material considerations, including the PPTS, indicate a decision otherwise than in accordance with it.
54. Accordingly, for the reasons given above, I conclude that the appeal should be allowed.

*C Parker*

INSPECTOR

## **Schedule of conditions**

1. Within three months of the date of permission, detailed plans showing how the development will enhance and maintain biodiversity, plus an establishment and management plan for native planting, will be submitted to and approved in writing by the Local Planning Authority. This will include details of native and wildlife-friendly planting, durable bat and bird boxes, and log piles. The approved details will be implemented within six months of the date of approval and shall be retained thereafter.
2. 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 dependant's 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.
3. The development hereby permitted shall be occupied only by Linda Harber and her sibling group, Steven and Charlotte Harber, and members of their immediate families.
4. No more than one mobile home as shown on drawing number 001 Rev. A (Location Plan, Existing Block Plan, Proposed Block Plan) shall be stationed on the site at any one time.
5. Within three months of the date of permission, detailed plans showing hardstanding/hardsurfacing serving the occupiers of the appeal pitch (pitch 4) to provide parking and/or tuning areas shall be to and approved in writing by the Local Planning Authority. The approved details will be implemented within six months of the date of approval and shall be retained thereafter.
6. The site shall not be used for the carrying out of any trade or business including the external storage of materials.
7. No vehicle over 3.5 tonnes shall be stationed, parked or stored on the land.
8. Within three months of the date of permission, detailed plans showing all existing external lighting installed or operated on the site areas shall be to and approved in writing by the Local Planning Authority. The approved details shall be retained thereafter.
9. No bonfires or incineration of rubbish or organic material or vegetation shall take place on the site.
10. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any other order revoking and re-enacting that order with or without modifications), no sheds or amenity/utility buildings, or other buildings or structures, walls, fences or other means of enclosure other than those shown on the approved plans shall be erected on the site.