



Appeal Decision

Hearing held on 3 November 2009
Site visit made on 3 November 2009

**by Dennis Bradley BSc(Econ) DipTP
MRTPI**

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

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**Decision date:
27 November 2009**

Appeal Ref: APP/T3725/A/09/2107108

Land at junction of Hampton Road and Henley Road (A4189), Hampton on the Hill, Warwick

- 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. Moloney against the decision of Warwick District Council.
- The application Ref W09/0157 dated 18 March 2009, was refused by notice dated 18 June 2009.
- The development proposed is change of use of land to caravan site for occupation by gypsy family with associated operational development (utility room, septic tank, hard and soft landscaping and widen dropped kerbs).

Decision

1. I dismiss the appeal.

Main issues

2. In my view the principal issues in the case are:
 - (a) whether there are substantial objections to the development on drainage grounds.
 - (b) whether the additional use of the access that would arise from the development would have an unacceptable impact on highway safety.
 - (c) whether the harm to the Green Belt which would result by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify the development.

Procedural matters

3. The main part of the Hearing was conducted in the Council offices in Leamington Spa. Following the site visit I heard the final submissions of the parties in the Village Hall at Hampton on the Hill.
4. Although the appellant's surname was given as Maloney in the planning application and in the appeal, I understand that it is in fact Moloney.

The site and its surroundings

5. The appeal concerns a triangular-shaped site which is about 0.1 hectares in size. The site is at the junction of Hampton Road and Henley Road and is about 300 metres to the south-east of the village of Hampton on the Hill.
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Henley Road forms part of the A4189 which leads into Warwick to the east. Hampton Road is a less busy road, mainly carrying local traffic. The site is roughly surfaced with hard core and is served by a vehicle access onto Henley Road. It is enclosed by a two-metre high close boarded fence on the road frontages, in front of which is a hedge and some deciduous trees. An overhead cable line crosses the site. At present the site contains a touring caravan which is used in connection with the agricultural use of the land.

6. The appellant also owns an adjoining field in which he keeps horses and has a barn. Beyond the field are allotments at the edge of the village. A footpath runs through the allotments and along the western boundary of the field. I understand that the Parish Council is seeking to have this footpath designated as a public footpath, but at present it does not have such status.
7. The site is served by mains water, and the appellant expects that a connection to mains electricity would be possible, thereby avoiding the need for a generator. Since a connection to a public sewer would not be possible the use of a septic tank would be required.
8. The application would result in the provision of one mobile home and one touring caravan on the site. Although the application was for permanent permission, at the Hearing the appellant made clear that a temporary permission for a period of some three years would be acceptable. The appellant expects that in these circumstances the services which would have been provided in the proposed utility room would be located in a temporary building and not in a brick building, as shown on the drawing submitted with the application. I have accordingly considered the appeal on this basis.

Planning Policy

9. The site is within the West Midlands Green Belt and is therefore subject to Green Belt policy as set out in the Warwick District Local Plan and Planning Policy Guidance Note 2 (PPG2). The Green Belt covers about 80% of the District. The Council has drawn my attention to policies DAP1, DP1, DP2, DP3, DP6, DP9, DP11, RAP1 and RAP5 of the Local Plan. The Council has further referred me to the Warwickshire Landscape Guidelines. These identify the area around the site as Wooded Estatelands, which are noted for their well-wooded estate landscape characterised by large-scale rolling topography, prominent hill-top woodlands and mature hedgerows.
10. In view of the nature of the proposal I have had regard to the advice in Circular 01/2006 on Planning for Gypsy and Traveller Caravan Sites. The Circular does not preclude the use of Green Belt sites for gypsies and travellers, but makes clear that alternatives should be explored before such locations are considered.

Reasons

Drainage

11. With regard to the first issue I observed that the surrounding roads are at a lower level than the site itself. Local residents have suggested that additional development on the site would increase the volume of standing water on the two roads, and have argued that this would accordingly adversely affect highway safety. However, in my opinion there is no clear evidence to support

this view. Since the site is already hard surfaced, it appears to me unlikely that there will be significant additional movement of surface water away from the site at times of heavy rainfall despite the topography of the land. Nevertheless, even if a contrary view were taken, it would be possible for a condition to be imposed on a grant of planning permission requiring any necessary measures regarding the drainage of the site to be implemented before the use commenced.

12. A further drainage issue regarding the disposal of foul waste was raised. Local residents expressed concern that the ground conditions on the site would not be favourable to the use of a septic tank. However, no technical evidence to support such a view was submitted. Moreover, it would be possible to impose a condition on a grant of planning permission requiring the provision of adequate facilities before the use commences. Therefore any potential harm on this matter could be avoided. I also note that the Highway Authority considered that any drainage issues could be dealt with by the imposition of appropriate conditions, and that these matters did not form part of the reasons for refusal of the application given by the Local Planning Authority.

Highway Safety

13. Turning to the second issue, the access to the site is close to the junction of Hampton Road and Henley Road which includes a triangular-shaped traffic island. Henley Road has a single carriageway and is subject to a 50 mph speed limit, a reduction from an earlier 60 mph limit. There are also double white lines prohibiting overtaking on this section of the road. I understand that the Highway Authority has plans to increase the width of the footway along Henley Road to allow its use by cyclists, but at present there is no firm date for the implementation of this scheme.
14. There is no dispute that visibility at the entrance to the site meets the standard usually applicable to locations subject to a 50 mph speed limit. However, local residents have argued that the additional turning movements into and out of the site which would result from the development would be hazardous. They emphasise two factors, i.e. the topography of the land, which restricts views of the access from the west, and the proximity of the access to the junction of the two roads, which may cause confusion about the destination of turning movements. They further point to the lack of street lighting in this location.
15. I note that the Highway Authority does not share these concerns and that the Council did not refer to highways matters in its stated reasons for refusal. Nevertheless, in my opinion local residents have raised an issue of some substance. The likely scale of the use of the access must be a matter for speculation. However, I consider that it must be probable that a residential caravan use, even of the relatively modest size proposed, would generate significantly more movements into and out of the site than the present agricultural use, given the need for trips for usual household activities. I assume there would be at least four movements per day, i.e. two trips in and two trips out. Because of the location of the site, all such trips are likely to be undertaken by private car, and they may also at times involve the movement of touring caravans.

16. In reaching a decision on this matter I have considered the advice in paragraph 66 of Circular 01/2006. This makes clear that such proposals should not be rejected if they would only give rise to modest additional vehicle movements and/or the impact on minor roads would not be significant. However, in the present case the access is onto a major road, which is clearly regarded as potentially hazardous by the Highway Authority because of the relatively low speed limit that has recently been imposed and the restriction on overtaking. Moreover, I consider that the increase in the number of vehicle movements could be considerable.
17. In addition the location of the access, which is my principal concern, is not a matter that can be resolved by the imposition of planning conditions: it would be unreasonable for me to impose a condition requiring the relocation of the access, since no alternative position has been identified, and no modifications to the access open to the appellant would resolve its deficiencies. I have therefore concluded that this must be regarded as a significant objection to the development. In my opinion these concerns must remain even when a temporary permission is considered.

The Green Belt

18. Turning to the third issue, the appellant accepts that the scheme constitutes inappropriate development in the Green Belt, which would affect its openness, and would cause encroachment into the countryside. Accordingly it is necessary for him to demonstrate that very special circumstances exist to outweigh the harm to the Green Belt. In his view such circumstances do exist by reason of the lack of alternative sites for gypsies within Warwickshire and the personal circumstances of the family. I deal with these matters in turn.
19. With regard to the first matter, the Council accepts that the family's needs could not be satisfied on public sites and that accordingly a private site is required. The need for gypsy and traveller sites in the South Market Area, which covers the six districts of Worcestershire and the two districts of South Warwickshire (Stratford-on-Avon and Warwick), was recently assessed. The study established that there was a requirement in Warwick District for 11 permanent pitches and 15 temporary pitches, and similar requirements in the other Districts apart from Bromsgrove and Redditch. The Council proposes to address this unmet need through its Core Strategy and subsequent Site Allocations Development Plan Document (DPD). The Core Strategy is expected to be adopted in late 2010 and the DPD is likely to be adopted during 2012/2013. The necessary additional gypsy and traveller sites are expected to come forward by 2014.
20. It is therefore likely that for some years to come there will be a lack of sufficient sites within the District, and also in surrounding areas. Paragraphs 45 and 46 of Circular 01/2006 make clear that where there is no available alternative provision, but a reasonable expectation exists that sites are likely to come forward at the end of the period to fulfil unmet need, consideration should be given to granting a temporary planning permission. This is accordingly an issue of some weight in reaching a decision on the appeal.
21. Turning to the second matter, the appellant and his family currently reside in two caravans sited on the driveway of a house in Kings Heath, Birmingham.

There are three children aged 18, 9 and 6. The two younger children currently attend primary school in Kings Heath, at which they appear to be making good progress. One child has medical problems which require regular attendance at Birmingham Children's Hospital. The family are Irish Travellers and are accepted by the Council to comply with the definition in paragraph 15 of Circular 01/2006.

22. The appellant emphasises the unsatisfactory nature of his present living arrangements, which is creating friction with his neighbours, and his search for some years to find a more suitable site. He also notes the limited amount of land within the District that is not within the Green Belt or within urban areas, and the consequent restriction on the area open to him. He further refers to the Council's own recent suggested use of Green Belt sites when identifying possible temporary sites for gypsies and travellers.
23. In my view the appellant's wish to provide a more acceptable home for his family is wholly understandable. In this respect I note the family's aversion to living in "bricks and mortar" and their desire to return to a more traditional mode of life. However, I am not persuaded that there are overriding personal circumstances which make the appeal site the only available option. There are no educational or medical needs which require them to live on the site. Indeed the younger children's education would be disrupted if they moved away from their present home. This suggests to me that the personal circumstances of the family can only be given limited weight.

Other Considerations

24. I accordingly move now to the balancing exercise that it is necessary for me to undertake in determining the appeal. In my opinion I must give substantial weight to the harm that would be caused by the impact of the development on the Green Belt by reason of inappropriateness, and to the harms that would be caused to the Green Belt's openness (its principal attribute) and also to highway safety. In respect of the openness issue, the impact on the Green Belt would remain even though a temporary permission is now sought, albeit only for a period of several years. Indeed, since it would be unreasonable to impose conditions requiring additional landscaping to screen the development on a temporary permission, it could be argued that its impact on the appearance of this area of countryside would in fact be greater for the period in which the planning permission is in operation.
25. The principal arguments in favour of the proposal are the family's gypsy status and the accepted lack of suitable provision elsewhere, a deficiency that will clearly not be resolved for some years. However, as noted previously, there seems to be no strong case requiring the use of this particular site by the family. I have carefully considered these matters and concluded that the other considerations in this case do not clearly outweigh the harms that I have identified and that the very special circumstances necessary to justify the development do not exist.

Human rights

26. I now turn to consider the question of human rights. The appellant and his family do not at present live on the site, and accordingly they would not be displaced if their appeal was to be dismissed. Nevertheless, the recent

judgement by the Court of Appeal in the case of *Rafferty & Jones v SSCLG & North Somerset District Council* suggests that human rights are still a relevant consideration.

27. A denial of the use of the site would represent an interference with the rights of the family under Article 8 of the European Convention on Human Rights. However this interference must be weighed against the wider public interest. I consider that the development would have a harmful impact on the Green Belt and on highway safety, and I am satisfied that these impacts can only be avoided by the dismissal of the appeal. There are no means of achieving this objective which would less interfering with the rights of the family. I am therefore satisfied that the dismissal of the appeal is necessary and proportionate, and would not result in a violation of their human rights.

Conclusions

28. For the reasons given above I consider that this inappropriate development in the Green Belt should not be permitted and conclude that the appeal should be dismissed.

Dennis Bradley

Inspector

APPEARANCES

FOR THE APPELLANT:

Alison Heine BSc MSc MRTPI	Heine Planning Consultancy, 10 Whitehall Drive, Hartford, Northwich CW8 1SJ
Mr M. Moloney	Appellant

FOR THE LOCAL PLANNING AUTHORITY:

David Edmonds Bsc DipTP MRTPI	Senior Planning Officer Appeals, Warwick District Council
Peter Lawson	Environmental Health Officer, Warwick District Council

INTERESTED PERSONS:

John Reid	Budbroke Parish Council
David Bryan	Budbroke Parish Council
Richard McCulloch	David Tucker Associates, Forester House, Doctor's Lane, Henley-in-Arden B955AN
Richard Dunnett	Stoneleigh Planning, Kingsleigh House, 63 Holly Walk, Leamington Spa LV32 4JG
B.J. Dale	Local resident
P.R. Gogery	Local resident
R. Adams	Local resident
Councillor Alan Rhead	Warwick District Council
Rob Leahy	Gypsy & Traveller Team Leader, Warwickshire County Council

DOCUMENTS

- 1 Attendance list
- 2 Notification and circulation
- 3 Letters from interested persons
- 4 Council's suggested conditions
- 5 Council report on temporary gypsy and traveller sites
- 6 Documents relating to highway policy submitted by local residents
- 7 Papers relating to proposed Modification Order

PLANS

- A Application drawings – 0001, 0002A, 0003A, 0004A