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## Appeal Decision

Hearing Held on 14 December 2021

Site Visit made on 14 December 2021

**by Andrew McGlone BSc MCD MRTPI**

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

**Decision date: 05 January 2022**

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### **Appeal Ref: APP/G4240/W/20/3258385**

#### **6 Watson Street, Denton, Manchester M34 3EN**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73A of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 for change of use of a builder's yard to use as a residential caravan site for two gypsy families, with a total of five caravans, the erection of an amenity block and the erection of two utility buildings for which a previous planning permissions were granted for limited periods.
  - The appeal is made by Mr Dean Price against the decision of Tameside Metropolitan Borough Council.
  - The application Ref 19/00971/FUL is dated 18 October 2019.
  - The application sought planning permission for change of use of a builder's yard to use as a residential caravan site for two gypsy families, with a total of five caravans, the erection of an amenity block and the erection of two utility buildings granted planning permission for a limited period Ref APP/G4240/A/13/2208161, dated 24 July 2015.
  - The permission is subject to conditions requiring the cessation of the use and the removal of the buildings or works at the end of 4 years, or when the land ceases to be occupied by those named in condition No 1 should this occur earlier.
  - The reasons given for the conditions are: the personal needs and circumstances of the occupiers of the appeal site, the lack of alternative sites and the effect of the proposal on the character and appearance of the area as the changes brought about to the appeal site would not endure.
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### **Decision**

1. The appeal is allowed and planning permission is granted for change of use of a builder's yard to use as a residential caravan site for four gypsy families, with a total of five caravans, the erection of an amenity block and the erection of two utility buildings at 6 Watson Street, Denton, Manchester M34 3EN effective from 25 July 2019, subject to the conditions in the attached schedule.

### **Preliminary Matters**

2. This appeal follows two earlier appeal decisions in 2009 and 2015<sup>1</sup>. Both were allowed and granted temporary planning permissions. The 2015 permission expired at the end of 24 July 2019, but the use of the land has continued since then. Although the appellant seeks to make the change of use permanent by removing conditions 1 and 2 attached to that permission, both of which refer to the temporary period of 4 years, I have fully considered the planning merits of the development given that the use of the land is no longer authorised.
3. Circumstances have changed in relation to the occupants living on the site since the 2015 appeal decision. This means that there are now 4 households

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<sup>1</sup> Appeal Decision Refs: APP/G4240/A/09/2107293 and APP/G4240/A/13/2208161

living on the site not 2. However, the total number of caravans stationed on the land is unchanged. I have determined the appeal on this basis. The number of caravans can be controlled by planning condition.

4. There is no dispute that the intended occupants of the pitch would accord with the definition as set out in Annex 1 of the Planning policy for traveller sites (PPTS). I see no reason to disagree based on the evidence before me.

### **Main Issues**

5. I agree with the main parties' assessment that the proposal is inappropriate development in the Green Belt having regard to paragraphs 149 and 150 of the National Planning Policy Framework (the Framework) and saved Policy OL1 of The Tameside Unitary Development Plan Written Statement (UDP), despite its reduced weight owing to its inconsistency with the Framework. Therefore, the main issues in dispute in this case are:
  - the effect of the proposal on the openness of the Green Belt and the purposes of including the land within it;
  - the effect of the proposal on the character of Tame Valley; and
  - would the harm by reason of inappropriateness, and any other harm, be clearly outweighed by other considerations so as to amount to the very special circumstances required to justify the proposal.

### **Reasons**

#### *Openness*

6. The Framework sets out that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence.
7. The appeal site is rectangular in shape and on the western side of Watson Street. The eastern (front) boundary to the site next to Watson Street comprises of a high brick wall with metal railings. Access is taken from here. The southern and western boundaries are lined by fences. A hedge also lines the southern boundary next to an open field which wraps around to the west of the site. Vacant land is to the north, beyond which is a terraced row of properties fronting Hyde Road. An earth embankment is to the north and west of the site whilst an industrial unit is to the east of Watson Street.
8. The previous appeal decisions found that the use of the land as a residential caravan site would have a significant adverse effect on the openness of the Green Belt having regard to the site's prior use as a builder's yard and aerial photographs which were considered as part of the 2009 appeal decision.
9. However, the appellant adduces that the previous Inspectors did not consider the full implications of the "fallback" use, namely the external storage of materials and the use of the site by large commercial vehicles. The appellant has not produced any substantive evidence to support either. Hence, whilst they may both be possibilities, it is unclear whether they are likely or to what extent they may occur. Anyway, the main parties agreed that the size and spread of structures represents a more intensive form of development than that in 2015. I have no reason to disagree, nor do I disagree with the appellant's assessment that there would be a spatial and visual loss of openness in the Green Belt. That said, the tree coverage on the western embankment is now said to offer a stronger backdrop and thus greater visual

enclosure to the site. So, whilst the upper parts of the caravans are visible above the boundary wall, I consider that a moderate loss of openness would be caused over a considerable period of time if permanent planning permission were granted which would be in conflict with Framework paragraph 137. The effect would be reduced in the event of a temporary planning permission, but I still attach moderate weight to this harm.

10. On this issue, I conclude that the proposal results in a loss of openness of the Green Belt such that it does not accord with Framework paragraph 137.

#### *Purposes*

11. The extent of the appeal site remains unchanged from both previous appeals and there has been no suggestion that it is any greater than the former builder's yard which was, by all accounts, enclosed by boundary treatment and the road. As such, the proposal would not encroach any further into the countryside than the former use of the site or the previously granted use of the site. Therefore, I disagree with the Council's assessment in respect of the third purpose of the Green Belt and I conclude, that the proposal does not conflict with any of the purposes of including the land in the Green Belt.

#### *Character of Tame Valley*

12. The appeal site lies in the Tame Valley, a locally designated site that crosses the Borough's urban and rural areas. Framework paragraph 174 explains that planning decisions should contribute to and enhance the natural and local environment by protecting and enhancing valued landscapes, in a manner commensurate with their identified quality in the development plan.
13. The site is near to built development, namely the industrial and commercial premises on the eastern side of Watson Street. However, the site remains within an open area of land which extends along this part of the valley to the north, west and south of the site and behind the houses on Hyde Road. Little seems to have changed compared to the previous appeal decisions which held that the site is contained within the wider open landscape on the west side of Watson Street.
14. I have previously considered the appellant's proposition about the external storage of materials and, the use of the site by large commercial vehicles in connection with the builder's yard. That same analysis applies here. As does the appellant's acceptance about the size and spread of structures being a more intensive form of development than in 2015 when it was found that the use of the land as a gypsy site was in conflict with saved UDP Policy OL15. The same conclusion was reached in 2009 also.
15. The site itself may not be publicly accessible, but Watson Street is part of the Tame Valley Way which extends to the south of the site. The site's boundary treatment and vegetation does screen some of the site from public vantage points along the road. However, the upper parts of the caravans remain visible, either above the boundary treatment or through the railings. The use of the site has a harmful effect on the character of the Tame Valley. This harm would be long-term if permanent permission was granted. The effect would reduce in tune with the length of any temporary planning permission.
16. The PPTS establishes that sites should be well planned or soft landscaped to positively enhance the environment and increase its openness. A planning condition has been suggested to include soft landscaping on the boundary of, and within the site. This would help soften the site, and there would be some

improvement to the environment, but this would fall short of positively enhancing the environment or mitigating the harm identified.

17. As such, the removal of the disputed conditions conflicts with saved UDP Policy OL15 which seeks to ensure developments do not adversely affect the character of the Tame Valley. By extension, conflict is caused with Framework paragraph 174 a).

Other considerations

Other policy considerations

18. Saved UDP Policy H8 contains criteria against which proposals for gypsy sites should be assessed. It does not, however, provide any specific, or even broad, locations to which developments should be directed. I have no reason to disagree with the main parties that the proposal accords with the criteria listed in saved UDP Policy H8.

19. Concerns about an adverse effect on house prices is not a material planning consideration, whilst the number of caravans on the land and who occupies the site could be controlled by conditions were planning permission to be granted. Any expansion of the site may require a further planning application.

The need for, and provision of, traveller sites

20. The PPTS seeks to promote more private traveller site provision and to ensure that local planning authorities develop fair and effective strategies to meet the need for sites in appropriate locations, to address under provision and maintain an appropriate level of supply, including a five-year supply of specific deliverable sites.
21. Despite the appellant's criticisms of the Greater Manchester Gypsy and Traveller and Travelling Showpersons Accommodation Assessment Update 2018 (GTAA) and The Garsdale appeal decision they estimate, accounting for current site-specific circumstances, that there is a minimum need of between 4 and 9 pitches. This is an uplift from the figures which the Council rely on from the GTAA which identify a short term need for 3 pitches between 2017/18 and 2021/22 and at least 7 pitches to 2035/36. While these are based on the situation in 2014 when the then occupants participated in the household survey, both confirm an unmet need for pitches in Tameside.
22. There are no planning applications currently before the Council for new pitches and no other pitches have recently been delivered by the Council. The Council accepts that it does not at present have a five-year supply of specific deliverable sites. Therefore, the proposal would help meet the unmet need whichever figure I were to consider to be more robust.
23. In the 2009 appeal decision it was anticipated that the Council would identify sites through the local development framework process with the Site Allocations Development Plan Document (DPD) being adopted in early 2012 followed by the adoption of the Core Strategy. This timetable later slipped based, but both were anticipated to be adopted by 2014/2015. However, collaborative work between all the Greater Manchester authorities took over, initially in the form of the Greater Manchester Spatial Framework, but now nine GM boroughs are taking forward Places for Everyone (PfE). This emerging plan will be submitted for Examination in early 2022 with adoption estimated in the summer/autumn of 2023.

24. The Council intends to set out a complementary vision, strategy and range of policies at a local level to PfE through a new Tameside Local Plan (emerging Local Plan). This will track PfE but with a significant enough gap to ensure that it can incorporate its policy direction as it emerges and reflect Government intentions. The Council anticipates the emerging Local Plan would be submitted for Examination in the winter of 2024 and adopted in the Spring of 2025. There would also be a period after its adoption before any new pitches are delivered.
25. Consequently, the Council remains reliant on saved UDP policies and there is no prospect of meeting the identified need for several years through the development plan process. Equally, the development plan process has either not moved at the pace or resulted in the change in circumstances anticipated when the two previous temporary planning permissions were granted. In short, just over 12 years later and the development plan position has not changed. There has been a long-term failure of policy by the Council to allocate land to meet the needs of gypsies and travellers. There has not been a plan led approach to meeting need. This weighs substantially in favour of the appeal.

#### Alternative sites

26. The Council confirmed at the Hearing that they are not aware of any alternative sites available to the appellant. The appellant anecdotally corroborated this position albeit they do not seem to have undertaken any active searches themselves in this regard. However, from what I heard the only likely alternative open to the appellant and his family would be to live at the roadside if I were to dismiss the appeal given that the Council would enter into dialogue with him and likely result in the start of enforcement proceedings. This factor adds significant weight in favour of the proposal.

#### Personal circumstances

27. The PPTS explains in 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. However, this does not mean that there will not be cases that do not amount to very special circumstances.
28. The occupants consist of the appellant and his wife (Mrs Adeline Price), their two youngest children and their adult aged children (Mr Dean Price Jnr, Mrs Mary Ireland and Mrs Chloe Knight) and their families which include children.
29. The best interests of the children are a primary consideration in the appeal, though not necessarily determinative. The appellant's two youngest children receive a home schooling and private tuition for reading, writing and maths. They have aspirations at this stage of going into hair and beauty or teaching.
30. Dean Price Jnr, Mary Ireland and Chloe Knight each have their own family units and between them have five children of varying ages. A further child of Mary Ireland recently passed away and collectively the family are supporting one another. The eldest of the five children attends primary school, enjoys going and has a good attendance. Two of the three youngest children attend nursery, and it is the intention for all three to go to primary school in due course. The remaining child receives specific 1-2-1 support in relation to a condition. Without this their development is very likely to be affected and this may affect their attendance at primary school. The children's best interests would be served by having a settled base from which to access education as it would help encourage and maintain school attendance or education, whilst

maintaining their established social network. This would especially be the case for the child receiving specialist support. These important matters add substantial weight in favour of the proposal.

31. I heard oral evidence and I have read medical letters concerning five occupants of the site. Tests are ongoing in relation to two of the occupants so it is too early to know whether they have any health conditions and if so, what the potential effects may be. In any event, the availability of a permanent base would help maintain access to healthcare facilities for them and the other occupants of the site. There are clear benefits to the health and wellbeing of the remaining three if they have a settled base from which they can access and attend appointments, treatment and/or support. In the case of each individual these matters carry substantial weight in favour of the proposal.

*Whether the harm is clearly outweighed by other considerations*

32. I have had due regard to the Human Rights Act 1998 (HRA) and the Public Sector Equality Duty (PSED) under the Equality Act 2010. The named occupants of the site have a protected characteristic for the purposes of the PSED. Article 8 of the HRA requires that decisions ensure respect for private and family life and the home. However, these are qualified rights and interference may be justified where in the public interest, such as the protection of the Green Belt. The concept of proportionality is key. Dismissal of the appeal would be a serious interference with these individuals' rights to respect for private and family life and the home (Article 8 of the HRA) as there is no other lawful home(s) currently available to them and given the Council's intention to enter into dialogue and potentially start enforcement proceedings, they would be likely to be living by the roadside. This existence would not be in the best interests of the children or the family unit.
33. The proposal causes harm by reason of its inappropriateness and has a moderate impact on the openness of the Green Belt. Jointly, these matters carry substantial weight against the proposal. There would be no impact on the purposes of including the land within the Green Belt. The proposal causes harm to the character of the Tame Valley. I attach moderate weight to this matter.
34. Although there is no presumption that a temporary planning permission will then be granted permanently, both previous temporary permissions were granted on the expectation that there would be a plan led approach to meeting the need during those time periods. The anticipated change didn't happen. Plainly, there has been a long-term failure of policy by the Council to allocate land to meet the needs of gypsies and travellers. While the Council suggested a further temporary planning permission to respond to the PfE and emerging Local Plan timetable, neither will address the unmet need in the immediate future even if the Council delivers against the predicted timelines. A temporary permission would afford the appellant and his family a settled base and access to education and health care during that time. However, given the historic situation over several years and the uncertainty about the PfE and emerging Local Plan delivering the necessary pitches, I am not satisfied that there is a realistic prospect that circumstances will have changed at the end of that temporary period.
35. The proposal would bring about benefits relating to an unmet need, the lack of a 5 year supply, the lack of alternative accommodation, and the uncertainty of the availability or allocation of future supply. There would also be clear benefits to the family unit being together as a cohesive unit, and for the children to

access education and healthcare to varying degrees. Access to healthcare for the adults, and in particularly those with particular or potential needs would also be a clear benefit to them. These matters attract either significant or substantial weight.

36. In terms of the removal of the disputed conditions and the grant of permanent planning permission, I consider that the combination of benefits and the substantial failure of policy is sufficient in this case to clearly outweigh the identified harm from the proposal to amount to the very special circumstances required. Therefore, a permanent planning permission is appropriate. On this basis, there would be no interference with the human rights of the appellant and his family.

### **Conditions**

37. I have had regard to the suggested list of planning conditions provided by the main parties at the Hearing and their comments on them. An approved plan condition is necessary in the interests of certainty. I have also imposed conditions, in the interests of certainty and the character and appearance of the area, to control: the number and type of caravans on the pitches; the implementation and maintenance of the hard and soft landscaping scheme; and to prevent commercial activities and the parking of heavy vehicles. I have imposed a personal condition given the facts involved in this case, but I have amended the suggested wording so that it accounts for potential family breakdown or death. Given that personal conditions are time-limited due to eventual death, I have imposed a condition so that the land is restored to its previous condition when the use is ceased. This is necessary in the interests of the Green Belt and the character of the Tame Valley.

### **Conclusion**

38. For the reasons given above, relevant considerations indicate that permanent planning permission should be granted for development not in accordance with the development plan as a whole. I conclude that a case has been made, in respect of the appellant and his family to clearly outweigh the harm to the Green Belt, thus justifying the proposal based on very special circumstances.
39. For the reasons given above I conclude that the appeal should be allowed.

*Andrew McGlone*

INSPECTOR

## SCHEDULE OF CONDITIONS

1. The development hereby permitted shall be carried out in accordance with the approved Site Location Plan.
2. The occupation of the site hereby permitted shall be carried on only by Dean and/or Mary Price; Dean Jnr and/or Tina Price; Mary and/or Shaun Ireland; and Chloe and/or Kaylem Knight; and all of their resident dependants.
3. At the end of when the land ceases to be occupied by those named in condition No. 2 above, the use hereby permitted shall cease and all caravans, structures, materials and equipment brought on to the land in connection with the use including the amenity block and utility buildings hereby permitted, shall be removed. Within 3 months of that time the land shall be restored in accordance with a scheme previously submitted to and approved in writing by the Local Planning Authority.
4. No more than 5 caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 as amended (of which no more than 4 shall be a static caravan or mobile home) shall be stationed on the site at any time.
5. No commercial activities shall take place on the land, including the external storage of materials.
6. No vehicle over 3.5 tonnes shall be stationed, parked or stored on the site.
7. 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 including details of: the proposed site layout, the two utility buildings, any external lighting on the boundary of and within the site, soft landscaping on the boundary of and within the site, and of modifications to the gates on the frontage to prevent them opening over the highway, shall have been submitted to and approved in writing by the Local Planning Authority, and the scheme shall include a timetable for its implementation.
  - ii) If within 11 months of the date of this decision the scheme outlined in part (i) above has not been approved in writing by the Local Planning Authority or, if the Local Planning Authority refuse to approve the details, or fail to give decisions within the prescribed period, appeals shall have been made to, and accepted as validly made by, the Secretary of State.
  - iii) If appeals are made in pursuance of (ii) above, those appeals shall have been finally determined and the submitted details shall have been approved by the Secretary of State.
  - iv) The scheme as approved under part (i) above shall have been carried out and completed in accordance with the approved timetable.

END OF SCHEDULE

## **APPEARANCES**

### FOR THE APPELLANT:

Philip Brown  
Dean Price

Philip Brown Associates  
Appellant

### FOR THE LOCAL PLANNING AUTHORITY:

Ben Sandover  
Simon Pateman  
John Hughes  
Dr Michael Bullock

Tameside Metropolitan Borough Council  
Tameside Metropolitan Borough Council  
Tameside Metropolitan Borough Council  
Arc 4 Limited

## DOCUMENTS

1 – Draft list of suggested conditions