

NATIONAL PLANNING POLICY FRAMEWORK – DECEMBER 2024

Sustainable Development

Paragraph 11 of the NPPF sets out the presumption in favour of sustainable development and states in paragraph 11d): *“where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date⁸, granting permission unless:*

- i. the application of policies in this Framework that protect areas or assets of particular importance provides a strong reason for refusing the development proposed;*
or
- ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole, having particular regard to key policies for directing development to sustainable locations, making effective use of land, securing well-designed places and providing affordable homes, individually or in combination”.*

Footnote 8 explains that development plan policies are out-of-date for applications involving the provision of housing, situations where: the local planning authority cannot demonstrate a five year supply of deliverable housing sites (with the appropriate buffer as set out in paragraph 78); or where the Housing Delivery Test indicates that the delivery of housing was substantially below (less than 75% of) the housing requirement over the previous three years.

Paragraph 63 states that: *“Within this context of establishing need, the size, type and tenure of housing needed for different groups in the community should be assessed and reflected in planning policies. These groups should include (but are not limited to) those who require affordable housing (including Social Rent); families with children; looked after children; older people (including those who require retirement housing, housing-with-care and care homes); students; people with disabilities; service families; travellers²⁷; people who rent their homes and people wishing to commission or build their own homes.*

Footnote ²⁷ makes clear that Planning Policy for Traveller Sites sets out how travellers' housing needs should be assessed for those covered by the definition in Annex 1 of that document.

Interpretation

Policies relating to the provision of sites for Gypsies and Travellers are to be considered out-of-date if the Local Planning Authority is unable to demonstrate that it has a five-year supply of deliverable land to satisfy the identified need. In such circumstances, the "tilted" balance should be applied whereby, planning permission should be granted for proposed traveller sites unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits.

Green Belt

Paragraph 143 of the NPPF sets out the five purposes of including land within Green Belt as being:

- a. to check the unrestricted sprawl of large built-up areas;
- b. to prevent neighbouring towns merging into one another;
- c. to assist in safeguarding the countryside from encroachment;
- d. to preserve the setting and special character of historic towns; and
- e. to assist in urban regeneration, by encouraging the recycling of derelict and other urban land.

Paragraph 148 states that: *"Where it is necessary to release Green Belt land for development, plans should give priority to previously developed land, then consider grey belt which is not previously developed, and then other Green Belt locations"*.

In this context Grey Belt is defined in the Glossary as: *"land in the Green Belt comprising previously developed land and/or any other land that, in either case, does not strongly contribute to any of purposes (a), (b), or (d) in*

paragraph 143. 'Grey belt' excludes land where the application of the policies relating to the areas or assets in footnote 7 (other than Green Belt) would provide a strong reason for refusing or restricting development."

Footnote 7 states that: *"The policies referred to are those in this Framework (rather than those in development plans) relating to: habitats sites (and those sites listed in paragraph 189) and/or designated as Sites of Special Scientific Interest; land designated as Green Belt, Local Green Space, a National Landscape, a National Park (or within the Broads Authority) or defined as Heritage Coast; irreplaceable habitats; designated heritage assets (and other heritage assets of archaeological interest referred to in footnote 75); and areas at risk of flooding or coastal change."*

Paragraph 153 sets out the presumption against inappropriate development. When considering any planning application, local planning authorities should ensure that substantial weight is given to any harm to the Green Belt, including harm to its openness⁵⁵.

Paragraph 153 is qualified by footnote 55 which makes clear that it applies other than in the case of development on previously developed land or grey belt land, where development is not inappropriate.

Paragraph 155 provides that the development of homes, commercial and other development in the Green Belt should not be regarded as inappropriate where:

- a) The development would utilise grey belt land and would not fundamentally undermine the purposes (taken together) of the remaining Green Belt across the area of the plan;
- b) There is a demonstrable unmet need for the type of development proposed⁵⁶;
- c) The development would be in a sustainable location, with particular reference to paragraphs 110 and 115 of this Framework⁵⁷; and
- d) Where applicable the development proposed meets the 'Golden Rules' requirements set out in paragraphs 156-157 below.

Footnote 56: Which, in the case of applications involving the provision of housing, means the lack of a five year supply of deliverable housing sites, including the relevant buffer where applicable, or where the Housing Delivery Tests was below 75% of the housing requirement over the previous three years; and in the case of traveller sites means the lack of a five year supply of deliverable traveller sites assessed in line with Planning Policy for Traveller sites.

Footnote 57: In the case of development involving the provision of traveller sites, particular reference should be made to Planning Policy for Traveller Sites paragraph 13.

Paragraph 110, referred to in paragraph 155(c), states amongst other things: *“opportunities to maximise sustainable transport solutions will vary between urban and rural areas, and this should be taken into account in both plan-making and decision-making”*.

Interpretation

Openness in Green Belt terms is not freedom from all development but, is freedom from inappropriate development. The development of traveller sites is not to be regarded as inappropriate development in the Green Belt, where the Local Planning Authority does not have a five-year supply and, the development will take place on previously developed land or “Grey Belt”, i.e. land that does not contribute towards checking the unrestricted sprawl of large built-up areas; preventing neighbouring towns merging into one another; and, preserving the setting and special character of historic towns.

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Paragraph 16 of PPTS reiterates that inappropriate development is harmful to the Green Belt and should not be approved, except in very special circumstances. Traveller sites (temporary or permanent) in the Green Belt are inappropriate development **unless** [my emphasis] the exceptions set out in Chapter 13 of the National Planning Policy Framework apply.

Paragraph 18 makes clear that the “Golden Rules”, set out in chapter 13 of the National Planning Policy Framework, do not apply to traveller sites.

APPLICATION TO SPRING LANE NURSERIES

The 2018 GTAA distinguishes between Gypsies complying with the definition in Annex 1 of *Planning policy for traveller sites* (2015), those who do not, and those whose gypsy status is unknown. However, following the Court of Appeal decision in **Lisa Smith v. Secretary of State for Levelling Up, Housing & Communities [2022] EWCA Civ 1391**, and the change in definition, the GTAA cannot be relied upon to determine gypsy status and, it is the full “cultural” need which must be provided for. To this extent, though only recently adopted, the Local Plan is out-of-date.

The GTAA estimates a “cultural” need for a total of 27 permanent gypsy pitches in the period 2017 – 2032, i.e. 1.8 pitches per annum. Only 13 pitches have been approved since the start of the GTAA assessment period which equates to 7 year’s supply (2017 – 2024). The Council has not allocated any land for the provision of gypsy sites and this means that, as of today, the Council cannot demonstrate a 5-year supply (19.8 permanent pitches, 2017 - 2028) of deliverable land for gypsy sites.

The fact that there is no five-year supply means that the policies most relevant to determination of this appeal are out-of-date and, as such, the “tilted” balance should be applied whereby, planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits.

Furthermore, paragraph 155 of the NPPF is engaged, whereby, the proposed development should not be regarded as inappropriate within the Green Belt provided that, amongst other things the development will take place on previously developed land or “Grey Belt”, i.e. land that does not contribute towards checking the unrestricted sprawl of large built-up areas; preventing neighbouring towns merging into one another; and, preserving the setting and special character of historic towns.

In this case, the site is not undeveloped, greenfield land. It already contains a non-agricultural buildings and hardstanding, and constitutes previously developed land. Even if this were not accepted, development of the application site would not result in the sprawl of a large built-up area; erode the gap between neighbouring towns; or, affect the setting or special character of a historic town. The site therefore constitutes Grey Belt land.

Furthermore, the proposed development is not of a scale or in a location where it could fundamentally undermine the purposes (taken together) of the remaining Green Belt across the area of the plan (criterion a. of paragraph 155). There is a demonstrable unmet need for the type of development proposed (criterion b.); and, the “Golden Rules”, set out in chapter 13 of the NPPF, do not apply to traveller sites.

The final criterion of Paragraph 155 requires that the development would be in a sustainable location, with particular reference to paragraphs 110 and 115 of this Framework.

Policy C of PPTS makes clear that some sites will be in rural areas and the countryside. This advice is qualified by Policy H (paragraph 23) which states that sites should be very strictly limited in the open countryside **away from** existing settlements. The term “*away from*” infers a significant degree of detachment, such that the site may be considered to be isolated. In this case, the proposed development is reasonably close to both Croft, which contains a limited range of services, including a primary school, and Birchwood, which contains a full range of community services and facilities. Clearly, the appeal site is not away from settlements for the purposes of PPTS.

Having established that gypsy sites can be appropriately located outside of existing settlements, within rural and semi-rural areas, it is self-evident that gypsy sites will generally not be as conveniently located for access to local services as conventional housing. Paragraph 110 of the NPPF recognises that different policies and measures will be required in different communities and, opportunities to maximise sustainable transport solutions will vary from urban to rural areas. Paragraph 110 generally seeks to direct developments that generate significant movement to locations where the need to travel will be minimised and the use of sustainable transport modes can be maximised. A development of 4 caravan pitches would not generate significant movement, i.e. requiring submission of a Transport Statement or Transport Assessment (para. 118 of the NPPF) and, although dependent on the private motor vehicle, trips to access local services and community facilities would be small in number and, short in duration. In my opinion, the site provides reasonable access to local services and community facilities in accordance with criterion (c) of paragraph 155 of the NPPF..

PPTS makes no mention of distances to services or modes of travel when assessing the sustainability of gypsy sites. PPTS expects local planning authorities to ensure that gypsy sites are sustainable economically, socially and environmentally – by promoting access to appropriate health services, and ensuring that children may attend school regularly. “Access” in this sense is related to the fact that gypsies may only have the right to register with a GP or obtain education if they have a settled base.

With regard to the wider sustainability objectives of providing permanent traveller sites, the proposed development would provide the opportunity to promote peaceful and integrated co-existence between the site residents and the local community (paragraph 13a of PPTS). The provision of a settled base would allow the site residents to register with a local GP, and access appropriate health services (paragraph 13b); it would allow the appellant’s children to attend school regularly (paragraph 13c); and reduces the need for long range or frequent travelling (paragraph 13d). There is no suggestion that occupants of the site would be subject to any adverse environmental effects, such as noise or poor air quality (paragraph 13e); the site would not place undue pressure on local infrastructure and services (paragraph 13f); and the site is not located in an area at high risk of flooding (paragraph 13g).

The proposed development would satisfy 7 of the 8 criteria for sustainability set out in paragraph 13 of PPTS, and criterion (h), relating to living and working in the same location, is not relevant to this application. The proposed site is therefore sustainable economically, socially and environmentally for the purposes of PPTS.

CONCLUSIONS

The recent seismic shift in planning policies aimed at greatly increasing the supply of housing, including traveller sites, has completely changed the way in which this application should be determined.

The proposed development falls squarely within one of the exceptions to the application of Green Belt, whereby the site can now be regarded as Grey Belt where the development of a traveller site is not to be regarded as inappropriate. The applicant no longer has to prove that very special circumstances exist to justify the granting of planning permission.

Furthermore, the lack of a five-year supply of deliverable land for traveller sites means that the tilted balance is engaged for determination of this application by which any adverse impacts of granting permission must significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole, before planning permission should be refused.

In this case, removal of any Green Belt objection leaves the Council with few, if any, adverse impacts on which to rely. For planning permission to be refused any harms must significantly and demonstrably outweigh the benefits of granting permission. In my opinion, any harm is likely to fall well short of outweighing the matters which weigh in favour of the scheme: the unmet need; absence of a five-year supply; lack of alternative sites; failure of the Development Plan to meet the full identified need; the likelihood that any new gypsy sites will be in the Green Belt; compliance with the Council's locally specific criteria; the personal accommodation needs and personal circumstances of the site residents; and, the needs of the children.