



The Planning Inspectorate

Appeal Decision

Hearing held on 24 April 2018

Site visit made on 24 April 2018

by Diane Fleming BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 June 2018

Appeal Ref: APP/V2255/C/17/3179355

Hill Top Farm, Elverland Lane, Ospringe, Faversham, Kent ME13 0SP

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr John Howard against an enforcement notice issued by Swale Borough Council.
 - The enforcement notice was issued on 5 June 2017.
 - The breach of planning control alleged in the notice is failure to comply with condition No 1 of a planning permission, Ref SW/10/1446, granted on 23 February 2012.
 - The development to which the permission relates is the
 - *Use of land for one mobile home and one tourer for a Gypsy family without compliance with condition number 1 previously imposed on permission SW/05/1316, dated 7 October 2005, granted on appeal on 15 November 2007 under reference APP/V2255/A/07/2035766.* The condition in question is No 1 which states that:
 - *The use hereby permitted shall be for a limited period being the period of four years from the date of this decision. At the end of this period the use hereby permitted shall cease, all caravans, buildings structures, materials and equipment brought on to, or erected on the land, or works undertaken to it in connection with the use shall be removed, and the land restored to its condition before the development took place.* The notice alleges that the condition has not been complied with in that the use has continued.
 - The requirements of the notice are to:
 - Cease the use of any part of the Land as a caravan site for the stationing of any mobile homes or caravans for residential use;
 - Remove from the Site all caravans, buildings, structures, materials and equipment brought on to or erected on the Land or works undertaken to it in connection with the stationing of any caravan and the Site shall be restored to the condition before the use commenced.
 - The period for compliance with the requirements is 12 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended.
-

Decision

1. It is directed that the enforcement notice be corrected by the deletion of '(a)' within the first paragraph and the substitution of '(b)'. Subject to this correction the appeal is dismissed and the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

<https://www.gov.uk/planning-inspectorate>

Appeal Decision APP/V2255/C/17/3179355

Procedural Matters

2. An enforcement notice must enable every person who receives a copy to know exactly what, in the Council's view, constitutes the breach of planning control. In this case, the opening paragraph of the notice states that there has been a breach of planning control under section 171A(1)(a), which is the carrying out of development without planning permission. It should have cited section 171A(1)(b), which deals with the failure to comply with planning permissions. At the Hearing the Council explained that this was an oversight on their part and the error had gone unnoticed by the appellant. The parties agreed that this could be corrected as it will not cause injustice to the appellant or the local planning authority.
3. When the notice was issued the Council relied on its policies within the Swale Borough Local Plan 2008. This has now been replaced by the adoption of a new local plan (LP) on 26 July 2017¹ to which I will have regard in reaching my decision.
4. The Hearing was adjourned at the end of the first day and closed in writing afterwards as the Council had received, very late in the day from a third party, information about alternative sites which the appellant had not seen. In addition, there was also a detailed letter of representation from a local resident handed in at the Hearing as the resident could not attend in person. The appellant was therefore given extra time to consider these submissions and make comments. These were exchanged with the Council and the last word was given to the appellant.

Background

Planning history of the site

5. The appellant and his mother purchased the appeal site around July 2012. Mr Howard has occupied it with his wife and two children continuously since then. The site was previously known as Tootsie Farm. On 6 March 2007 the Council issued a notice alleging a material change of use from agricultural land to land used as a caravan site for the stationing of caravans/mobile homes used residentially and land used for the keeping of horses. A temporary planning permission was granted on appeal² on 15 November 2007 subject to a number of conditions including that the use of the site should cease by 15 November 2010.
6. On 15 August 2011 the Council issued a second notice alleging a failure to comply with previous conditions requiring the use as a caravan site to cease, the occupiers effects to be removed from the site and the site to be restored to the condition it was before the breach took place. A second temporary planning permission was granted on appeal³ on 23 February 2012. This was subject to a number of conditions including that the use of the site should cease by 23 February 2016.
7. On 6 March 2017 planning permission was refused to vary or remove the time limiting condition attached in 2012 so as to continue the use of the

¹ Bearing Fruits 2031: The Swale Borough Local Plan 2017

² APP/V2255/C/07/2040928

³ APP/V2255/C/11/2159720

Appeal Decision APP/V2255/C/17/3179355

land as a caravan site. Following this decision the Council issued the notice the subject of this appeal.

Planning history of other nearby sites

8. During the Hearing, the Council drew my attention to three other gypsy sites along Elverland Lane within the vicinity of the appeal site. At The Retreat to the west of the appeal site a notice alleging a material change of use to land used as a caravan site for the stationing of caravans for residential use was upheld on appeal⁴ and the use of that site must cease by 3 March 2018. A subsequent refusal of planning permission for the same use was also dismissed on appeal⁵ on 24 January 2018. At The Meads Farm to the south of the appeal site planning permission was allowed on appeal⁶ on 23 January 2018 for a temporary period of four years. Directly adjacent to The Meads is Horseshoe Farm where planning permission has been refused to continue the use of the land as a caravan site for the stationing of caravans for residential use.

Policy changes since 2007

9. There have been significant policy changes and other publications since the 2007 and 2012 appeal decisions in relation to Hill Top Farm. These are the publication of the National Planning Policy Framework in March 2012 (the Framework); the production of the Gypsy, Traveller and Travelling Showpeople Accommodation Assessment 2013, reviewed 2015 (GTAA); the publication of the Kent Downs Area of Outstanding Natural Beauty Management Plan 2014-2019 in April 2014(KDMP); the publication of the Planning policy for traveller sites August 2015 (PPTS); and the adoption of the Council's LP. Whilst the findings of the previous Inspectors are material and there is a need for consistency in the planning process, I am not bound to reach the same conclusions provided there are sound planning reasons for departing from their approach.

Status of the appellant

10. The Council do not contest the appellant's claim to be a gypsy. However third parties have raised this in their representations. Mr Howard states he is a Romany Gypsy and was born on a traveller site. He grew up at various sites around the country including at Gravesend, Kent and Preston, Lancashire. He left school at age 13 and his father introduced him to the keeping and breeding of horses. These are a large part of his identity and a source of income as he goes to trade at several horse fairs such as Appleby, Barnet, Stow and Kenilworth amongst others. He currently has three mares and in addition to grazing horses on the 7 acres he owns adjacent to the appeal site, he rents a field nearby to keep another 8 horses.
11. The appellant also buys and sells vehicles and lays tarmacadam. This enabled him to buy a house in Connaught Road, Chatham where he tried 'bricks and mortar' but it proved unsuitable and so he rented it out and occupied a caravan in the garden adjacent to his father's house in

⁴ APP/V2255/c/16/3142907

⁵ APP/V2255/w/17/3172935

⁶ APP/V2255/w/17/3174468

Appeal Decision APP/V2255/C/17/3179355

Connaught Road until he bought the appeal site. Now his children are at school he travels to the horse fairs in the school summer holidays with all the family. He also travels for work on his own during term time so as not to interrupt his children's education.

12. On the basis of the oral and written evidence put to me I am satisfied that the appellant has a nomadic habit of life that accords with the definition of gypsies and travellers as set out in Annex A of the PPTS and the other occupiers of the site are his dependents.

Main Issue

13. Against that background the main issue raised by this appeal is whether the development represents an acceptable form of development having particular regard to the following matters:
- The objectives of the development plan in respect of gypsy and traveller accommodation;
 - The character and appearance of the area, having regard to the location of the site within the Kent Downs Area of Outstanding Natural beauty (AONB) wherein the statutory purpose of an AONB is to conserve and enhance the natural beauty of an area;
 - The suitability of the access point, having regard to the safety and convenience of highway users; and
 - Whether any harm arising from the above matters is outweighed by other considerations, including the level of need for gypsy and traveller sites, availability of alternative sites, personal circumstances and Human Rights considerations.

Reasons

Appropriateness of development: Site location

14. The appeal site was previously part of a larger field and is situated on the north side of Elverland Lane which connects Faversham Road in the west to Eastling Road in the east and the village of Painter's Forstal. The site is approximately midway between the villages of Painter's Forstal and Newnham. There are no permanent dwellings along Elverland Lane. The only residential use along the lane, in addition to the appeal site, are the three other gypsy sites as described in paragraph 8, of which only one has a temporary planning permission. The parties accept that the site lies within open countryside, outside the built-up area boundaries shown on the LP Proposals Map and also within the Kent Downs AONB, a nationally important landscape.
15. Policy ST 3 from the LP sets out the Council's settlement strategy and directs growth to the main urban centre of Sittingbourne followed by smaller urban centres and rural local service centres. Minor infill development will be permitted in other villages with settlement boundaries but development will not be permitted in open countryside unless it can be demonstrated that it would protect and where appropriate enhance the intrinsic value, landscape setting, tranquillity and beauty of the countryside.

<https://www.gov.uk/planning-inspectorate>

4

Appeal Decision APP/V2255/C/17/3179355

16. The supporting text to the policy states that when considering development for gypsy and traveller provision, Policy ST 3 should be read in conjunction with Policy DM 10 and there may be a need for some flexibility to take into account specific business or personal requirements.
17. Policy DM 10 is intended to act as a criteria based policy to guide windfall sites that may come forward, amongst other matters. It explains that applicants are required to consider the availability of sites at each tier of settlement category before a site in the next lower tier is considered and permitted.
18. The appellant submits that there are no alternatives to the use of sites in open countryside as there is an absence of allocated or existing gypsy sites in existing settlements. However, the basis of the LP, which has only recently been adopted, is not to allocate sites but to test windfall applications against the criteria in Policy DM 10. With that in mind, and the PPTS policy that Councils should very strictly limit new traveller site development in open countryside that is away from existing settlements, the Council submitted that they have granted planning permission for gypsy sites nearer to urban centres. This is because these are more sustainable locations not only in terms of reduced distances to travel but also when considering the social and economic aspects of sustainability as set out in paragraph 13 of the PPTS.
19. Having regard to those aspects, I find that the appellant's residential use of his land comprising a static caravan and a tourer on its own does not dominate either of the nearby villages or the surrounding wider area of isolated dwellings. It has also not been demonstrated that the single household on the site causes significant harm to the capacity of local services. The appellant explained he had no difficulty in obtaining places for his children at the nearby primary school.
20. Whilst the appellant submitted mixed use gypsy sites can be more sustainable, in that working from a settled base can reduce the need to travel, I consider this does not take account of all aspects of sustainability and a mixed use is not the allegation in this instance. The parties agreed that it was 2.8 miles to the nearest school and 4.5 miles to Faversham. Newnham has a village hall and a public house but Painter's Forstal has fewer facilities, therefore it is necessary to travel to Faversham for day to day needs including social and economic requirements. In that regard the residential use of the appeal site does not contribute towards establishing a sustainable pattern of development as envisaged by the LP. This is the case even though it has not been demonstrated that the use dominates either of the nearby villages or the surrounding area and it does not have an adverse effect on the capacity of local services. I therefore give this finding substantial weight.

Character and appearance

21. The site is approximately rectangular in shape, fenced on three sides with a short side facing the lane where there are timber gates. It lies on the side of a dry valley chalk slope against the backdrop of an indigenous hedge. It is recognised by the KDMP as being in an attractive, remote and undeveloped part of the district. The former five bar gate field access was widened at the time of the first breach of planning control to create a

<https://www.gov.uk/planning-inspectorate>

5

Appeal Decision APP/V2255/C/17/3179355

hard-surfaced access in the shape of a large bell mouth. The shape of the access remains but the surface beyond the gate has softened. The current appellant has also refurbished the existing sheep shelter that was on the site at the time of the first breach of control by cladding it in black boarding. The distinctive character and appearance of the general surroundings is that of arable land enclosed by hedging, interspersed with small woods on high ground, the remnants of orchards and isolated traditional buildings.

22. Elverland Lane is recognised as an attractive rural lane by the LP. It is one of many such lanes along the side of the valley which were probably developed as herding routes from the high ground to the valley floor. It is a sunken single track road, with few formal passing places, which gently climbs the side of the valley. It is flanked by mature trees and hedges which in parts have grown over the lane to enclose it. In one section of the lane in the vicinity of the appeal site there is a long line of overgrown prominent conifer trees which are at odds with the natural beauty of the area.
23. Policy DM 6 of the LP seeks to prevent development that would either physically alter or result in levels of traffic that would significantly harm the character of this lane. I consider the shape of the access into the appeal site is intrusive and harms the special qualities of the lane. Although there is an established wide access point at The Meads Farm further along the lane, such accesses are not features generally common to rural lanes in the AONB.
24. At the site visit I was taken to a bridge over the motorway where it is possible to look across the valley towards the appeal site. My two previous Inspector colleagues were taken to the same spot. The 2007 Inspector could clearly see the appeal site and a mobile home situated prominently towards the top of the valley side. A laurel hedge had been planted just below it to screen it but the Inspector concluded that the screen, once established, would not be in keeping with the natural qualities of the landscape.
25. The 2012 Inspector recognised that the laurel hedge was now a more effective screen though the caravans could still be seen. He echoed the 2007 Inspector's view that the laurel hedge was an unnatural feature in the area. My observations are that the laurel hedge is now so tall that from across the valley the mobile home and tourer sited to the north of the refurbished sheep shelter are extremely well screened with only the entrance to the shelter being visible through a gap in the laurel hedge. Alongside the motorway the trees have also matured compared to images in previous photographs from 2006. However these only add to the screening of the site in spring and summer. I concur with my colleague Inspectors in that the evergreen laurel hedge is an incongruous feature in the AONB where the primary purpose of the designation is to conserve and enhance the natural beauty.⁷ The hedge may also die back over time which would reveal the full extent of the use and as such cannot be relied upon for screening.

⁷ Kent Downs Area of Outstanding Natural Beauty Management Plan 2014-2019, April 2014

Appeal Decision APP/V2255/C/17/3179355

26. The appellant submits that allowing the use of the site to continue would not result in significant harm to the AONB as PPTS accepts the principle of traveller sites in rural areas provided they respect the scale of and do not dominate the nearest settled community. The mobile home and tourer are not visible from the lane as they are situated behind the shelter. Should planning permission be refused, the use would cease but the hedge would remain together with the access point.
27. This argument was dealt with by the Inspector in 2007 who said that gypsies have long been a part of the agricultural landscape of Kent but a traditional working presence is very different to a mobile home in a fenced off area complete with domestic artefacts. In this case there is a large mobile home and tourer plus parked cars. I note whilst there is hedging on the western and eastern boundaries of the site, the northern boundary comprises a low fence. The mobile home and tourer together with parked cars and the appellant's domestic paraphernalia to the north of the shelter are therefore open to view from the north. I consider their modern appearance and the development of this site in this remote, generally undeveloped area is at odds with the identified sensitive natural landscape, scenic beauty and the traditional buildings in the wider area.
28. Furthermore, the notice requires that the site should be restored to its condition before the use commenced. Policy DM 24 from the LP also emphasises that planning permission will only be granted for development in the AONB provided it conserves and enhances the special qualities and distinctive character for the AONB. For the reasons given I consider the residential use of the appeal site for the stationing of caravans harms the distinctive character and appearance of the AONB and undermines its designation. I therefore give this finding great weight.

Highway safety

29. The Council are concerned that the site access lacks sufficient visibility to enable safe use and adequate visibility splays cannot be provided on land within the appellant's control. At the site visit I parked on the appeal site together with the Council's officer and experienced for myself the limited visibility either side of the access. The appellant and the Council also pointed out the extent of the appeal site in relation to the boundary of the road and the neighbouring land.
30. The Highway Authority require a visibility splay of 2.4m x 33m either side of the access on the basis of 25mph traffic speeds. The restricted width and gradient of the lane discourages but does not prevent higher traffic speeds. The parties agreed that such splays could not be provided on land within the appellant's control. Whilst he has erected mirrors to facilitate safer access, he submits that traffic flows are light and there is no record of any accidents in over 10 years that the access has been used for residential purposes.
31. Notwithstanding these points, I concur with the previous Inspectors. Whilst a visibility splay of about 2.4 x 30m is possible to the west of the access, this is only around 10m to the east. Consequently, in order to leave the site it is necessary to ease out into the lane, a harmful manoeuvre in itself made more difficult by the steep gradient of the access. I consider mirrors are no substitute for actual safe viewing as they can be obscured by poor

<https://www.gov.uk/planning-inspectorate>

7

Appeal Decision APP/V2255/C/17/3179355

light, glare or inclement weather. Highway standards are necessary for safety reasons and whilst they can be relaxed on occasion, as referred to by the appellant, this is not at the expense of safety and is usually where other aspects of road design are manipulated to reduce traffic speeds which is not the case here. For these reasons I conclude that the access is unsatisfactory and I give this substantial weight.

Other considerations

The need for sites and whether a 5 year supply is demonstrated

32. The Council's GTAA was published in 2013 and was reviewed in 2015 following the revised definition of a gypsy and traveller in the PPTS. It was also re-interrogated to inform the Examination In Public of the LP. The conclusion was that over the plan period to 2031 there is a need for 61 pitches. As 51 have already been completed or had permission granted it was accepted by the examining Inspector that the remaining 10 pitches could reasonably be provided through windfall applications and that this was a pragmatic approach. There would also be an early review of the plan due to the need to consider strategic highway capacity to meet the borough's proposed housing targets so need and supply in relation to gypsies and travellers would be assessed again.
33. At the Hearing the Council advised that 63 pitches have been granted planning permission so far in the LP period. They also stated that they would continue to grant planning permission for pitches if suitable sites came forward as they do not regard the need figure to be a ceiling.
34. The appellant submits that around 64 pitches have been granted planning permission but 19 of these are at the Brotherhood Woodyard site. However, it appears that these 19 pitches will not come forward as the site has not been laid out in accordance with the approved plans.
35. The Council have been robust in dealing with this site and have issued an Enforcement Notice to address the unauthorised use and have negotiated the submission of a revised planning application for a new layout of pitches. They are therefore confident that following the grant of planning permission⁸ to increase the number of authorised pitches from 29 to 40, the significant number of pitches that this site would deliver would address the unmet need identified by the appellant. This has been described by the appellant as arising from household formation, the number of pitches with temporary planning permissions and the number of unauthorised sites.
36. Whilst there was a recent count of traveller sites in the borough in January 2018, these figures have not been processed and therefore the appellant relied on figures put to the Inspector who dealt with the recent appeal at The Retreat. These figures were that at July 2017 there were 73 unauthorised caravans. In addition, as at the date of the current Hearing 37 caravans had been granted temporary planning permission of which only 4 remain current, the remaining 33, in the appellant's view demonstrate unmet need.
37. I consider even if the number of pitches at the Brotherhood Woodyard site are not deliverable, the Council has calculated that the number of pitches

⁸ Application 7/502338/FULL granted 3 May 2018

Appeal Decision APP/V2255/C/17/3179355

approved and occupied since the publication of the GTAA is still 44. The shortfall figure is derived from the need figure of 61 minus those provided, which equals 17. Over the plan period of 14 years this equates to a need of 1.21 per year which means the number of pitches required for the 5 year supply is 6.05. The Council advise that this can be met as there are currently 7 unimplemented planning permissions for pitches in their supply. I concur with my fellow Inspector at The Retreat in terms of my conclusion on this issue. While the Council can demonstrate a 5 year supply of sites to meet the established need, as examined through the development plan process, there is evidence at the moment of unmet need for gypsy and traveller accommodation on the ground.

Availability of alternative sites

38. PPTS paragraph 24 requires consideration of the availability of alternative accommodation for the appellant. Alternative sites must be available, affordable, acceptable and suitable. To be available a pitch must have planning permission, be vacant and be actually available to the proposed occupier.
39. The information supplied about alternative sites relates to two double pitches on a site owned by Kent County Council (KCC) at Murston, Sittingbourne; three yards for sale at Eastry, Deal and Minster; and agricultural land advertised for sale with equestrian potential at Breach Farm, Rainham and Four Acre Stables at Bredgar.
40. Firstly the appellant submits that even if the Brotherhood Woodyard site was deliverable, it is unlikely that the appellant would be able to access a pitch. This is because there are 47 households on the site and 40 pitches have been permitted. Furthermore, a pitch on that site would not be suitable for two reasons. Firstly, the appellant would have to sell his mobile home as anyone taking a pitch has to make use of the mobile home already provided on the pitch. Secondly, the site is owned by Irish Travellers and the appellant is a Romany Gypsy.
41. However, other than the inconvenience of having to sell a mobile home, no specific evidence was offered as to why this site would be unsuitable or why it would be not be possible to integrate with the owners of the site. With regard to the Murston site, whilst KCC no longer operate a waiting list, sites are now allocated to those in most need in accordance with KCC's allocation policy. The appellant though does not state whether he would meet any criteria in the allocation policy.
42. With regard to what are described as 'yards for sale' which appear to be gypsy pitches, one is a considerable distance from the appellant's home area, one site no longer appears to be for sale and the third is unaffordable. I note the site in Deal would mean that the children would have to change school. Whilst the Council submit site value is not a relevant indicator of suitability, if it is beyond the means of the appellant then it is my view it is unavailable to him. Finally with regard to the agricultural land sites, the appellant submits that neither has planning permission and as such they are not available.
43. On the basis of these submissions, the appellant has not adequately explained why two of the options would not be viable. I am therefore

<https://www.gov.uk/planning-inspectorate>

9

Appeal Decision APP/V2255/C/17/3179355

unable to conclude that there does not appear to be any reasonable alternative accommodation for the appellant.

Personal circumstances

44. The appellant and his family have no particular health problems but a stable base would enable them to continue to have regular access to doctors and proper medical care. The children appear to have made good progress at school and have enjoyed a continuity of education. The appellant is ambitious for his children and wants them to have the benefit of a complete education including further education. Whilst there is no requirement to show that educational needs are unusual or exceptional, the best interests of the children are a primary consideration.
45. Although the circumstances surrounding alternative sites are not clear, it is possible that as a consequence of dismissing the appeal the appellant and his family would have to take up a roadside existence. He could not double up with his parents as they also live on the roadside. This could be harmful to the educational progress of the children and limit their expectations. It could also result in harm to the character and appearance of an area and relations with the settled community.

Planning balance

46. I have borne in mind the requirements of the Public Sector Equality Duty and have considered the best interests of the children living on the site as a primary consideration. Article 8 of the European Convention of Human Rights (as incorporated by the Human Rights Act 1998) provides the right to respect for private and family life.
47. It is clear that a refusal of planning permission would interfere with the Article 8 rights of the appellant. Indeed the Courts have held that Article 8 imposes a positive duty to facilitate the Gypsy way of life, as defined by race and ethnicity rather than planning policy. Any interference in this regard must be balanced against the public interest in upholding planning policy to protect the environment generally.
48. I have found conflict with development plan policies. In particular, the location of the appeal site does not accord with Policy ST 3 or the criteria in Policy DM 10 in that it does not contribute towards establishing a sustainable pattern of development as envisaged by the local plan. The design of the access conflicts with the requirements of Policy DM 6 and the use of the appeal site does not accord with either Policy DM 24 or DM 26 which seek to protect the special qualities and distinctive character of the AONB and rural lanes. The harm to the purposes of the AONB attracts great weight⁹ and the harm caused by the location of the site and the point of access weighs substantially against the appeal.
49. I turn now to factors which could outweigh these findings. Whilst the Council can demonstrate a supply of 5 year sites, there is evidence of unmet need. This is a material consideration that significantly weighs in favour of planning permission. The situation regarding suitable alternative sites is not clear but the Council has demonstrated their willingness to grant planning permission for the residential use of sites by the gypsy and

⁹ Paragraph 115 National Planning Policy Framework

Appeal Decision APP/V2255/C/17/3179355

traveller community. Many recent planning permissions have been permanent permissions for sites with a prior temporary planning permission or the subdivision of existing sites to accommodate new household formation. However, there are 7 pitches where existing planning permissions have not been implemented. As such, I attach some moderate weight to the lack of alternative sites argument.

50. With regard to personal circumstances, the appellant submits that the consequences of dismissing the appeal would inevitably mean a roadside existence. The Council stated that the compliance period was a year; that they would work with the appellant to find an alternative site and that there are some sites in the borough that are 'tolerated'. However, there are no guarantees that this would be the case for the appellant. In all likelihood, there is the potential to disrupt the continuity of the children's education. Although many children successfully move schools when their parents move from one house to another, accessing education from no fixed address or from a series of temporary and/or unauthorised sites would be more problematic. This would not be in their best interests and although the Planning Practice Guidance (PPG) makes clear that their interests do not always outweigh other considerations, I attach significant weight to the personal circumstances of the appellant.
51. Taking all these factors into account, I consider that in the overall planning balance the other considerations do not clearly outweigh the harm to the AONB, which attracts great weight and the other identified harm. The development is therefore in conflict with development plan policies.
52. The principal matter to bear in mind though is the balance between the harm to the public interest and the degree of interference with the Article 8 rights of an individual arising from the dismissal of an appeal and whether the decision as a whole is necessary and proportionate in the circumstances.
53. Interference with a person's right to respect for private and family life and the home may be justified in the public interest. The interference would be in accordance with the law provided that planning policy and relevant statutory duties are appropriately and lawfully applied. The interference would also be in pursuit of a legitimate aim. This is the economic well-being of the country which encompasses the protection of the environment through the regulation of land use. The means that would impair individual rights must be no more than necessary to accomplish that objective.
54. I find that the legitimate aim of protecting the environment in the public interest attracts great weight and the location of the site is not in a sustainable position. Added to that is the unsuitability of the access point and for these reasons I consider the site is not appropriate for a gypsy site. Permanent long term provision should continue to be plan-led in the wider community interest. Interference with the Convention Rights is therefore necessary and proportionate.
55. However, there is a need to consider the grant of a temporary planning permission given my findings on unmet need, the lack of clarity on alternative sites, the personal circumstances of the appellant and the best interests of the children. There have already though been two previous

<https://www.gov.uk/planning-inspectorate>

11

Appeal Decision APP/V2255/C/17/3179355

temporary planning permissions granted for the use of the site to a previous appellant. These were given having regard to his personal circumstances and on the basis that it was expected that planning circumstances, namely the adoption of an up-to-date local plan and the provision of a 5 year supply of sites, would occur at the end of each period.

56. Whilst an early review of the development plan is due, I was not advised of any timetable in place for when it would emerge. A temporary planning permission would though offer a period of stability for the children and allow more time to find an alternative site but I note that the period for compliance with the notice is a year. This is a reasonable period of time to find another site and go through a planning application process as well, if needed. In most cases a temporary planning permission would reduce the duration of the harm I have identified. However since planning circumstances are unlikely to change in the near future, the considerations advanced in support of the development do not justify a grant of temporary planning permission given the harm caused. Furthermore, the PPG advises that it will rarely be justifiable to grant a second temporary planning permission; further permissions should normally be granted permanently or refused if there is clear justification to do so.

Conclusion

57. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice with corrections and refuse to grant planning permission on the deemed application.

D Fleming

INSPECTOR

Appeal Decision APP/V2255/C/17/3179355

APPEARANCES

FOR THE APPELLANT:

Philip Brown BA (Hons) MRTPI	Agent, Managing Director, Philip Brown Associates Limited
John Howard John Howard Snr	Appellant Appellant's father

FOR THE LOCAL PLANNING AUTHORITY:

Graham Thomas BSc (Hons) DipTP MRTPI	Area planning Officer, Swale Borough Council
---	--

INTERESTED PERSONS:

Cllr Andrew Bowles	Leader, Swale Borough Council and local member
Cllr Colin Woods	Chairman, Newnham Parish Council
Cllr Andrew Keel	Chairman, Ospringe Parish Council
Cllr G Tutt	Chairman, Dunkirk Parish Council
G Elvy	Local resident

Documents handed in at the Hearing

1 Representation from the occupier of Whitehall Farm

From the Council

- 2 Court judgement, permission to challenge appeal decision
APP/V2255/C/16/3165246
- 3 Appeal decisions APP/V2255/W/17/3172935 and APP/V2255/W/17/3174468
- 4 Copy of Policy DM 14 from the LP
- 5 Letter dated 7 December 2015 from Kent Downs AONB Unit
- 6 The 'Laurel hedge' report
- 7 A copy of the enforcement notice with the accompanying plan
- 8 Details of alternative sites