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## Appeal Decision

Hearing held on 19 July 2016

Site visit made on 19 July 2016

by **Susan Ashworth BA (Hons) BPL MRTPI**

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

**Decision date: 17 August 2016**

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**Appeal Ref: APP/V2255/W/15/3140289**

**Plumpudding Lane, Dargate, Faversham, Kent ME13 9EY**

- 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 David Dighton against the decision of Swale Borough Council.
  - The application Ref 15/507844/FULL, dated 17 September 2015, was refused by notice dated 25 November 2015.
  - The development proposed is use of the land for 6 no. gypsy and traveller pitches, each pitch having one mobile home, a dayroom and space for one touring van; hardstandings, means of enclosure and landscaping and ancillary childrens' play area.
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### Decision

1. The appeal is dismissed.

### Preliminary Matters

2. A residential caravan occupied by the appellant, and various structures associated with a smallholding, currently occupy the site. That development was subject to an enforcement appeal which was dismissed, and the enforcement notice upheld, on 28 January 2015<sup>1</sup>. A concurrent planning appeal was also dismissed<sup>2</sup>. These decisions are a material consideration in the determination of the appeal.
3. A planning application must be accompanied by a relevant certificate of ownership. The requirement for such a certificate is to ensure that owners of land are aware of development proposals which affect their property, allowing them to become engaged in the application process. It transpired at the hearing that the Certificate of Ownership accompanying the planning application was incorrect as the appellant was not the sole owner of the appeal site - a third party owns the track running through the site. Accordingly, a notice should have been served on that party to make them aware of a development proposal which may affect their property<sup>3</sup>. However, the third party submitted letters in response to the application and the appeal and submitted a statement was read out at the hearing on his behalf. He was therefore aware of the proposal and engaged in the process. Accordingly, in this instance, I am satisfied that the interests of the third party would not be prejudiced by my determination of the appeal.

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<sup>1</sup> Appeal decision : APP/V2255/C/14/2219797

<sup>2</sup> Appeal decision : APP/V2255/A/14/2217679

<sup>3</sup> Article 13 of the Town and Country Planning (Development Management Procedure) (England) Order 2015.

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4. The planning application was refused partly on the grounds of highway safety having regard to visibility at the proposed site access. However, following the refusal of planning permission, the appellant conducted vehicular speed surveys on the approaches to the access. On the basis of that evidence, the Council conceded that the proposed visibility splays would be acceptable and, in effect, withdrew that reason for refusal. Whilst I acknowledge the concerns of local residents in this regard there is no specific evidence before me to support the objection.

#### **Main Issues**

5. The remaining main issues in this case are therefore:
  - The effect of the proposed development on the character and appearance of the countryside.
  - Whether the proposal represents a sustainable form of development.
  - If any material harm arises whether it would be outweighed by any other material considerations including any identified need for gypsies and travellers in the area and any personal circumstances.

#### **Reasons**

##### *Character and Appearance*

6. The site, which forms part of a larger field, is flat and low lying. It is bordered by a belt of mature poplar trees on its northern boundary and a hedgerow to the roadside. The site and the fields that surround it are visually contained to the south and east by higher ground. The site lies at a distance from the nearest settlement, Dargate, and, with the exception of a stand-alone dwelling known as Honeysuckle Villa, there is an absence of built development within the landscape. As such the character of the area is open and rural.
7. The site lies within an area designated as an Area of High Landscape Value. Policy E9 (3) of the adopted Swale Borough Local Plan 2008 (Local Plan) sets out as a priority the protection and enhancement of the area which is seen as an asset. The Local Plan pre-dates the introduction of the National Planning Policy Framework in 2012 which advocates a criteria based approach to policies against which development should be judged. Whilst this is a material consideration, it is a core principle of the Framework that the intrinsic character and beauty of the countryside is recognised and that account is taken of the different roles and character of different areas.
8. The site is identified in the Swale Landscape Character and Biodiversity Appraisal as being within the Hernhill and Boughton Fruit Belt. I accept that a particular character area may display some of the characteristics from other landscape types, and that not all of the key characteristics listed are present within this area. Nevertheless, the area is one of rolling Kentish landscape with a distinctive field pattern in generally good condition. It has been described in the Appraisal as having moderate visibility and a high sensitivity to change.
9. The site is currently occupied by a residential caravan and a collection of buildings and enclosures associated with a smallholding, and has an untidy appearance. However, evidence indicates that the appearance of the site has deteriorated only recently. Prior to the appellant's occupation of the site it appears that the land, along with the fields adjoining, was in agricultural use

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and made a positive contribution to the character and appearance of the rural area. Given that the present development is unauthorised I am not persuaded that the development is necessary to improve the sites appearance.

10. I note that the Inspector at the previous appeal considered that the design and appearance of the existing caravan and structures are a jarring visual presence in a sensitive rural setting and I concur with that view. The proposed development would significantly increase the number of caravans and structures on the site and would thereby consolidate the visual effect of the development. As such the development would have a stark urban appearance in marked contrast to the open rural character of the landscape around it. Moreover, it would detract from rather than enhance the environment and decrease its openness.
11. The proposal also seeks to enclose the site with a 2m high close boarded fence. Such fencing is intrinsically an urban feature which is uncharacteristic in a rural setting and would thereby be visually intrusive. It would also give the impression that the site and its occupants were deliberately isolated from the rest of the community. I note that the appellant intends to plant mixed hedgerow along the appeal site boundaries which I accept would help soften the appearance of the fencing. However, it would take several years to become established. As such it would not therefore provide effective mitigation. Moreover, the planting would not effectively screen the development, particularly from vantage points at higher levels.
12. I therefore conclude that the development would have a significantly harmful effect on the rural character and appearance of the area and would fail to protect or enhance the qualities of the landscape. Consequently the proposal is contrary to Policies E1, E9 and E19 of the Local Plan which seek to protect the quality and character of the landscape.

#### *Sustainability*

13. The National Planning Policy Framework (the Framework) sets out a presumption in favour of sustainable development, which, it advises, has three mutually dependant roles.
14. In terms of its economic role there would be some private benefits to the appellant as a result of renting out the pitches. However, whilst I have taken into account the appellant's point that there would be some benefit from the laying out of the site, the public economic benefit accruing from the development would be negligible. Moreover, the economic role of sustainability includes ensuring that land is available in the right places. As set out above, the proposal would cause significant harm to the environment and there is therefore a conflict with the environmental role of sustainability.
15. The appeal scheme would provide housing for 6 families and this is a social benefit of the scheme. However, the Framework also sets out the need for accessible local services. Policy SH1 of the Local Plan sets out a hierarchy of locations suitable for development. The nearest settlement, Dargate, is considered to be part of the countryside, outside of even the lowest tier of the settlement hierarchy. Dargate, which is in walking distance of the site albeit along an unlit lane with no footpaths, has only very limited services. I saw that there are facilities available alongside the nearby A299, which include a coffee shop and petrol filling station. However, these services are intended to cater for

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motorists and would not provide for the day to day needs of residents. There are no schools, doctor's surgeries or other essential retail facilities nearby and there is no evidence of a public transport service before me. It is therefore likely that all journeys would be made by car. Consequently the site is not in a sustainable location.

16. Therefore, the overwhelming balance of the evidence is that the proposal would not be consistent with the aims of the Framework which encourages sustainable development.

*General need for and provision of gypsy sites*

17. Policy H4 of the Local Plan sets out criteria against which proposals for gypsy sites will be assessed. However, both main parties agree that this policy is out of date in terms of its conformity with the Framework. Accordingly it can carry only limited weight.
18. The Government's Planning Policy for Gypsy and Traveller Sites (PPTS) was published in August 2015. It establishes that the level of need, and local provision, should be considered when dealing with proposals for gypsy sites. The Council's revised Gypsy and Traveller Accommodation Assessment (GTAA) 2015, which takes account of a revised definition of a gypsy and traveller as set out in the PPTS, sets out a target of 61 pitches to be provided by 2031. Monitoring information dated 18 June 2016, produced at the hearing, indicated that since the GTAA base date, 65 caravans and 54 pitches had been permitted. Accordingly the Council contends that supply exceeds the requirement for the next five years and also virtually meets the requirements for the following five years.
19. The Council's re-evaluated assessment of the need for pitches was provided to a recent examination of the emerging Swale Local Plan. The Inspector's interim findings in March 2016, stated that the evidence update provides a well-reasoned and pragmatic solution to ensure the plan aligns with up to date policy on gypsy and traveller sites. Accordingly the Inspector endorsed the Council's policy approach to the provision of gypsy and traveller sites, which, essentially, proposes that the remaining need for pitches is provided through windfall planning applications. Whilst there are outstanding objections to the modifications to the Local Plan, the Inspector's interim findings carry moderate weight in my consideration of the appeal.
20. The appellant argues that the Council has underestimated the need and notes that as of January 2016 there were 117 applicants on the waiting list for sites managed by Kent County Council, 44 of which had an interest in a public site in Sittingbourne and another 9 who have an address in Swale. The appellant also questioned the methodology for the assessment of need. Furthermore, in terms of the housing supply, the appellant challenges the inclusion of permissions that pre-dated the local plan period and questions the implementation dates of some of the sites. In addition, following previous appeal decisions<sup>4</sup>, questions were raised about whether pitches at Cricket Meadow and Orchard Park should fully count towards supply and whether a site at Brotherton Wood where enforcement action over occupancy by European workers is pending, should be included.

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<sup>4</sup> APP/V2255/A/14/2219020 Orchard Place, Ashford Road, Badlesmere, Faversham.  
APP/V2255/A/14/222135 Blind Mary's Lane, Bredgar, Sittingbourne

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21. It seems to me that the Council has made clear progress in both granting permission for sites and in developing its pitch provision policy. However, given that there is no Framework-compliant local plan in place, there is still a degree of uncertainty and potential for unmet need. Given the uncertainty, and on the basis of the evidence before me, I cannot accurately conclude that the 5 year land supply has been met. In any event the provision of six additional pitches would constitute windfall development, which the Council is broadly seeking to promote through the emerging Local Plan, and this lends support to the scheme.

*Gypsy Status and Personal Need*

22. The pitches are proposed for occupation by gypsies and travellers in general terms and in such circumstances it is not necessary to assess personal need. Nevertheless as part of his case, the appellant has stated that one of the pitches would be occupied by himself and his family, and the remaining five pitches by other persons with gypsy status. The Glossary to the PPTS defines gypsies and travellers as 'persons of nomadic habit of life whatever their race or origin, including such persons who on grounds only of their own or their family's or dependants' educational or health needs or old age have ceased to travel temporarily, but excluding members of an organised group of traveling show people or circus people travelling together as such'.
23. The Inspector in the previous appeal was not persuaded of the appellant's gypsy status and little more evidence was provided at the hearing. I understand that despite having a gypsy heritage, and although he spent time living in his grandparents' caravan as a child, he lived in a house for a considerable period of time, raising 7 of his 8 children there. Some evidence of travelling to buy and sell a variety of livestock was presented to the hearing although this evidence is limited and only covers a period of 9 months in 2015. Whilst I acknowledge the appellant's preference for caravan living, I am unconvinced that he has a nomadic lifestyle. Furthermore no intention of living a nomadic lifestyle in the future has been demonstrated.
24. On the basis of the evidence before me therefore, I am unable to conclude that the appellant meets the definition of a gypsy or traveller set out in the PPTS. In addition, no evidence of the status of the persons named as being potential occupants of the other five pitches has been provided.
25. The appellant explained that for medical reasons and for the educational requirements of his son, there is a personal need to occupy the site. However, it seems to me that such needs could equally be met by living in a conventional dwelling close to the medical and educational facilities a settlement can offer. There is no evidence before me to suggest that alternative accommodation in the locality is not available and I am therefore not persuaded that if the appeal fails there would be no option for the appellant to live in a touring caravan on the roadside or any convincing reason why his health or the education of his son would suffer.
26. Consequently, whilst I acknowledge that the basis of the appeal is for general occupation by gypsies and travellers, there is no demonstrable personal need or circumstances that justify the proposal.

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### **Other matters**

27. Article 8 of the European Convention on Human Rights affords the right to respect for private and family life. If the appeal is dismissed ongoing enforcement action will interfere with the family's Article 8 rights. However, as noted by the previous Inspector, alternative accommodation is, in all probability available and the family would not be made homeless through the dismissal of the appeal.
28. Whilst I have concluded that the appellant is not a gypsy under the definition in the PPTS, I have had regard to the Public Sector Equality Duty (PSED), contained in the Equality Act 2010 which seeks amongst other things to eliminate harassment and discrimination and to advance equality for opportunity and good relations between persons who share a relevant protected characteristic and those who do not. Romany Gypsies have a protected characteristic for the purposes of the PSED. Whilst dismissal of the appeal would deprive the appellant and his family opportunity to live on this site, this is set against the serious effect the proposal would have in terms of other planning considerations. It does not therefore follow that the appeal should succeed.
29. Whilst I acknowledge the concern of the local residents that Plumpudding Lane suffers from flooding in the vicinity of the appeal site, there is no convincing evidence before me that the proposed use would exacerbate the present situation. Had I been minded to allow the appeal, I am satisfied that an appropriate condition requiring approval of the proposed drainage arrangements for the site would have mitigated against any potentially harmful effects in this respect.

### **Planning balance**

30. I have found that the proposal would make a contribution to the provision of windfall sites for gypsy and traveller pitch provision in the area. However, the proposal would result in substantial harm to the character and appearance of the area and, furthermore, would not constitute sustainable development which the government is seeking to promote. As such the adverse impacts of the proposal significantly and demonstrably outweigh the benefits.

### **Conclusion**

31. For the reasons set out I therefore conclude that the appeal should be dismissed.

*S Ashworth*

INSPECTOR

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#### **APPEARANCES**

##### FOR THE APPELLANTS:

Mr David Dighton     Appellant

Mr Stephen Hinsley     Agent

##### FOR THE LOCAL PLANNING AUTHORITY:

Mr Graham Thomas     Planning Officer, Swale Borough Council

Ms Shelly Rouse     Planning Policy Officer, Swale Borough Council

##### INTERESTED PARTIES

Felix Krish     Local Resident

Mark Woodcock     Local Resident /Parish council member

Simon Edgington     Local resident /Parish council member

Joanna Sugden     Local resident

Mr & Mrs Nesham     Local residents

Frances Ward     Local Resident

Barbara Foster     Local resident

Samantha Denham     Local resident

Crispin Maciejewski     Local resident

##### DOCUMENTS SUBMITTED AT THE HEARING

Photographs of the site by Mr Maciejewski

Photographs of Plumpudding Lane by Ms Sugden

Updated Monitoring of Gypsy Land Supply and updated Pitch Provision, 5 year  
Supply by the Council

Witness Statement of David Dighton previously submitted to the Planning  
Inspectorate