



Appeal Decision

Hearing Held on 17 October 2017

Site visit made on 17 October 2017

by Lesley Coffey BA Hons BTP MRTPI

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

Decision date: 01 February 2018

Appeal Ref: APP/V2255/W/17/3176865

Windmill Farm, Yaughar Lane, Hartlip, Sittingbourne, ME9 7XE

- 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 Mrs G Cooper against the decision of Swale Borough Council.
 - The application Ref 16/505491/FULL, dated 27 June 2016, was refused by notice dated 31 January 2017.
 - The development proposed is the renewal of temporary planning permission SW/13/0277 "Change of Use for the siting of two mobile homes; the erection of two utility blocks; and associated fencing, parking and landscaping for use by a Gypsy family.
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Decision

1. The appeal is allowed and planning permission is granted for the siting of two mobile homes; the retention of the existing utility block; and the erection of an additional utility block; and associated fencing, parking and landscaping for use by a Gypsy family at Windmill Farm, Yaughar Lane, Hartlip, Sittingbourne, ME9 7XE in accordance with the terms of the application, Ref 16/505491/FULL, dated 27 June 2016, and the plans submitted with it, subject to the conditions in the attached schedule.

Preliminary Matters

2. The appeal seeks to continue the use of the site for the siting of two mobile homes. Planning permission for the use was first granted in 2013 for a temporary period of three years. An application to continue the use of the site was refused in January 2017 and that application is the subject of this appeal.
3. The Swale Borough Local Plan was adopted by the Council on 26 July 2017 and the policies within it supersede those referred to in the Council's decision. I have considered the appeal accordingly.
4. The appellant is a Romani gypsy. Evidence was submitted to show that the family travel for work for a significant part of the year. They also attend various fairs and horse fairs. The Council accepts that the appellant and her family have gypsy status for the purposes of Planning Policy for Traveller Sites (PPTS) and having regard to the submitted evidence I have no reason to disagree.

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Appeal Decision APP/V2255/W/17/3176865

Main Issues

5. I consider the main issues to be:
- Whether occupants of the site would have satisfactory access to services; and
 - Whether any harm would be outweighed by other material considerations including the general need for and supply of gypsy sites, the accommodation needs and personal circumstances of the appellants, to lead to the grant of a permanent planning permission.

Reasons

6. The appeal site is located on Yaugher Lane, south of Hartlip. It is accessed via a private drive and is occupied by 2 static caravans/mobile homes and a day room. The previous consent included a second day room/utility block but this has not yet been constructed. There is a parking area to the eastern end and a hedgerow has been planted along the northern boundary with the adjacent field.
7. Policy DM10 of the Local Plan sets out the Council's policy in relation to the provision of gypsy and traveller sites. Part B states that the Council will grant planning permission for sites subject to a number of criteria. The Council consider that the proposal would conflict with criterion 1, which requires proposals to accord with the settlement hierarchy at ST3. Policy DM10 allows for some exceptions to criterion 1, including where there are exceptional mitigating and/or personal circumstances and where the appellant has demonstrated that a particular site is required to meet their needs and where there is no overriding harm to the locality.
8. Policy ST3 adopts a hierarchical settlement strategy and directs most development to Sittingbourne, followed by Faversham and Sheerness. In locations within the open countryside, such as where the appeal site is located, development is not permitted unless it is supported by national planning policy.
9. Policy DM14 sets out general development criteria. The Council consider that the proposal would fail to comply with criteria 1 and 10. Criterion 1 requires proposals to comply with other development plan policies. Criterion 10 requires safe vehicular access, convenient routes and facilities for pedestrians and cyclists, enhanced public transport facilities and services.
10. PPTS provides the national planning policy context for traveller sites. Although it does not preclude gypsy and traveller sites within the countryside it states that local planning authorities should very strictly control new traveller sites within the open countryside that is away from existing settlements. Whilst PPTS seeks to promote more private sites and reduce the number of unauthorised developments/ encampments, it also states that such sites should be in an appropriate location and to have due regard to the protection of the environment.
11. The proposal does not accord with the settlement strategy at policy ST3. The appeal site is relatively small and is not visible from Yaugher Lane. There are more open views towards the north, but these are a considerable distance away. In views from the A2 the appeal site is almost indiscernible due to the distance and intervening trees and other vegetation. The appellant has planted a mixed hedgerow along the northern site boundary, and although this has

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

2

Appeal Decision APP/V2255/W/17/3176865

established, at the present time it provides only a limited degree of screening. As it matures it would mitigate any limited views of the mobile homes from the surrounding countryside. The Council is satisfied that there would be no significant harm to the character and appearance of the wider area and I share this view.

12. The Council considers the site to be remote from services and facilities. It contends that occupants would be reliant on the use of a private car in order to meet their day-to-day needs. The appeal site is located about 1.9km from Hartlip, which benefits from a primary school, village pub, church, and a playground. The appellant submits that the appeal site occupies a sustainable location and is close to a range of facilities at Farthing Corner motorway services. The services are located about 2km from the appeal site and can be accessed by local roads. The facilities available include a petrol station, a M&S Food store, a bakers and a WH Smith.
13. The Council acknowledged that it is common for gypsy and traveller sites to be located within the countryside, but the preference is for sites with good access to services and facilities, rather than more remote locations such as the appeal site.
14. The appellant referred to an indicative map of accessibility to services which formed part of the evidence base for the Local Plan. The key provides average distances to a range of services in the south east. The appellant submitted details of the distance of the appeal site from a range of facilities and these are generally lower than average distances shown on the accessibility map.
15. The appellant stated that the facilities at the motorway services are accessible by a PROW across the fields and therefore occupants of the site would not necessarily be reliant on the use of a car. Whilst walking across the fields may be an option on some occasions, there will be many times when it is not suitable due to weather or the time of day. The roads in the vicinity of the appeal site are generally narrow and unlit and therefore are not likely to be attractive to pedestrians. I therefore consider that residents of the site would be reliant on the use of a car to meet their day-to-day needs and to access many services including the school. However, the site is located about 4 km from Newington and Rainham, both of which have a range of shops and services and therefore the journeys would not be particularly long.
16. I agree with the Council that the motorway services are unlikely to meet the day-to-day needs of the family due to the limited range of goods available and the high cost of goods at such outlets. Moreover, the use of these services would be likely to involve the use of a car for many of the trips. Nevertheless the proximity of the services would allow the family to meet some of their needs close to the appeal site.
17. I therefore conclude that whilst the occupants of the site would be able to access some services, they would be largely reliant on the use of the car and in this regard the proposal would not comply with Policies ST3 and DM10 of the Local Plan.

Need for Sites

18. The Gypsy and Travelers Accommodation Assessment (GTAA) published in 2013, identified a need for 85 pitches for the period 2013 - 2031. It formed

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

3

Appeal Decision APP/V2255/W/17/3176865

part of the original evidence base for the Local Plan. Following revisions to PPTS in August 2015, the Council reviewed the GTAA in order to establish the implications of the revised definition of gypsies and travellers for pitch provision. It concluded that many of those living in Swale no longer come within the PPTS definition and consequently the need for sites was much reduced. The review found that there was a need for 61 pitches for the period up to 2031. It considered that the immediate need had been met and the balance could be met from windfall sites.

19. The Council state that since the base date of 2013 it has permitted 56 pitches and 51 of these are now completed or occupied. It considers that on the basis of the outstanding requirement for 10 pitches it has a 7.1 year supply of pitches. The appellant is critical of this figure, both in terms of the overall assessment of need and the number of pitches delivered since 2013.
20. The Council's approach to the reduction in the extent of need was endorsed by the Local Plan Inspector as a well-reasoned and pragmatic solution to ensure that the Local Plan aligned with the updated PPTS. It is not a matter for this appeal to re-visit the approach endorsed by the Local Plan Inspector. The appellant submitted an extract from a statement by Ms Heine in respect of a recent appeal at Meads Farm Elverland Lane. This explained her concerns in relation to the Council's approach and was considered by the Local Plan Inspector.
21. The 2013 GTAA found that there were about 48 private authorised sites within Swale. These accommodated 160 permanent pitches and 32 temporary pitches. There were also 7 unauthorised pitches which were not tolerated and these added to the need for sites. The GTAA found a need for 35 additional pitches for the period up to 2017/18. Of these 19 arose from temporary planning permissions due to expire in before 2017/18, and 7 were to meet the need from unauthorised development.
22. If only 19 of the 35 additional pitches required for the period up to 2017/18 were to meet the need arising from temporary pitches, it would seem that there were 13 temporary pitches where the planning permission extends beyond 2017/18. The GTAA indicates a total need for 10 pitches for the period 2017/18 – 2020/21. This would be insufficient to meet the remainder of the need arising from temporary pitches, regardless of any requirement generated by new household formation or other causes. Whilst it is possible that a temporary permission granted in 2013 or before extended beyond 2020/21, in my experience this would be very unusual. I therefore consider that it is probable that the pitch requirement for the period 2013/14 – 2020/21 exceeds the 45 pitches identified by the GTAA.
23. The appellant referred to a number of sites with temporary planning permission which were not represented in the GTAA. These include the appeal site where planning permission was first granted in July 2013. It is not shown in the GTAA as either an authorised pitch or an unauthorised pitch. Other sites include One Acre and One Half Acre at Bredgar, and the Retreat at Elverland Lane. Together these sites, including the appeal site, would add a further 6 pitches to the need assessed by the GTAA.
24. The Council's assessment of the number of pitches required was based on a review of the evidence in the GTAA. However, for the reasons given above, it would seem that the GTTA significantly under-estimates the number of pitches

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

4

Appeal Decision APP/V2255/W/17/3176865

required. Consequently, the Council's review which informed the Local Plan examination is likely to have carried these errors forward and the need for pitches is likely to be greater than the 61 assessed by the Council. I am aware that the Council is in the process of commissioning a new GTAA in conjunction with other Kent authorities. This should provide a more robust PPTS compliant assessment of need.

25. Since the base date of the GTAA the Council has permitted a total of 56 pitches; of which 51 have been implemented and are now occupied; 5 pitches are yet to be implemented and form the supply.
26. The implemented pitches include 19 at Brotherhood Wood Yard, Dunkirk. At the hearing the Council explained that the permission was for 16 permanent pitches and 3 transit pitches. Mr Jones disputes that the permission has been implemented. He contends that the site is laid out as a mobile home park and is used to accommodate workers from abroad, and therefore the permitted scheme has not been implemented. In support of this view he submitted a site survey note from Mrs Annie Gibbs and an aerial photograph of the site.
27. Mrs Gibbs recorded that the site had no gardens or play areas, and there was a single utility block on the site. In addition, the individual pitches were not defined. She was told that there were no children currently living on the site. She also noted that there were no UK nationals on the site and a number of cars had number plates from outside of the UK. The submitted aerial photograph shows a formally laid out site with one large amenity block, and few, if any, touring caravans. Mr Jones also referred to a letter to the Council from the police stating that the pitches were rented to workers from Europe.
28. There is currently an application with the Council for a layout similar to that shown on the aerial photograph submitted by the appellant. The intended use is described as a gypsy and traveller site. The Council acknowledged that at the present time the site has not been laid out in accordance with the approved plans and that the pitches were smaller than those permitted. The Council has served a Planning Contravention Notice on the owner of the site. This has been completed and the matter is currently under consideration.
29. The evidence presented to the hearing in relation to this appeal is recent and verified by more than one source. I consider it to be credible. It is more substantive than that available to the Local Plan Inspector. On the basis of the submitted evidence it would seem that the Brotherhood Wood Yard site is not currently occupied by gypsies and travellers or available to them. Indeed, on the basis of the evidence submitted to the hearing it seems doubtful that the 19 pitches relied upon by the Council were ever implemented.
30. The Council is currently investigating the situation at Brotherhood Wood Yard. The implications of its investigation are unclear at the present time, and it could take some considerable time for this matter to be resolved. Therefore the site is not available now. Due to uncertainties regarding both the current and future use of the site I do not consider that at the present time it should be included in the supply of available gypsy and traveller sites. Consequently the existing need for sites should be increased by 19 pitches. This represents a residual need for at least 24 pitches based on the GTAA requirement.

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

5

Appeal Decision APP/V2255/W/17/3176865

31. I am aware that the Brotherhood Wood Yard site was considered at the Land at Blind Mary's Lane, Bredgar¹ appeal and the Hawthorns, Greyhound Road appeal². The evidence submitted to these appeals indicated that the site was occupied by Irish Travellers and it was not excluded from the supply. It would seem that the concerns as to the manner in which the site is occupied was also brought to the attention of the Local Plan Inspector by Ms Heine. Although this matter is not explicitly addressed in her report, it would appear that the evidence before her was less extensive than that submitted to this hearing. She did however note that the plan would require an early review and this would necessitate both the need for and supply of traveller sites to be addressed soon after adoption.
32. For the reasons given above, and having regard to the evidence within the GTAA, and that submitted to the hearing, it would seem probable that the GTAA considerably underestimates the true scale of the need for pitches. Consequently, when taken together with the absence of pitches on the Brotherhood Wood Yard site the need for pitches is likely to significantly exceed that identified by the Council.
33. The evidence submitted to the hearing suggests that there is currently a supply of 5 pitches set against a need for at least 29 pitches.³ If the appellant's need for two pitches is included, as well as those at the other sites with temporary planning permission but not included in the GTAA, the residual need would increase to 35 Pitches. The pitches with temporary planning permissions identified in the GTAA, but not included in Table 11.1 of the GTAA could add to this need. Therefore the Council does not have sufficient land to provide a five year supply of pitches and the need for and supply of sites weighs in favour of the proposal.
34. I am aware that I have reached a different conclusion from the Local Plan Inspector regarding the extent of the need for pitches, however, her conclusions were based on the submitted evidence. Whilst she endorsed the approach taken by the Council in terms of its review of the GTAA, it does not seem that there was any evidence before her to suggest that the GTAA may have under-estimated the extent of the need.

Personal Circumstances of the Appellant

35. The appellant has a need for two pitches. One for herself, her husband and son, and one for her daughter Katy Davies and her family. I have had regard to the family's health situation and that adds significant weight to the need for a settled base for access to specialist health services, as well as to education.
36. The Council is sympathetic to the family's compelling personal circumstances. The majority of sites in Swale are privately owned sites and the Council does not suggest that there are other sites available to the appellants.
37. It recognises that should the appeal be dismissed and the family required to leave the site there would be no alternative to roadside camping for the family. It stated that it would not be minded to commence enforcement proceeding until Katy's health had recovered.

¹ Appeal Ref: APP/V2255/A/14/2222135

² Appeal Ref: APP/V2255/W/16/3153751

³ 10 identified by the GTAA + 19 to compensate for those at Brotherhood Woodyard)

Appeal Decision APP/V2255/W/17/3176865

38. A settled base would enable the family to access to health services, and education. This would be in the best interest of the children, particularly the new baby who may need on-going medical care. The personal circumstances of the family are compelling and add substantial weight in favour of the proposal.

Overall Balance

39. I found above that the site does not benefit from good access to services. In this respect it would not comply with the settlement hierarchy set out at policy ST3. However, criterion 1 of policy DM10 provides for exceptions where there are exceptional mitigating and/or personal circumstances and where there is no over-riding harm to the locality. The Council is satisfied that the proposal would not harm the character and appearance of the area, and for the reasons given above I take a similar view. The appellant's personal circumstances are compelling and exceptional. In the absence of a fixed base Katy Davies would be unable to access either the essential medical care she requires or benefit from the support of her family. I therefore conclude that the proposal would come within the exceptional circumstances at criterion 1a. of policy DM10. Consequently the proposal would comply with policy DM10 as a whole.

40. The need for additional pitches within Swale and the absence of alternative pitches add further weight in favour of the proposal. I therefore conclude that the proposal would comply with the development plan as a whole.

Human Rights

41. Representations were made to the effect that the human rights of the appellant and his family would be violated if the appeal were dismissed. As I have decided to allow the appeal, I do not need to deal with this matter.

Conditions

42. I have considered the conditions suggested by the Council in the light of the advice at paragraphs 203 and 206 of the National Planning Policy Framework and the Planning Practice Guidance.

43. The Council suggest a temporary condition for a period of three years due to the unsustainable location of the site. It would seem that the GTAA significantly underestimates the need for sites. At the present time there are no alternative sites available to the appellant within Swale. In order to secure an alternative private site would involve selling their existing site. I consider this would place a considerable emotional and financial burden on the family at a time when it has other more pressing priorities. Therefore in the absence of any harm to the wider area, I consider that a permanent permission is justified.

44. The occupation of the site should be limited to those gypsies and travellers who meet the definition within PPTS to ensure that the site continues to contribute to meeting the need for sites within the area. In reaching my decision I have had regard to the appellant's personal circumstances and therefore consider that the permission should be limited to the appellant and her family. In the interest of visual amenity the site should be restored once the appellant and her family vacate it.

45. I agree that the number of caravans on the site should be restricted in the interests of visual amenity. No vehicle over 3.5 tonnes should be kept on the

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

7

Appeal Decision APP/V2255/W/17/3176865

site and no commercial activities should take place on the site in order to protect the character and appearance of the area. In addition, the parking and turning area should be permanently retained in the interests of highway safety.

46. Whilst I understand the Council's desire to limit the extent of light pollution, the appeal site has been occupied for a number of years and the Council has not objected to any of the existing lighting on the site. No evidence has been submitted to suggest that the appellant intends to erect additional external lighting, and therefore I consider that a condition in relation to lighting is not necessary.

Conclusion

47. For the reasons given above I conclude that the appeal should be allowed.

Lesley Coffey

INSPECTOR

Appeal Decision APP/V2255/W/17/3176865

APPEARANCES

FOR THE APPELLANT:

Joseph G Jones
Joseph P Jones
Genty Cooper

FOR THE LOCAL PLANNING AUTHORITY:

Ross McCardle
Shelly Rouse

INTERESTED PERSONS:

Councillor John Wright

DOCUMENTS

- 1 Update in relation to Katy Davies health issues submitted by the appellant
- 2 Note of Annie Gibb's visit to Brotherhood Wood Yard Site submitted by the appellant
- 3 Traveller caravan count January 2017 submitted by the appellant
- 4 Aerial photograph and layout plan for Brotherhood Wood Yard site submitted by the appellant
- 5 Additional health information in relation to Katy Davies submitted by the Council
- 6 Methodology for the Swale Borough SHLAA (2009) submitted by the Council
- 7 Indicative map of accessibility to services submitted by the Council
- 8 Schedule of private gypsy sites in Swale submitted by the Council

Appeal Decision APP/V2255/W/17/3176865

Appeal Ref: APP/V2255/W/17/3176865

Schedule of conditions

- 1) The site shall not be occupied by any persons other than gypsies and travellers as defined in Annex 1: Glossary of Planning Policy for Traveller Sites (or its equivalent in replacement national policy).
- 2) The occupation of the site hereby permitted shall be carried on only by the following and their resident dependants: Gentilia Cooper, Mr Colin Davies, Mr Luke Davies, Mrs Katy Davies and Mr Stephen Hatton.
- 3) When the land ceases to be occupied by those named in condition 2 above the use hereby permitted shall cease and all caravans, structures, materials and equipment brought on to or erected on the land, and/or works undertaken to it in connection with the use, shall be removed and the land shall be restored to its condition before the development took place.
- 4) There shall be no more than 2 pitches on the overall site and on each of the 2 pitches hereby approved no more than two caravans (as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 as amended), shall be stationed at any time, of which only one caravan shall be a static caravan.
- 5) No commercial activities shall take place on the land, including the storage of materials.
- 6) No vehicle over 3.5 tonnes shall be stationed, parked or stored on this site.
- 7) The area shown on plan 461/02E as vehicle parking and turning space shall be permanently retained and kept available at all times for the parking of vehicles.
- 8) The development hereby permitted shall be carried out in accordance with the plans 461/02E and 461/03A.