



Appeal Decision

Hearing Held on 24 January 2018

Site visit made on 24 January 2018

by **David Murray BA (Hons) DMS MRTPI**

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

Decision date: 22 February 2018

Appeal Ref: APP/V2255/W/17/3172935

Mobile Home 1, The Retreat, Elverland Lane, Ospringe, Faversham, Kent, ME13 0SP.

- 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 A Gibbs against the decision of Swale Borough Council.
 - The application Ref. 16/507020/FULL, dated 22 September 2016, was refused by notice dated 6 March 2017.
 - The development proposed is change of use to residential caravan site for two Romani Gypsy families with two static caravans and two touring caravans, and construction of a hardstanding, associated parking, water treatment plant and new access.
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Decision

1. The appeal is dismissed.

Procedural matter

2. The application forms refer to a proposal for a mixed use including use as an orchard, however, the formal red line defining the application site shown on the submitted site plan only includes the proposed gypsy site with caravans and parking areas and the creation of a new access, and not the surrounding orchard land. I will therefore consider the proposal as set out above in the fourth bullet point.

Main Issues

3. The main issues are:
 - The effect on the character and appearance of the area including the tranquillity of the Kent Downs Area of Outstanding Natural Beauty (AONB);
 - The accessibility of the site;
 - Whether a gypsy/traveller site is acceptable in principle in this location;
 - The need for gypsy sites locally and whether the Council can demonstrate a 5 year supply of deliverable new sites;
 - The availability of alternative sites; and

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- Personal circumstances.

Reasons

Background

4. The appellant owns an orchard (extent unspecified) which lies on the lower slopes of a downland valley in the Kent Downs AONB. The land lies in open countryside and the Landscape Character Assessment describes the area as 'Donnington and Newnham dry valleys landscape'. The orchard land has a field access onto the highway close to the junction of Faversham Road and Elverland Lane.
5. It is proposed to change the use of part of the orchard to a residential use for two Romani Gypsy families where each of the two pitches would comprise a static caravan and a touring caravan, and the site would have a hardstanding for vehicle parking and new access off Elverland Lane. It is also proposed to install a water treatment plant for the disposal of foul drainage.
6. At the time of my visit, there were two static caravans on the orchard land and ancillary residential paraphernalia. The caravans were sited on the lower parts of the orchard land close to the existing access, and at the site visit I noted the mesh screening and conifer planting which the appellant said had been planted to help act as a wind-break. There was also a raised bank of deposited material parallel with Elverland Lane.
7. The use of the land as a site for residential caravans and the laying of a hard surface is subject to an enforcement notice. This was subject to an appeal¹ but only on ground (g) and the Inspector upheld the notice but decided that the period for compliance should be increased to 12 months. The Inspector concluded that the unauthorised development gave rise to significant harm, including to the AONB, but having regard to the appellant's personal medical circumstances and the best interests of the children living on site, an increase in the period of compliance would give the appellant time to discuss alternative sites with the Council and give her more of a chance of finding an alternative site. This decision means that the use of the land as a residential gypsy site should cease by the 3 March 2018. Nevertheless, I have considered this current appeal as a separate proposal to the unauthorised development in the previous appeal.
8. At the site visit, my attention was drawn to three other gypsy/traveller sites which exist locally along Elverland Lane but which the Council advised did not have planning permission. I am considering another appeal regarding one of these sites².

Policy context

9. Although the reason for refusal refers to saved policies in the Swale Borough Local Plan 2008 this has been superseded by the Swale Borough Local Plan - "Bearing Fruits 2031" which was adopted by the Council in July 2017 following examination. I have only referred to and assessed the development in respect of the policies in the adopted 2017 Local Plan (LP).

¹ APP/V2255/C/16/3142907

² APP/V2255/W/17/3174468

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10. The examining Inspector into the LP refers to the need for an early review of the plan in particular because of uncertainties regarding highway infrastructure. Mr Thomas advised that the Council anticipated that the review would be completed and a new plan adopted within five years.

Effect on the AONB

11. This issue is concerned with the general effect of the proposed site in the landscape of the AONB, and secondly, the specific impact of the creation of the new access to Elverland Lane.
12. Policy DM24 sets out criteria for conserving and enhancing valued landscapes where part A of the policy relates to designated landscapes and indicates that planning permission will only be granted where a proposal meets specific criteria. Of these I am concerned about the visual and physical impact that the proposal would have in the landscape. As the application site is on land in an elevated position on the valley side I consider that the static and touring caravans proposed would be seen from Faversham Road and to a more limited extent through the proposed opening onto Elverland Lane. I have taken account of the screening effect of the existing orchard and wind break and the appellant proposes to undertake further planting if necessary. Nevertheless, the caravans and area of hardstanding, together with the domestic paraphernalia that would be likely to arise, would be very intrusive features in the otherwise undeveloped landscape of this part of the AONB and this impact is unlikely to be mitigated by additional screen planting. In any event additional screening and man-made embankments may in themselves also detract from the landscape quality of the area.
13. The policy also refers to the need to conserve the 'tranquillity' of the valued landscape. While this term may reflect the physical remoteness of a particular part of the AONB it must also refer to quietness. During my time on site I was conscious of the noise of traffic movement on the M2 to the north and I am satisfied that the proposal would not interfere with the perception of tranquillity in terms of quietness in the vicinity of the site subject to the imposition of conditions to control the generation of electricity on the site.
14. I have also had regard to the Management Plan of the Kent Downs AONB which although not part of the formal development plan is a material consideration. Similar to my assessment above I find that the proposal is in conflict with the objectives to conserve and enhance the natural beauty of the landscape as set out in Policies SD1, SD2, SD3 and SD8 of the Management Plan.
15. In terms of the impact of the proposed access, in addition to the general effects in respect of Policy DM24, Elverland Lane is recognised on the LP Proposals Map as a 'rural lane' to which Policy DM26 applies and this seeks to prevent development that would either physically alter, or result in levels of traffic, that would significantly harm the character of this rural lane.
16. At my visit I noted the present form of the lane where the new access is proposed and it has a sunken form with high banks lined with vegetation which almost meet over-head resulting in a tunnel effect along its incline. The new access is proposed at a point where there is a slight bend in the lane which would aid the visibility in each direction. However, in the absence of any details of the new access I consider it would require the removal of some of the

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hedgerow/trees and bank either side of the access as well as the creation of the opening itself. This would result in a fundamental and significantly harmful change to the present character of the lane which contributes to the distinctiveness of the AONB. Therefore, the proposal clearly conflicts with Policy DM26.

17. Overall I find that the proposal would have a significantly harmful effect on the distinctive landscape character of the AONB and would not conserve or enhance this special character. Therefore there would be conflict with Part 1 (a), (b) of Policy DM24.

The accessibility of the site

18. In assessing this issue I have had regard to the LP Picture 4.3.2 which shows the broad accessibility of services from settlements related to Policy ST3 which is based on the distances as set out in the Picture. I have also had regard to the appellant's own evidence put forward in appendix SUS-01 about the measured distance to specific services. The distances put forward in both of these assessment are 'as the crow flies'. At my site I also travelled from the appeal site along local lanes to the nearest larger villages at Newnham, Eastling and Ospringe. The Picture broadly shows the appeal site as being located in an area with 'no' or 'few' services and this reflects my observations of the general location of the site. Further, at the hearing I was not advised of any public transport bus route near the site and the local lanes are unlit and without footways and generally are not appropriate for children to walk along to school, the nearest of which was over 1.4km away from the site.
19. I have taken account of the guidance in the National Planning Policy Framework (the Framework) which acknowledges that different transport solutions and measures will be required between urban and rural areas and that travelling by vehicle is part of a nomadic way of life for gypsies and travellers. Nevertheless, the relative isolation of the site from the services and facilities necessary for day to day living means this the appeal site does not lie in an accessible location. As such I find that its development for residential purposes would not be in the interests of ensuring a sustainable pattern of development and would not accord with the intentions of the Framework.

Overall Accord with Policies

20. LP Policy ST3 sets out the settlement strategy for the Borough and as the site lies in the open countryside outside of the built up area of any settlement, the fifth paragraph of the policy applies. This puts forward a presumption against development unless it can be demonstrated that this would contribute to the protection or enhancement of the intrinsic value, landscape setting, tranquillity and beauty of the countryside.
21. I have already found in relation to policy DM24 and DM 26 that the proposal would have a significantly harmful effect on the landscape character of the AONB and as such the residential occupation proposed would not accord with LP Policy ST3.
22. Part B of Policy DM10 deals with the provision of gypsy and traveller sites and advises that permission will be granted where it is demonstrated that the proposals accord with criterion (1) and generally accord with Policy ST3 (1)

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unless there are exceptional personal circumstances and where there is no overriding harm to the locality. In respect of the other criteria set out, I have concerns under criteria (4) and (7) as the proposal would on its own be at odds with and would dominate the remote and undeveloped character of the area and would harm the landscape within the AONB. Further, taken collectively with the other unauthorised gypsy/traveller sites nearby, would introduce a scale of development that would compound the degree of landscape harm.

23. In terms of national policy the Planning Policy for Traveller Sites (PPTS) recognises in Policy C that such sites can be located in rural or semi-rural areas but paragraph 25 indicates that new traveller site development in open countryside that is away from existing settlements should be very strictly limited. It will be clear from my assessment under the accessibility of the appeal site that I find that it lies well away from any recognised settlement or residential area.
24. Overall on this issue I find that the development of a gypsy/traveller site in the location of the appeal site does not accord with the main policy in the development plan or national guidance.

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

25. The PPTS requires Councils to identify and annually update a five year supply of traveller sites set against locally derived targets. The Council refers to the 2013 Gypsy and Traveller Accommodation Needs Assessment (GTAA) which was reviewed to take account of the revisions to the definition of Gypsies and Travellers put forward in the 2015 PPTS. The issue of the appropriate provision for gypsy and traveller sites was considered by the LP examining Inspector as Issue 7.
26. In the examination the Council submitted that there was a need for 61 pitches up to 2031 but that this was likely to be met by planning permissions granted. The examining Inspector concluded that the Council's evidence on the submission of a five year supply provided a well-reasoned and pragmatic solution to ensure an appropriate provision to address the needs of gypsies and travellers, bearing in mind that an early review of the plan would require both need and supply to be assessed. At the Hearing the Council advised that 63 pitches have been granted planning permission so far in the local plan period. While this exceeds the target level for the whole plan period Mr Thomas stressed that the Council does not regard the target as a ceiling and the Council would continue to grant planning permission for gypsy and traveller pitches on appropriate sites that accorded with LP policy DM10 and national guidance. The Council were also undertaking a further GTAA to obtain an up-to-date picture of need to feed into the Review.
27. The appellant notes the recent conclusions of the examining Inspector but considers that the local need for gypsy and traveller sites has not been satisfied on the ground and there remains unmet need. In particular a recent appeal decision³ at Spade Lane, Hartlip is referred, to together with the Council's formal Count of Caravans undertaken in July 2017. In the former, the Inspector concluded that there was considerable doubt over whether the site at Brotherhood Woodyard in the parish of Dunkirk would deliver the 19 pitches

³ APP/V2255/17/3165246 et al

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allowed or that these would be suitable for gypsies and travellers that met the Annex 1 definition in the PPTS. However, at the Hearing the Council explained that there had been very recently a multi-agency intervention at the site concerning enforcement issues which the Council is pressing to resolve. Following further discussions with the landowner the Council says that the extent and availability of pitches on this site would be resolved in the outstanding planning application. On the basis of the written and oral evidence put to me I am satisfied that there is not now significant doubt over the deliverability of the pitches on the Brotherhood Woodyard site.

28. In terms of other evidence, the appellant highlights the most recent count of traveller caravans in the Borough (July 2017) which indicates that there were 10 caravans with temporary planning permissions, 26 'tolerated' and 37 'not tolerated' caravans, all on unauthorised sites owned by the travellers but where there is no planning permission. Although Mr Thomas said this may be an indication of the 'demand' for a pitch in the area rather than true 'need' to my mind the statistics on temporary and unauthorised sites do provide clear evidence of unmet need on the ground.
29. I conclude on this issue that while the Council can demonstrate a five 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.

The availability of alternative sites

30. The previous Inspector's reasoning for increasing the period of compliance specified in the enforcement notice was in part to allow the appellant time to find an alternative site. Mrs Gibbs said that she had not come up with anywhere else to move to. She had visited Brotherhood Woodyard but was told that she would not be accepted there because of her grandson and in any event own caravans are not allowed on the site. She had not found any other land (in or outside the AONB) that she could afford and both Mr Jones's said that they were not aware of any alternative sites locally that would be suitable and affordable for Mrs Gibbs.
31. Neither could the Council offer or suggest alternative sites other than refer to the list of sites which had received planning permission but Mr Thomas agreed that these were usually private sites applied for by the owners themselves. Nevertheless, Mr Thomas said that the evidence showed that the Council looked positively at permitting sites in the right locations that were policy compliant so he was confident there were other opportunities available. However, whilst noting Mr Thomas's optimism, I conclude that it has not been demonstrated that there are alternative suitable sites available at the moment and this is a factor to which considerable weight must be given.

Personal circumstances

32. The personal circumstances applying are central to the appellant's case and further written evidence was put forward about the appellant's family living on site including an adult with a severe medical condition together with a child with special educational and social needs. The appellant and her agent have submitted copies of relevant correspondence from doctors, health and teaching

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professions but as these contain personal information, I have not referred to them or the individuals involved in specific detail here.

33. From the evidence submitted it appears to me that the uncertainty over the future of their home on the orchard land is causing the appellant and her wider family continuing distress. In the absence of finding alternative accommodation, being forced to live on the roadside would continue this distress and would make it more difficult for the adults living on the site to receive medical care and to stay in touch with the medical practitioners to ensure continuity of health care. In terms of the children, while the school of one of the children is located well away from the site, there is clear expert evidence to establish that if the child had to break with this and start again at a new school, this is likely to have a greater than usual effect on the child's special needs, and the child's well-being, emotional health and academic progress would decline. These are factors to which I attach considerable weight.

Planning balance

34. At the start of considering the key elements in the planning balance 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.
35. Bringing together my conclusions on the main issues I have found that the proposed residential caravan site would have a prominent and harmful visual effect on the special landscape of the AONB and would not conserve or enhance the distinctiveness of the area. The proposed new access onto Elverland Lane would also significantly harm the recognised special character of this rural lane. I have also found that the site lies in an isolated location in open countryside well away from the services and facilities necessary for day to day living and the residential use proposed would not be in the interests of ensuring a sustainable pattern of development. Further, the proposal does not accord with the locational criteria set out in LP Policies ST3 and DM10 concerning the provision of gypsy sites. Overall, for the reasons I have given, I find that the proposal does not accord with the provisions of the development plan which has only recently been adopted following examination.
36. The appellant and Mr Jones refer to the historic association of gypsies and travellers staying in the local area and taking part in fruit picking which I recognise but to my mind there is clear difference between the occasional and seasonal use of farm land for fruit pickers and all year round occupation of an isolated site for residential purposes.
37. The Framework says in paragraph 115 that in AsONB great weight should be given to conserving the landscape and scenic beauty in these areas which (along with National Parks and The Broads) have the highest status of protection.
38. In terms of the need and supply of gypsy /traveller sites it is probable that the Council can demonstrate a five year supply of sites at the moment that meets the established need as recently examined through the development plan process, but there is also evidence of unmet need on the ground. Even so, while unmet need could be a significant material consideration in favour of the

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grant of a temporary planning permission, the PPTS makes clear in paragraph 27 that such an exception should not apply to sites on land designated as an AONB.

39. There are therefore clear environmental and policy objections against the proposal. To be balanced with this is the position that neither the Council nor the appellant have been able to demonstrate a specific and lawful alternative site that the appellant could turn to. From the evidence put to me, I conclude that it is likely that the appellant and her family would be faced with living on the roadside if the appeal is dismissed. This would be likely to cause further distress to the individuals, some of whom already suffer from poor health, and make it less likely that they will receive the appropriate care. More specifically, while the child with special needs could potentially travel to the same school from other sites, the disruption from a life on the roadside would be likely to have a fundamental and harmful effect on the child's education and future.
40. Attributing weight to the relevant factors as set out above, I find that the special family circumstances put forward do not outweigh the environmental and policy harm to justify the grant of planning permission on a permanent basis for this new site but I need to consider whether they justify a temporary permission. However, it is clear that the previous Inspector has already taken account of such factors when he decided to extend the period of compliance in the enforcement notice and he accepted that there were clear planning reasons not to make this longer and prolong the harm to the AONB. Even though I am dealing with a separate new proposal I am conscious of the knock-on effects on the appellant given the 'live' enforcement notice, but in the circumstances of the case I consider that a temporary permission for the development is not justified on planning merits.
41. Whilst compliance with the enforcement notice is not a matter before me, Mr Thomas said that if there were signs that the appellant was making genuine attempts to find an alternative site, the Council would be able to take this into consideration before pursuing any further legal action.
42. I conclude that the other considerations which arise in this case do not outweigh the conflict with the development plan and the adverse impacts that would occur with the development.

Conclusion

43. For the reasons given above I conclude that the appeal should be dismissed.

David Murray

INSPECTOR

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APPEARANCES

FOR THE APPELLANT:

Mr J G Jones	Agent - Bucks Floating Support Gypsy Council (BFSGC)
Mrs A Gibbs	Appellant
Mr J P Jones	Gypsy Council

FOR THE LOCAL PLANNING AUTHORITY:

Mr G Thomas BSc (Hons) Dip TP, MRTPI	Area planning Officer, Swale Borough Council
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INTERESTED PERSONS:

Mr A Bowler	Leader Swale Borough Council and local member.
Mr G Tutt	Dunkirk Parish Council
Mr C Woods	Newnham Parish Council.

DOCUMENTS HANDED IN AT THE HEARING

- 1 Appendix SUS-01 Information in support of Sustainability - from Mr Jones.
- 2 Representations entitled 'Issues arising from recent appeal decision at Spade Lane' - from Mr Thomas.
- 3 Additional Representations from Mr E Ford, from Mr Thomas.
- 4 Count of Traveller Caravans July 2017 from Mr Jones.
- 5 Updated 'information related to the health and education of a minor' from Mr Jones.
- 6 Extract from 1:50000 OS map showing context of site and surrounding villages.