



Appeal Decision

Hearing Held on 23 January 2018

Site visit made on 23 January 2018

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

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

Decision date: 23 February 2018

Appeal Ref: APP/V2255/W/17/3174468

The Meads Farm, Elverland Lane, Ospringe, Faversham, ME13 0SP.

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (the Act) against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr and Mrs E Smith against the decision of Swale Borough Council.
 - The application Ref.16/505471/FULL, dated 26 May 2016, was refused by notice dated 6 March 2017.
 - The application sought planning permission for one mobile home for a gypsy caravan site without complying with a condition attached to planning permission Ref. SW/09/1142, dated 8 February 2010.
 - The condition in dispute is No.1 which states that: The use hereby permitted shall be for a limited period being the period of 4 years from the date of this decision. At the end of this period the use hereby permitted shall cease and 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.
 - The reason given for the condition is: As permission has only been granted having regard to the need for gypsy/traveller accommodation within the Borough, and to allow the Council to review its position at the expiration of the permission in accordance with Policy H4 of the Swale Borough Local Plan 2008.
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Decision

1. The appeal is allowed and planning permission is granted for a limited period for the use of the land for the siting of residential caravans for a pitch for one Romany family at The Meads Farm, Elverland Lane, Ospringe, Faversham, ME13 0SP, effective from the 28 May 2016, in accordance with the terms of the application, Ref.16/505471/FULL, dated 26 May 2016, and the plans submitted with it, subject to the conditions as follows:
 - 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 use hereby permitted shall be carried on only by Mr and Mrs E Smith and their resident dependants, and shall be for a limited period of four years from the date of this decision, or when the residential caravans cease to be occupied by them, whichever is the sooner. At the end of this period, the use hereby permitted shall cease and all caravans,

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buildings and structures brought on to the land pursuant to this permission shall be removed from the land and the land restored to its condition before the development took place.

- 3) No more than 2 caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968, as amended, (of which no more than one shall be a static caravan) shall be stationed on the site at any time.
- 4) The site shall only be used for residential purposes and it shall not be used for any business, industrial or commercial use. In this regard no open storage of plant, products or waste may take place on the land and no vehicle over 3.5 tonnes shall be stationed, parked or stored on the land.

Preliminary matters

2. At the start of the Hearing I raised the issue of the nature of the application and whether it was made under s73 or s78 of the Act. The application is dated 26 May 2016 and was made on the basis of the removal or variation of a condition imposed on an earlier permission SW/09/1142. Although by the time of submission of the application in the current appeal that original permission had lapsed, it had been extended by a further permission SW/12/0096 which expired on the 28 May 2016. On this basis the application should be considered as one made under s73A for the removal or variation of condition No.1 imposed on planning permission SW/09/1142 as extended by SW/12/0096.
3. At the Hearing an application for costs was made by the appellants against the Council. This is the subject of a separate decision.

Main Issues

4. The main issues are
 - The effect on the character and appearance of the area including 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
 - Personal circumstances.

Reasons

Background

5. The appeal site comprises a parcel of open land situated on the lower slopes of a valley in downland which forms part of the Kent Downs AONB. There is a barn and stable building on the appellant's land together with a static mobile home which the appellants have occupied on the site since about 2008. Mrs

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Smith said that there is usually a touring caravan on the site and occupied by a son but he and the caravan were away at the time of the visit. Also the mobile home has had timber cladding applied to the exterior walls and stained dark brown to match the form of the stable and barn buildings, although the structure remains a caravan.

6. Planning permission was granted by the Council for a limited period in 2010 for a gypsy/traveller site and then renewed for a four year period in 2012. At these times the Council concluded that there was a clear identified need for gypsy and traveller sites in the area which weighed significantly in favour of the application and outweighed environmental concerns. The permission for the gypsy/traveller site expired on the 28 May 2016 and the Council has subsequently issued an enforcement notice which requires the use to cease and the caravans to be removed from the site by the 5 July 2018. No appeal has been lodged against that notice.
7. 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 sites¹.

Policy context

8. Although the reason for refusal of the application 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 the policies in the adopted Local Plan (LP) 2017.
9. The examining Inspector refers to the need for an early review of the Local 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.

The effect on the character and appearance of the area including the Kent Downs AONB).

10. LP 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. In the Statement of Common Ground the Council accepts that, apart from the issue of 'tranquillity' the development proposed does not harm the special qualities or distinctive character of this part of the AONB or the objectives of AONB designation. These are also matters raised by third parties in objection to the proposal and which I must consider.
11. At my site visit I noted that the site has an established access off Elverland Lane, as previously permitted by the Council, and the actual site of the static caravan lies towards the valley floor. Around the site there are various forms of screen vegetation including natural hedgerows and belts of conifers, some of which are showing signs of old age. Because of the land form and screening, the static mobile home is not visible from Elverland Lane or other public vantage points. Nevertheless, in the vicinity of the site the mobile home and the trappings of the residential use, are moderately discordant features in the

¹ APP/V2255/W/17/3172935

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open landscape of the AONB, notwithstanding that the external appearance of the mobile home now matches the lawful buildings on site. Further, only limited weight can be given to the screening effect of natural vegetation as this may change over time, and at the visit my attention was drawn to the recent clear felling of an area of woodland to the north-west of the appellants' land.

12. 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 the vicinity of the site in terms of quietness. However, a residential use in the open field would be at odds with the physical aspects of tranquillity concerned with the perception of remoteness and isolation within the AONB even though the site is away from the public realm.
13. I have also had regard to the Management Plan of the Kent Downs AONB which although not part of the formal development plan, nor referred to by the Council in the reason for refusal, is a material consideration and was raised by objectors to the proposal. Similar to my assessment above, I find that the proposal is in conflict with the objectives to conserve and enhance the nature beauty of the landscape as set out in Policies SD1, SD2, SD3 and SD8 of the Management Plan.
14. Overall on this issue, I conclude that the continued development of the land as a residential gypsy/traveller site would have a moderately harmful visual effect on the distinctive landscape character of the AONB and would not conserve or enhance this special character. Therefore, the proposal would conflict with Part A1 (a) and (b) of the LP Policy DM24.

The accessibility of the site

15. 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 LP Policy ST3 which is based on the distances as set out in the Picture. I have also had regard to the appellants' agent's assessment of the distance that the appeal site lies from various services and facilities. Further, I note that when the renewal of the application for a residential gypsy/traveller site was considered by the Council in 2012 the planning officer concluded that the site 'is located in a comparatively sustainable location'.
16. At my site visit I travelled from the appeal site to the nearest larger villages at Newnham, Eastling and Ospringe. The LP 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.
17. The appellant refers to other sites permitted within an equal or worse accessibility zone but I have only treated this classification as a broad framework rather than a mathematical selection tool and I have given more weight to the actual site's relationship with local services and facilities and my perception of the local area itself.

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18. I have also 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 that 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.

Whether the principle of the development accords with the development plan and national guidance

19. 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.

20. I have already found in relation to policy DM24 that the proposal would have a moderately harmful effect on the landscape character of the AONB and as such the residential occupation proposed would not accord with LP Policy ST3.

21. 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 accords with Policy ST3 (1) 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 cumulative scale of this proposal with the three other unauthorised gypsy/traveller sites nearby are of an overall scale which dominates the otherwise remote and undeveloped local area and would harm the character of the landscape within the AONB.

22. 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.

23. 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 the main thrust of national guidance.

Whether the Council can demonstrate a five year supply of new gypsy and traveller sites

24. 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

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for gypsy and traveller sites was considered by the LP examining Inspector as Issue 7.

25. In the examination the Council submitted that there was a need for 61 pitches up to 2031 but that was already 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 again. 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 in the process of undertaking a further GTAA to obtain an up-to-date picture of need to feed into the Review.
26. Notwithstanding this formal policy position in respect of need and supply, the appellants' agent contends that the need for gypsy and traveller site is not being met on the ground and disputes the actual provision of the 19 additional pitches permitted at Brotherhood Woodyard and also queries other development permitted at Cricket Meadow, Orchard Park and Love Lane. In these, it is said that the permitted schemes were for additional caravans for families on existing sites and the redesign of the sites did not involve the creation of new complete pitches each with independent amenity buildings rather than shared ones. Moreover, in terms of unmet need the appellants' agent lists some 30 pitches where there is only a temporary consent at the moment, as well as unauthorised pitches, travellers on the roadside, or families on a waiting list.
27. The parties refer to a recent appeal decision² at Spade Lane, Hartlip where 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 permitted or that these would be available 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 Woodyard 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 whether there is presently an unmet need within the Borough, Mr Thomas said this may be an indication of the 'demand' for a residential pitch in the area rather than true 'need', however, to my mind the information on temporary and unauthorised sites does 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 recently examined through the

² APP/V2255/C/16/3165246

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development plan process, there is evidence at the moment of unmet need for gypsy and traveller accommodation on the ground.

Alternative accommodation

30. The Council could not offer or suggest alternative sites for the appellants to move to other than make reference 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. However, Mr Thomas said that the evidence showed that the Council looked positively at permitting sites in the right locations that were policy compliant so there were opportunities available to the appellants. 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

31. The personal circumstances applying are central to the appellants' case and further written evidence was put forward about the appellants' family living on site including two adults with severe medical conditions, together with a child with special educational and social needs. The appellant has submitted copies of relevant correspondence from doctors, health and teaching professionals but as these contain personal information, I have not referred to them or the individuals involved in specific detail.
32. From the evidence submitted it appears to me that while these personal health circumstances are not site dependent, the uncertainty over the future of their home on the appeal site is causing the appellants and their family continuing distress. In the absence of finding a site providing alternative accommodation, being forced to live on the roadside would continue this distress and would make it more difficult for the adults currently 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 child, while the school he attends is located away from the locality of the site, and other sites could be equally convenient for attendance, there is evidence to indicate that if the child had to break with this and start again at a new school, this is likely to affect the child's education and well-being. Similarly a life on the roadside would be likely to harm the child's continued education and well-being. These are factors to which I attach considerable weight.

Planning balance

33. 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 child living on the site as a primary consideration.
34. Bringing together my conclusions on the main issues, I have found that the continued use of the appeal site for residential accommodation as a gypsy/traveller site would continue to cause a moderate harmful effect on the special landscape character of the AONB and the presence of the site conflicts with the provisions of the AONB Management Plan. Further, the site lies in open countryside well away from any settlement, has poor accessibility to essential facilities and services and the continuation of the residential use here

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would not be in the interests of ensuring a sustainable pattern of development, notwithstanding the nomadic habit of life of this Romany Gypsy family. This would be contrary to the general provisions of the Framework and the PPTS.

35. Overall, I have found that the residential use of land in this location and with AONB sensitivity does not accord with the provisions of the development plan when this is read as a whole.
36. This moderate adverse visual effect, poor location and conflict with policy have to be balanced with the factors which support the proposal. In terms of the need for gypsy/traveller sites, the need for and provision of sites has recently been examined through the formal development plan process and found to be sound, subject to early review involving an up-to-date assessment of need. However, even though the evidence reasonably indicates that the Council have granted sufficient permissions to meet the recognised need during the current plan period, there is other evidence on the ground of a continuing unmet need for gypsy/traveller sites.
37. In this context the PPTS makes clear in paragraph 27 that, amongst other aspects, where a site lies in an AONB, this makes an exception to the general position that a lack of up-to-date supply should be a significant material consideration when considering the grant of a temporary permission. I take this guidance to relate to the weight to be applied to the consideration not being 'significant' rather than to prevent this consideration from being material in a particular case.
38. The personal circumstances of the family are also very relevant. It is very significant that the family have lived on site for some 10 years of which 6 years have been formally permitted by the Council. This has resulted in the family having made a home on the site and put down roots, notwithstanding that each temporary permission was subject to review at the end of the stated period. It is also significant that no party has been able to suggest any alternative sites that are reasonably available for the appellants to turn to. Therefore if the appeal is dismissed there is a clear likelihood that the appellants and their family would lose their home and have to live on the roadside. This would be an interference with their Human Rights and also be likely to have a harmful effect on their well-being and especially on the best interests of the resident child. It also appears to me that this situation regarding the positive allocation of sites is unlikely to be materially different until the Local Plan review is well advanced taking into account the GTAA update.
39. Balancing the harm and benefits, I conclude that the conflict with national and local policy and the harm to the AONB means that it would not be appropriate to grant a permanent permission for the residential use, even if that was made personal to the appellants, as that would result in permanent adverse effects. However, given the length of time that the appellants have lived lawfully on the site together with their personal circumstances, I find that these factors outweigh the moderate harm to the AONB and policy conflict in the short term to the extent that a further temporary permission for a limited period of four years is justified. This would give the appellants more time to make their own application for a private site in a more appropriate location or consider the allocation of sites through the LP Review. Although a permission restricted by time would still be an interference with the Human Rights of the appellants and

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family over their home, these are qualified rights and the interference is necessary and proportional in the public interest.

Conditions

40. Although this s73 proposal only relates to condition no. 1 imposed on permission SW/12/0096 as this permission has now lapsed, appropriate conditions need to be considered afresh. The Council recommends 7 conditions be imposed on any permission and I will consider these under the same numbering.
41. As the appellants' case has been made as gypsies/travellers and with reference to applicable policies I agree that it is reasonable and necessary to impose condition (No.1) limiting the residential use to gypsies/travellers that meet the terms of the definition in the PPTS. Further, as the appellants' personal circumstances have been given significant weight in the decision, I will impose a personal condition limiting the permission to them only including their dependants. I will also make it clear that the permission is for a limited period expiring in four years from the date of the decision.
42. I will impose condition (No.2) regarding the number and type of caravans that can be stationed on site to match the proposal and to limit the impact of caravans on the sensitive landscape of the AONB. For similar reasons I will impose a condition (No.3) restricting uses that are not residential in nature.
43. Regarding condition No. 4 on external lighting, I do not consider that such a restriction is necessary as the residential use of the site has taken place over a number of years and it has not been demonstrated that there has been any undue impact from external lighting. Likewise, conditions No's 5, 6 and 7 all relate to a scheme for additional landscaping, planting and subsequent maintenance but I do not consider that such planting will make a difference to screening the caravans in the landscape for the limited period in which the permission will run. I will therefore not impose these conditions.

Conclusion

44. For the reasons given above I conclude that the appeal should be allowed and permission granted on a personal and temporary basis.

David Murray

INSPECTOR

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APPEARANCES

FOR THE APPELLANT:

Mrs A Heine	Heine Planning Consultancy
Mr and Mrs Smith	Appellants
Mr J Jones	Gypsy Council

FOR THE LOCAL PLANNING AUTHORITY:

Mr G Thomas, BSc (Hons), Dip TP, MRTPI	Area Planning Officer, Swale Borough Council.
Ms K Millar, BSc (Hons), Dip TP, MRTPI	Kent Downs AONB Unit

INTERESTED PERSONS:

Cllr M Baldock	Swale Borough Council
Ms V Tilney	Supporter
Mr C Woods	Newnham Parish Council
Mr G Tutt	Dunkirk Parish Council

DOCUMENTS HANDED IN AT THE HEARING

- 1 Appeal Decisions APP/V2255/C/16/3165246 etc. in respect of Spade Lane, from Mrs Heine;
- 2 Issues arising from Spade Lane decisions - from Mr Thomas.
- 3 Further representations from Mr E Ford - from the Council
- 4 Written application for costs from Mrs Heine
- 5 Copy of OS 1:50000 map - from the Council

DOCUMENTS SUBMITTED AFTER THE HEARING

- A Council's Costs Rebuttal - 30 January 2018
- B Mrs Heine's Final Comments on lpa costs rebuttal - 3 Feb. 2018