



Appeal Decisions

Hearing Held on 26 June 2018

by **B M Campbell BA(Hons) MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 18 July 2018

S174 Appeal Refs: APP/V2255/C/17/3178921, 3178922 & 3178923 Grace's Place, Homestall Road, Doddington, Kent ME9 0HF

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeals are made by Mrs Sybil Smith, Mr John Smith and Mr Dennis Doughty against an enforcement notice issued by Swale Borough Council.
- The enforcement notice was issued on 5 June 2017.
- The breach of planning control alleged in the notice is failure to comply with condition No.1 of planning permission Ref: SW/06/0126 granted on 28 July 2011.
- The development to which the permission relates is *change of use to residential for one gypsy family for one mobile, one tourer, one shed.*
- The condition in question states that: *The use hereby permitted shall be for a limited period of 3 years from the date of this decision, after which time the use shall cease and all caravans, structures, fences, materials and equipment brought on to the site in connection with the use shall be removed from the site within three months, and the land shall be restored to its former condition.* The notice alleges that the condition has not been complied with in that the use continues.
- The requirements of the notice are to:
 - (1) Cease the use of any part of the Land as a caravan site for the stationing of any mobile homes or caravans for residential use; and
 - (2) Remove any caravans, structures, fences, materials and equipment brought on to the Site in connection with the stationing of any caravans for residential use, and the Site shall be restored to its former condition.
- The period for compliance with the requirements is 12 months.
- Appeal 3178921 was initially proceeding on the grounds set out in section 174(2) (a), (c) and (g) of the Town and Country Planning Act 1990 as amended. Appeals 3178922 & 3178923 were proceeding on grounds (c) and (g) only, ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act having lapsed since the prescribed fees were not paid within the specified period.

Summary of Decision: The appeal is allowed, the enforcement notice is quashed, and planning permission is granted in the terms set out below in the Formal Decision.

S78 Appeal Ref: APP/V2255/W/17/3178940 Grace's Place, Homestall Road, Doddington, Kent ME9 0HF

- 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 Sybil Smith against the decision of Swale Borough Council.
- The application Ref 16/503982/FULL, dated 9 May 2016, was refused by notice dated 6 March 2017.
- The development proposed is Change of use to residential – for one gypsy family, comprising one mobile home, one touring caravan and one utility shed.

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Summary of Decision: The appeal is allowed, and planning permission granted subject to conditions set out below in the Formal Decision.

Preliminary matters

1. At the outset of the hearing, I sought confirmation of the correct spelling of Mr Doughty's surname given the variations on the appeal paperwork.
2. The Agent for the Appellants confirmed that ground (c) was withdrawn on all the s174 appeals. Thus 3178921 proceeds on grounds (a) and (g) and appeals 3178922 and 3178923 on ground (g) only.
3. Since the refusal of planning permission and the issue of the notice, a new local plan for the Borough has been adopted. The appeals now fall to be considered having regard to the provisions of *Bearing Fruits 2031: The Swale Borough Local Plan* (July 2017) and my attention has been drawn to policies ST 3 – The Swale settlement strategy, DM 10 Gypsy and Traveller sites, DM 24 Conserving and enhancing valued landscapes and DM 26 Rural lanes.

The s78 appeal 3178940 and the s174 appeal 3178921, ground (a)

4. The main issue in this case is whether the site is suitable as a gypsy and traveller site having regard to its specific location and assessed against relevant planning policies and whether any harm or identified policy conflict is outweighed by other considerations.

Background

5. The site is owned by Mr John Smith. He purchased it in 2006 and made a planning application for residential use as a gypsy site. It was occupied by him, his partner and his three children. The application was not determined until 2011 when the site was found to be unsuitable for permanent occupation. Nonetheless, having regard to the personal circumstances of the family a temporary permission was granted. This expired on 28 July 2014.
6. Of those original occupiers, only one, Jacob, who is now 20, remains on the site. Also resident are his grandmother (John's mother) Sybil Smith and her husband, Dennis Doughty. My understanding is that Sybil moved on to the site to take over parenting duties for Jacob when her son and the other original family members moved off.
7. Sybil is registered disabled. She and her husband stopped travelling for work because of her disability and although it was their intention to resume, they now accept that due to her ill health and their age and infirmity, they will not be able to do so. Whilst she is a Romany Gypsy and he is an Irish Traveller, neither meet the revised definition of gypsies and travellers for planning purposes as set out at Annex 1 of the 2015 national *Planning policy for traveller sites* (PPTS) as it now excludes those who have ceased to travel permanently.
8. Jacob is currently undertaking an apprenticeship and hopes to qualify at the end of the year. He will not be leading a nomadic lifestyle and so he too does not meet the PPTS definition of a gypsy despite his Romany background.
9. The planning application, the subject of the s78 appeal was made on the basis that it would be for these three occupiers. At the hearing, however, I heard

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that Jacob stays away for much of the time (although the appeal site remains his home) and that his cousin Luke (another grandson of Sybil's) has been using Jacob's bedroom for the last two months since the breakdown of his marriage. Luke is a gypsy for planning purposes since he travels for work and he needs a base so that his young son can visit at weekends.

10. Specific policies addressing the accommodation needs of gypsies and travellers are contained in national and local planning policies. However, having regard to the above, these apply only to Luke.

Suitability of the appeal site

11. The appeal site comprises a rectangular shaped plot situated on the southern side of Homestall Road, a narrow country lane. Despite being situated opposite a pair of semi-detached cottages, the area is sparsely populated with very few buildings along the lane and in the immediate surroundings. Farmland, trees and hedgerows prevail culminating in a largely unspoilt and tranquil rural scene notwithstanding the proximity of the M2 to the south.
12. The newly adopted Local Plan sets out a settlement strategy for Swale. Settlement tiers are identified to guide the location of future development and services. Urban centres and larger well-connected villages with the largest concentrations of population and where services, employment and transport choices are present occupy the higher tiers. The lower the tier, the less development is envisaged. The appeal site, with its isolated position in the countryside, falls within the lowest tier where policy ST 3 indicates that development will not be permitted unless supported by national planning policy and able to demonstrate that it would contribute to protecting and, where appropriate, enhancing the intrinsic value, landscape setting, tranquillity and beauty of the countryside, its buildings and the vitality of rural communities.
13. The overarching aim of government policy in the National Planning Policy Framework (NPPF) is to achieve sustainable development in economic, social and environmental terms. In addressing housing development in rural areas, paragraph 55 says it should be located where it will enhance or maintain the vitality of rural communities and that isolated homes should be avoided unless there are special circumstances.
14. The appeal site is so isolated that it cannot be said to support any identifiable rural community and thus, in the absence of special circumstances, its use would be in conflict with paragraph 55 of the NPPF. Not being supported by national planning policy would also result in conflict with Local Plan policy ST 3.
15. To the limited extent that the policies in the PPTS are applicable to this case, paragraph 14 recognises that gypsy traveller sites will be found in rural and semi-rural settings. Nonetheless, paragraph 25 indicates that traveller site development in open countryside and away from existing settlements or outside areas allocated in the development plan should be strictly limited. The appeal site is such a site. As with general national policy, the aim is to achieve sites that are sustainable economically, socially and environmentally. Having regard to the guidance in PPTS paragraph 13, I do not find this site to be so. Whilst a settled base has advantages such as enabling occupiers to access education and health services and reducing the need for long distance travelling, these are general benefits that would come from any settled base and are not specific to this site. The isolated position of this site is such that it

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would not foster social inclusion or integrated co-existence with the settled community and it is not conveniently situated to access the necessary services and facilities for day to day living.

16. In connection with policy ST 3 the Local Plan includes an indicative map of accessibility to services showing areas ranging from those accessible to most or all services to those accessible to few or no services. The appeal site is located in the most inaccessible category.
17. Local Plan policy DM 10 addresses the provision of gypsy and traveller sites and the Plan makes clear that it is to be read and interpreted in conjunction with policy ST 3. Thus applicants are required to consider the availability of sites at each tier of settlement category before a site within the next lower tier is considered and permitted – although the policy does allow for exceptional circumstances.
18. Looking at the effect of the use on the character and appearance of the area, the site is well screened from public view by natural vegetation. Nonetheless, the additional residential use on a sizeable site in this remote location serves to erode the largely undeveloped nature of the area and in this respect there is a degree of conflict with national and local policies which seek to protect the character of the rural area.
19. The Local Plan identifies Homestall Road as a rural lane where policy DM 26 states that permission will not be granted for development that would either physically, or as a result of traffic levels, significantly harm its character. I have already noted that the site is well screened. However, the wide, hard surfaced, bell mouthed access into the site and the maintenance of a sight line (required in the interests of road safety) are at odds with the type of simple opening in a hedge secured by a field gate that one might typically expect to find along a rural lane flanked by farmland. Moreover at the access a view into the site is afforded which exposes the domestic use taking place on the site. Notwithstanding that the amount of traffic generated by the use would be low and unlikely to have any material effect, I find the appearance of the entrance and the view available into the site at this point do significantly harm the character of the rural lane in conflict with policy DM 26.
20. Drawing together my findings, I conclude that having regard to its specific location and assessed against relevant planning policies, the site is not suitable as a gypsy and traveller site due to its isolated location remote from day to day services and facilities and with no potential for fostering social integration; and due to its harmful effect on the character and appearance of the rural area in particular on the valued rural lane. In reaching that conclusion I have borne in mind the two appeal decisions drawn to my attention by the Appellant where Inspectors found distances to services greater than in this case to be reasonable. However, those cases were in very different local authority areas. In Swale, ease of accessibility to services for the whole Borough has been assessed and sustainable locations are now guided by the recently adopted Local Plan. The appeal site is in the category of area which performs least well and the Council indicated at the hearing that suitable gypsy and traveller sites have been found in the better performing areas. My conclusion on the suitability of the site would be the same whether one applies national and local policies specifically relating to gypsies and travellers (bearing in mind one of the occupiers meets the planning definition) or not.

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Other considerations

Need

21. The national need for more gypsy and traveller sites is not in dispute. Nor was it argued at the hearing that there is not a need for more sites regionally. With regard to need within Swale, the Council's 2013 Gypsy and Traveller Accommodation Assessment (GTAA) identified a need for 85 pitches. Following publication of the 2015 PPTS with the revised definition of gypsies and travellers, that figure was reduced to 61. The revised figure was accepted by the Local Plan Inspector who, after taking into account sites completed and with planning permission, agreed that the very small remaining identified need could come forward as windfalls assessed against the criteria based policy DM 10.
22. There has been criticism that 19 pitches at Brotherhood Woodyard should not currently contribute to supply as they are not suitable for, nor occupied by gypsies and travellers. The Council, however, provided evidence at the hearing of action being taken against the apparent breaches of planning control so as to bring the development into line with the permission granted. In addition, I heard that a further planning permission has been granted that would increase the supply at that site by another 11 pitches (30 additional pitches in total). The scheme was criticised by the Appellant as to its suitability for gypsies and travellers, in particular in that only seven of the 40 pitches have a utility/day room and the communal facility would not be an acceptable alternative for those without. However, my understanding is that each pitch would accommodate a mobile home and touring caravan and not all gypsies and travellers are adverse to having toilet and washing facilities within their mobile homes – the current Appellant family being one such example.
23. In evidence the Council produced three alternative calculations of the five year supply: firstly in the last monitoring year and discounting any contribution from Brotherhood Woodyard; secondly calculated live and including in supply the additional 30 at Brotherhood Woodyard along with two from another approval; and thirdly calculated live assuming 19 additional pitches at Brotherhood Woodyard had been implemented with the additional 11 and two from another approval included in supply. These produced a supply of 4.88 years, 22.6 years and 14 years respectively. The mathematics was not disputed by the Appellant. Given the active steps that the Council has and is taking with regard to the situation at Brotherhood Woodyard, it seems to me that it is in a good position insofar as demonstrating a five year supply against the assessed need is concerned.
24. Nonetheless, the Local Plan Inspector, in concluding that the Council's evidence update provided a well-reasoned and pragmatic solution, made clear in her report that she had in mind that the early review of the Plan (a commitment arising from concerns about highway infrastructure) would require both need and supply to be reassessed soon after adoption. Added to this, the GTAA, which has a base date of 2 February 2013, recommended a repeat assessment in about five years to maintain accuracy. It is overdue with no date as yet for anticipated publication.
25. In addition to this current requirement to re-assess need, the Council's response at the hearing to concerns raised about need arising from in-migration and from expiry of temporary planning permissions was far from

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satisfactory. With due respect, it is quite incorrect to say that these matters should not be factored in in the calculation of need. Notwithstanding the current position with regard to the five year supply, I was given no reason to reach a different conclusion to that of my colleague Inspectors in recent appeal decisions referred to me¹, that there is evidence (from caravan counts and from the expiry of temporary permissions) of unmet need for gypsy and traveller accommodation on the ground.

26. However, in the circumstances of this particular case, need and provision for gypsies and travellers who meet the PPTS definition has limited relevance since the site primarily provides for three people who do not meet that definition. The exception is Luke. But he has only been resident some two months and so moved on well after the service of the notice. His status as a permanent resident seems uncertain as I was told he has been "borrowing" Jacob's bedroom rather than the spare room within the mobile home being converted to a bedroom for his use.
27. The 24 households subtracted from the 2013 GTAA assessment of need² when the definition of gypsies and travellers changed in 2015 are households no less in need of accommodation. These people will be caught by the recently introduced duty in the Housing Act 1985³ for Councils to consider the needs of people residing in or resorting to their district in respect of caravan sites and houseboats. The Local Plan Inspector indicated that those needs would be best addressed as part of the early review of the Local Plan. The principal occupiers of the appeal site fall within this group. They are ethnic gypsies and travellers who, I heard, have a cultural aversion to living in conventional bricks and mortar. As yet there appears to be no assessment of need for this group and no provision made for them.

Personal circumstances and alternatives available

28. The family group have a need for a permanent pitch. Sybil and Dennis are elderly and infirm and Sybil is registered disabled. All require a permanent base to access health services – but Sybil and Dennis in particular due their age and infirmity.
29. The site has been Jacob's home for some 12 years and Sybil's and Dennis's for about seven years. At the hearing they confirmed that they had looked for alternative sites but without success. The Council was unable to suggest where the family group might go should the enforcement notice be upheld and they are required to leave. The upshot could be no alternative but roadside living.
30. Although it was unclear whether Luke's presence on site was a permanent or temporary arrangement, for as long as he has nowhere else to go, he is in need of a settled base so as to enable his young son to come and stay.

Intentional unauthorised development

31. Sybil and Dennis have occupied the land in breach of the occupancy condition but it is clear that their motive was well intentioned in that their purpose was to take over parental responsibility from John for Jacob. In addition, the family group has remained on the site since the temporary planning permission

¹ 3176865 (Windmill Farm), 3179355 (Hill Top Farm), 3174468 (The Meads Farm) and 3172935 (The Retreat)

² 85 reduced to 61

³ Section 8(3) of the Housing Act 1985 introduced by Section 124(1) of the Housing and Planning Act 2016 (12 July 2016)

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expired in 2014. However, they applied for a renewal when expiry was drawn to their attention and have brought an appeal on ground (a) against the enforcement notice in the hope of regularising the position. In the situation here where the family group has occupied the site for many years – no doubt considering it to be their home – and with no other alternative open to them, I give this matter minimal weight.

The balance of considerations and conclusion

32. I have found the appeal site to be unsuitable as a gypsy and traveller site due to the remoteness of its location and harm caused to the character of the area and designated rural lane. Whilst the identified need, especially for those gypsies and travellers who do not meet the PPTS definition, and the personal circumstances of the occupiers of the site weigh in favour of a grant of permission, I do not find this to be of sufficient weight to justify permanent occupation of a site in the most inaccessible category of land in the Borough and where there is damage to a designated rural lane. This is especially so when the Council has shown that sites have been found in more sustainable locations and planning permission granted.
33. Whether one applies policies applicable to gypsies and travellers or not, there is conflict with both national planning policies and with the Development Plan for the area. In looking at a permanent permission, the harm identified is overriding and is not outweighed by the other considerations so as to indicate that the proposal should be determined otherwise than in accordance with the Development Plan.
34. For a temporary period, however, I believe the balance shifts. Notwithstanding the position in relation to the five year supply, a need on the ground for more gypsy and traveller sites for those who meet the PPTS definition has been identified. Perhaps of greater significance, however, is that in the main the Appellant family group do not meet the PPTS definition although they clearly are ethnic gypsies and travellers by background. Despite the duty to do so, the needs of this ethnic group who fail the PPTS definition have yet to be assessed or addressed even though there is an indication from the 2013 GTAA that there are at least 24 households in need.
35. Whilst the Local Plan Inspector indicated that their needs would be best addressed as part of the early review of the Local Plan, the current inequality of housing opportunity for this group of people adds weight to the proposition that a temporary permission might be granted to allow for this situation to be redressed. When considered along with the personal circumstances of the occupiers of this site and the lack of any suitable alternative to which the group could go, the balance tips in favour of the grant of a temporary planning permission. I have no evidence of any substantive progress having been made on the early review of the Plan despite a year having elapsed since adoption and in these circumstances it seems to me that five years would not be an unreasonable period to enable the needs of persons who do not meet the PPTS definition but who nonetheless require caravan pitches to be assessed and addressed and so achieve equality of opportunity for all.
36. With regard to Luke who does meet the PPTS definition, there is evidence that he is in need of a base – at least in the short term – and no indication that he has any alternative place to go. It is clearly in the best interests of his child that he has a settled base so that his son has the opportunity to visit him.

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37. For a temporary period, therefore, the particular circumstances of this case are such that the other material considerations, when taken together, indicate that a decision should be taken otherwise than in accordance with the Development Plan. The harm and identified policy conflict is outweighed by other considerations in the short term.

Conditions

38. As permission is only justified for a limited time and by the personal circumstances of the occupiers, conditions addressing these matters are clearly necessary. Conditions restricting the number of caravans, preventing business use, restricting the size of vehicle to be accommodated and controlling external lighting are all necessary to limit the effect on the character of the rural area and designated lane. In addition the maintenance of a sight line at the access into the site is necessary in the interests of highway safety.

Conclusion

39. The s78 appeal 3178940 and the s174 appeal 3178921 on ground (a) succeed. Conditional planning permissions will be granted and the enforcement notice will be quashed. That being the case there is no need for me to go on to consider the s174 appeals on ground (g).

40. Since the notice is to be quashed, there is also no need for me to correct the typographical error in paragraph 1 where the reference to Section 171A(1)(a) of the Act should have been Section 171A(1)(b).

Formal Decisions

S174 Appeal Ref: APP/V2255/C/17/3178921

41. The appeal is allowed and the enforcement notice is quashed. Planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the change of use to residential for one gypsy family for one mobile, one tourer and one shed without complying with condition 1 of permission SW/06/0126 subject to the following new conditions:

- 1) The use hereby permitted shall be carried on only by the following: Jacob Smith, Sybil Smith, Dennis Doughty and Luke Smith and their resident dependants, and shall be for a limited period being the period of five years from the date of this decision, or the period during which the premises are occupied by them, whichever is the shorter.
- 2) When the premises cease to be occupied those named in condition (1) above, or at the end of five years, whichever shall first occur, the use hereby permitted shall cease and all caravans, buildings, structures, materials and equipment brought on to the land, or works undertaken to it in connection with the use, shall be removed and the land restored to its condition before the development took place.
- 3) 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 (of which no more than one shall be a static caravan) shall be stationed on the site at any time.
- 4) The site shall be used for residential purposes only and shall not be used for any business, industrial or commercial use. No open storage of plant,

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products or waste shall take place on the land and no vehicle over 3.5 tonnes shall be stationed, parked or stored on the land.

- 5) No floodlighting, security lighting or other external lighting shall be installed or operated on the site other than in accordance with details which shall have been previously submitted to and agreed in writing by the local planning authority.
- 6) The area between the carriageway edge and a line drawn between a point 2m back from the carriageway edge in the centre of the access and a point on the nearside carriageway edge 30m to the west of the centreline of the access shall, at all times, be kept clear of any tree, plant or other obstruction over 1.05m above carriageway level.

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42. I take no further action in respect of these appeals.

S78 Appeal Ref: APP/V2255/W/17/3178940

43. The appeal is allowed and planning permission is granted for change of use to residential – for one gypsy family, comprising one mobile home, one touring caravan and one utility shed at Grace's Place, Homestall Road, Doddington, Kent ME9 0HF in accordance with the terms of the application, Ref:16/503982/FULL, dated 9 May 2016, and drawing nos: 16002 001, 16002 002 & 16002 003, subject to the following conditions:

- 1) The use hereby permitted shall be carried on only by the following: Jacob Smith, Sybil Smith, Dennis Doughty and Luke Smith and their resident dependants, and shall be for a limited period being the period of five years from the date of this decision, or the period during which the premises are occupied by them, whichever is the shorter.
- 2) When the premises cease to be occupied those named in condition (1) above, or at the end of five years, whichever shall first occur, the use hereby permitted shall cease and all caravans, buildings, structures, materials and equipment brought on to the land, or works undertaken to it in connection with the use, shall be removed and the land restored to its condition before the development took place.
- 3) 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 (of which no more than one shall be a static caravan) shall be stationed on the site at any time.
- 4) The site shall be used for residential purposes only and shall not be used for any business, industrial or commercial use. No open storage of plant, products or waste shall take place on the land and no vehicle over 3.5 tonnes shall be stationed, parked or stored on the land.
- 5) No floodlighting, security lighting or other external lighting shall be installed or operated on the site other than in accordance with details which shall have been previously submitted to and agreed in writing by the local planning authority.
- 6) The area between the carriageway edge and a line drawn between a point 2m back from the carriageway edge in the centre of the access and a point on the nearside carriageway edge 30m to the west of the

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centreline of the access shall, at all times, be kept clear of any tree, plant or other obstruction over 1.05m above carriageway level.

B M Campbell

Inspector

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APPEARANCES

FOR THE APPELLANT:

Dr A Murdoch	Agent for the Appellant
Mrs Sybil Smith	Appellant
Mr Dennis Doughty	Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Mr G Thomas	Area Planning Officer
Ms G Bryant	Enforcement Officer

DOCUMENTS submitted during the hearing

- 1 Planning Committee report for application SW/06/0126
- 2 Aerial photograph showing nearby sites and note addressing sustainability/Brotherhood Woodyard/ Two further permanent pitches
- 3 Appeal decision 3136912 – Chichester District Council
- 4 Enforcement and Breach of Condition Notices for Brotherhood Woodyard
- 5 Extract from Swale GTTA