
Appeal Decision

Hearing held on 22 June 2016

Site visit made on 22 June 2016

by Sarah Colebourne MA, MRTPI

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

Decision date: 6 December 2016

Appeal Ref: APP/J1915/W/16/3145267

Elmfield Stables, Thirty Acre Farm, Broadfield, Throcking, Hertfordshire, SG9 9RD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Robin Jamieson against the decision of East Herts Council.
 - The application Ref 3/15/1725/FUL, dated 20 August 2015, was refused by notice dated 13 November 2015.
 - The development proposed is described as the change of use to a mix of gypsy and traveller residential with the siting of a single caravan and grazing for horses, together with the development of replacement stables.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues in this case are:-
 - whether the appellant meets the definition of a gypsy or traveller for the purposes of planning policy as defined in Annex 1 of '*Planning Policy for Traveller Sites*' (PPTS).
 - whether the proposed development is in a sustainable location, having regard to national and local policy;
 - if any harm arises, whether it is outweighed by any other material considerations, including any identified need for sites for gypsies and travellers in the area, the alternatives for the appellant and any personal circumstances.

Reasons

Background

3. The appellant has owned the site since 2004. Two previous appeals for stables at the appeal site were dismissed in 2006 and 2008 on the grounds of the effect on the character and appearance of the area. A previous appeal for the use of land as a traveller site and a stable block was dismissed in 2013 on the grounds of harm to the character and appearance of the area, to sustainability and to nature conservation.
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Definition of gypsy or traveller

4. It was accepted at the previous appeal in 2013 that the appellant satisfied the definition of a gypsy and traveller in terms of the planning policy which applied at that time. In this case the Council has not disputed that the appellant is of Romany Gypsy ethnic identity or that he leads a travelling lifestyle and from the submitted evidence I have no reason to disagree with that. However, since the Council's decision, it now considers that Mr Jamieson no longer meets the current, revised definition of a gypsy and traveller in the government's PPTS. This removed the words 'or permanently' from the previous definition so that gypsies and travellers who have permanently ceased a nomadic way of life are no longer included in the provisions of the policy.
5. The Council reached this view following the results of its 'East Herts Gypsy and Travelling Showpeople Accommodation Needs Assessment' dated June 2016 (GTAA) which was agreed by the Council on 7 June 2016. This was commissioned by the Council to take account of any changes resulting from the changed definition. It sought to understand the accommodation need of the travelling population in East Herts through a new round of household interviews and a review of the data that was collected during the previous now superceded study in 2014 in which the appellant's need was identified.
6. Mr Jamieson's interview was conducted by telephone and email, in which he said that he did very little work, travelling for social, domestic and pleasure reasons. At the hearing he said that at the time of the interview he was recovering from an operation and was heavily medicated and unable to provide an accurate response. However, during the hearing he provided further details of his current and anticipated future travelling patterns.
7. Although Mr Jamieson has retired from his work as a clinical psychologist, he is currently involved with police investigations into allegations of institutional child abuse in Essex and will appear at some point before the Goddard inquiry, in a professional albeit unpaid capacity. Whilst I was told that this will involve travelling to London, Essex, Manchester and the north for periods of between one day and several months, the fact that this work is unpaid is crucial. Caselaw, including the *R v South Hams District Council ex parte Gibb* (1994) judgment referred to me at the hearing, despite its reference to '*purposive activities including work*' also refers to a connection between the travelling and the means of livelihood, that is, an economic purpose. In this regard, there is no economic purpose.
8. I was also told that the appellant has land and property interests which include the ownership of a flat in London for which he is also a director of the block and two flats in North Tyneside, all of which are, or in the process of being, rented out and amount to around a third of his income. This involves visits several times a year of varying lengths, although those to the north east are sometimes combined with family visits. I did not hear that Mr Jamieson is involved in a physical capacity in property repairs or renovation and it seems to me that the management of the flats would not require much more than the occasional day or two, a few times a year. This situation is no different from that of many landlords and property investors or indeed anyone travelling to work in a fixed, pre-arranged location. In this regard there is not an essential connection between wandering and work.

9. He also carries out custody reports and provides psychology support for gypsies and travellers which amounts to a day or two a few times a year and some 5% of his income. Whilst there does appear to be some connection between the travel and the work in this regard, it seems to me that these periods of travel for economic purposes are very short, amounting to an extremely small proportion of his time and income. Furthermore, the work is not carried out in a nomadic manner because it seems likely that it is done by appointment.
10. I conclude, therefore, that Mr Jamieson does not meet the definition of a gypsy and traveller in terms of planning policy because there is insufficient evidence that he is currently a person of a nomadic habit of life. I shall, however, go on to consider whether the site is suitable for use as a general gypsy and traveller site or as a site for a residential caravan and stables for people without gypsy or traveller status.

Planning policy

11. Government guidance referred to by the parties includes the National Planning Policy Framework ("the Framework") and PPTS. The Framework sets out the three dimensions of sustainable development. These are economic, social and environmental. Paragraph 8 of the Framework states that the three sustainability roles should not be undertaken in isolation, because they are mutually dependent. To achieve sustainable development, economic, social and environmental gains should be sought jointly and simultaneously. Paragraph 14 sets out a presumption in favour of sustainable development which means approving proposals that accord with the development plan and where the plan is absent, silent or relevant policies are out-of-date, granting permission unless any adverse impacts would significantly and demonstrably outweigh the benefits when assessed against the Framework as a whole. I must therefore assess whether the Council's policies are consistent with national policy.

Sustainable location?

12. The development plan includes the East Herts Local Plan Second Review (LP) (2007) in which the appeal site lies outside any settlement boundaries. Policy HSG10 is a criteria-based policy for gypsy and traveller sites which says that permission will be granted if the site is in a sustainable location in terms of accessibility to existing shops, education and health services and potential sources of employment, amongst other things.
13. Transport is only one dimension of sustainability and neither PPTS nor the Council's policies exclude all sites outside settlements. The Framework acknowledges the difference between urban and rural areas and neither it nor the Council's policy explicitly requires reliance on cars to be reduced in every instance. However, the Framework seeks to encourage a sustainable pattern of development and reduce car journeys where possible. Moreover, PPTS says that sites in open countryside away from existing settlements or outside areas allocated in the development plan should be very strictly limited. It also seeks to ensure that sites are sustainable and provide access to school and health services and reduce the need for long-distance travelling. The Council's policy is therefore broadly consistent with the Framework and PPTS.

14. The site is some 2 km from the village of Cottered which has a very limited range of services and some 4km from Buntingford which has a greater range of services, including shops and a doctor's surgery. There is no public transport in the immediate area. I heard that Mr Jamieson intends to use supermarket deliveries and to cycle, using a battery assisted bicycle, to and from Buntingford. However, that would not be likely in certain weather and, despite his generally good health now, is a less likely option with increasing age.
15. Although the existing stables are now authorised, there are no horses on the site and there is no need at present for Mr Jamieson to visit the site for the stables although this could change in the future. Although a permanent site may reduce some of his longer distance journeys, as Mr Jamieson's family and partner live in other parts of the country and his business and work interests lie elsewhere, the site would not contribute to a significant reduction in longer distance travelling either. I have noted that Mr Jamieson is committed to living a sustainable life and spends some time travelling out of the country each year but notwithstanding that it is highly likely that most journeys would be made by car.
16. The lane is very narrow, unlit and without pavements. If the site became a general gypsy and traveller site or a residential caravan site, those occupiers would be likely to require other facilities such as schools and given the conditions of the lane it is unlikely that they would choose to walk or cycle to any services that are required on a frequent basis. They may also own a greater number of vehicles and this would result in a greater number of car journeys even if they had a pattern of nomadic travelling or if the stables were brought back into use. Although the site is not large, the number of journeys would significantly increase over the existing situation and would have a severe impact.
17. I have noted that the site was the only site identified as potentially available and suitable in the Peter Brett Associates site scoping report and the East Herts Identification of Potential Sites Study in 2014 as part of the evidence base for the emerging District Plan. It identified the appeal site as having potential for one pitch for a single touring caravan. However, that was only one of the options suggested and a further strand of the report concerned the need to consider the delivery potential of providing pitches/plots within the wider areas of the proposed 'Allocations' and 'Broad Locations' in the emerging District Plan.
18. For these reasons, I agree with the Inspector for the previous appeal that the appeal site is not in a sustainable location and this is the case whether for use as either a general gypsy and traveller site or as a residential caravan site. The proposal would therefore be contrary to LP policy HSG10, the Framework and PPTS.

Any identified need for sites for gypsies and travellers in the area

19. PPTS identifies a national need for traveller sites and seeks to ensure that local planning authorities develop strategies to meet the need for sites in appropriate locations, to address under provision and maintain an appropriate level of supply (including a five year supply) of sites.
20. The Council's 2016 GTAA, which supercedes the 2014 GTAA and will be tested during the examination for the emerging District Plan as part of its evidence

base, identifies a requirement for 5 pitches in the district to 2033. Although the appellant is critical of the methodology and assumptions used in the GTAA, it has been carried out by a suitably qualified and experienced consultancy who have carried out a vast number of other GTAAs across the country, including those in neighbouring districts. I heard that similar assumptions and methodology have been accepted very recently by the Inspector's Interim Report for the Joint Core Strategy for Gloucester Cheltenham and Tewkesbury. In view of this and as I have no compelling evidence before me that the GTAA has significantly under-estimated the need for pitches despite the appellant's concerns, I will take into account the identified need in the GTAA.

21. Of the 5 pitches identified, 2 are needed between 2016-2022 and 3 between 2022-2027. The Council accepts that it has a very small shortfall of pitches and says that it will address the shortfall through the expansion or intensification of one of the existing private sites although no planning application for that has yet been received. At the present time, the Council cannot demonstrate a deliverable and available five year supply as required by PPTS. This carries some weight in favour of the proposal but given the very small size of that need, I have given it only limited weight.

Alternative accommodation options and personal circumstances

22. Mr Jamieson is currently living in his converted van, staying with relatives or very occasionally at the appeal site. I have noted the difficulties that this poses including abuse and threats, getting fresh water and access to toilet and other facilities. I heard that he would not consider living in any of the flats he owns because he has a personal aversion to living in bricks and mortar as a result of his wartime experiences and a long history of moving around. He considers that it would be detrimental to his health and well-being. From the evidence provided which points to, I accept this.
23. Since 2015 he has owned another small piece of land outside but close to the settlement boundary of Standon, for which planning permission for a dwelling was refused. He is hoping this might be suitable for social housing. Whilst the Council's officer considered that this might be a sustainable location for use as a caravan site, Mr Jamieson considers that, despite photographs showing a caravan on that site, it might be unsuitable in terms of highways access and it is unclear to me whether or not this would represent a suitable alternative site. The land and properties Mr Jamieson owns may not be suitable alternatives. I was also told of the difficulties in acquiring land and the extent of Green Belt land in this district. However, he could presumably sell the land and properties he owns if necessary which would contribute towards the purchase of a more suitable site. This reduces the weight I have given to his accommodation and personal needs.
24. Mr Jamieson is unaware of any reasonably available sites within this or neighbouring districts and as a single man with no dependants it seems unlikely that he would be able to obtain a pitch on an existing local authority existing site and previous enquiries have been unsuccessful.
25. The Council was unable to say whether or not it had any intention to make provision in its emerging District Plan for gypsies and travellers such as the appellant who have permanently ceased travelling for economic purposes. However, Section 124 of the Housing and Planning Act requires each local housing authority in England to consider the needs of people residing in or

resorting to their district with respect to the provision of sites on which caravans can be stationed. This duty increases the weight that I give to the personal needs of Mr Jamieson given his situation.

26. If the appeal were dismissed he would have to continue visiting relatives or staying with friends on unauthorised sites and whilst I have given his accommodation and personal needs moderate weight in view of his age, he is not registered with a GP in the area and I have not been told of any specific health or other reason, other than previous minor injuries and operations, that would provide further weight in support. A site in this location is not essential for the appellant.

Other matters

27. Local residents have raised a number of other matters to which the Council did not object.
28. The Framework recognises the intrinsic character and beauty of the countryside. PPTS does not require that sites are completely screened from view but instead seeks to ensure that they have adequate landscaping that rather than isolating them, increases their openness. Nonetheless, it requires that due regard is had to the protection of the local environment.
29. The appeal site is approached along a country lane in which there are a number of scattered dwellings. The site is surrounded by mostly grazing land. To the west, permission has been granted for a temporary agricultural worker's dwelling since the previous appeal and there is an associated large agricultural building. Some screening would be provided from the lane by the existing tall hedge and the additional proposed landscaping. The site would only be clearly seen from the access and from a public footpath which crosses through the southern part of the site. There are significant differences between this proposal and the previously dismissed scheme. The smaller size of the proposed stables building, its siting directly behind the roadside hedge rather than in the middle of the field and the single caravan rather than the caravan and mobile home proposed previously, together with additional planting would not result in significant harm in terms of the character and appearance of the area. Indeed the proposal would provide a small benefit in this regard given that the existing dilapidated building and container now have certificates of lawful development (LDC) which have been issued since the previous appeal and their removal would be a visual improvement. I have insufficient evidence to find that the concerns raised on behalf of local residents regarding the use of the land and the LDC's should lead me to a different conclusion and the proposal would accord with the Framework and PPTS in this respect.
30. S40 of the Natural Environment and Rural Communities Act 2006 requires that decision makers have regard to the purpose of conserving biodiversity. ODPM Circular 06/2005 states that *'it is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before planning permission is granted.'* The Framework states that *'the planning system should contribute to and enhance the local environment by minimising impacts on biodiversity and providing net gains in biodiversity where possible'*. I have a duty under the EC Habitats Directive 92/43, the Habitats Regulations 2010 and the Wildlife and Countryside Act 1981 to consider this matter.

31. The Inspector for the previous appeal found there to be no dispute that protected species (great crested newts and a barn owl) were present on the site at that time and concluded that as no survey had been provided one was necessary. As that could not be provided through a condition, the proposal was found to be harmful to nature conservation interests. In this case, the same organisation, Hertfordshire Ecology (HE) found that the development would not destroy any ponds that support newts or their habitats and that the stable block would be on short improved grassland that is sub-optimal for newts to cross. As a precaution to avoid any potential impacts it advised a number of directives regarding newts, birds and bats and conditions for biodiversity enhancements, lighting and soft landscaping. I was told by the Council that HE's previous view was based on the possibility of species in the area and their presence in the wider area was referred to at the hearing by a neighbouring farmer. As I also heard that the nearest pond is some 250m from the site and that barn owls are not present in the proposed developed area of the site, it seems to me that the difference in the siting of the buildings may account for the difference in HE's advice between the previous proposal and this scheme. I have noted that the landscaping proposals provide for longer grass in the undeveloped part of the site to enable its continued function as a corridor of movement for a range of species. I am satisfied, therefore, that in this case there is adequate information to be certain that, subject to the conditions referred to, no significant harm would arise to protected species and biodiversity.

The planning balance

32. I have found that the proposal is not in a sustainable location and would not fulfil the environmental aspect of national policy. This carries significant weight against the proposal. In its favour, the development would provide a small social and economic benefit in terms of the identified general need for gypsy and traveller sites in the area including the lack of a five year supply and a moderate social benefit to the personal and accommodation needs of Mr Jamieson. The visual appearance of the site would also provide a small environmental benefit. However, these material considerations do not outweigh the conflict with the development plan as a whole.
33. I have considered whether a split decision allowing the stable block and the use of the land for the grazing of horses would be appropriate given that I have found that no harm would result in terms of character and appearance. The appellant indicated at the hearing that this would be acceptable if the appeal failed in regard to the change of use of the land to a caravan site. The Council's policy GBC3 says that permission will be given for essential small scale facilities for outdoor sport and recreation and is broadly compatible with the Framework which seeks to encourage opportunities for sport and recreation and a prosperous rural economy. However, as the stable block includes a utility room for washing facilities for Mr Jamieson's own use, the proposals are not clearly severable. Conditions excluding the utility room and requiring the submission of further details would be imprecise and could not ensure that the use of the whole of the building was acceptable. A split decision is not, therefore, appropriate.
34. PPTS says that if a local planning authority cannot demonstrate an up-to-date five year supply of deliverable sites, this should be a significant material consideration when considering applications for a temporary permission. I

have considered whether a condition allowing occupation for a temporary period of up to, say, five years would be sufficient for the adoption of a strategy for the provision of gypsy and traveller sites in the emerging District Plan and any subsequent Development Plan Document and for those sites to become deliverable, achieve planning permission and be available for occupation. Given that the Council expects to submit its Draft District Plan in March 2017 with adoption by the end of 2017, this might be achievable. However, the harm caused by the unsustainable location and the conflict with the development plan during this period would be significant and on balance this outweighs the need for such a condition.

35. I have had due regard to the Human Rights Act 1998 (HRA) and the Public Sector Equality Duty under the Equality Act 2010. Article 8 of the European Convention on Human Rights (as incorporated by the HRA) deals with the right to respect for private and family life and the home. The Council has said that it may consider enforcement action. Dismissal of this appeal would, in all likelihood, result in Mr Jamieson having to stay with friends and relatives. This would represent an interference with his home and family life. Without an authorised site it would also be difficult for him to pursue his current lifestyle.
36. However, these are qualified rights and interference may be justified where in the public interest. The concept of proportionality is crucial. These interferences would be in accordance with the law and in pursuit of a well-established and legitimate aim: the protection of the environment. The environmental harm which would be caused by the development in terms of its location would be significant. In the context of this case it outweighs the human rights of the appellant. Despite the need for pitches, the lack of a five year supply, the lack of an available and suitable alternative site and the other matters weighing in the appellant's favour, I conclude that the granting of a temporary or permanent planning permission would not be appropriate. I am satisfied that the legitimate aim of the protection of the environment cannot be achieved by any means which are less interfering with the appellant's rights. They are proportionate and necessary in the circumstances.

Conclusion

37. I have taken into account all other matters raised where relevant but none are sufficient to alter or outweigh my findings. The appeal should be dismissed.

Sarah Colebourne

Inspector

APPEARANCES

FOR THE APPELLANT:

Mr M Hargreaves	Planning consultant
Mr R Jamieson	Appellant
Mr R Watson	Friend
Mrs S Watson	Friend

FOR THE LOCAL PLANNING AUTHORITY:

Mrs L Page	Principal Planning Officer
Mr S Jarman	Opinion Research Services

INTERESTED PERSONS

Mr P Bloomfield & Mr M Fearn	Planning consultants
(on behalf of Mr and Mrs Bunton and other local residents)	
Mr M Dingemans	Local resident

DOCUMENTS

1. Legal summary R v South Hams ex parte Gibb, 1994.
2. Email from Mr Jamieson to ORS.
3. Land registry title number and plan for Standon.
4. Photographs of Standon site.
5. Plans showing site layout and landscaping for previous scheme.