The Planning Inspectorate

Appeal Decision

Hearing held on 29 September 2016
Site visit made on 29 September 2016

by G D Jones BSc(Hons) DipTP DMS MRTPI

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

Decision date: 6 February 2017

Appeal Ref: APP/V2255/D/15/3141240
1 Old Half Acre, Blind Marys Lane, Bredgar, Kent ME9 8AR

- 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 Samuel Baker against the decision of Swale Borough Council.
- The application Ref 15/505426/FULL, dated 5 July 2015, was refused by notice dated 25 November 2015.
- The development proposed is change of use of land from agricultural to a residential caravan site to contain two static caravans and one touring caravan, for two Romani Gypsy families and vehicular access, parking for four vehicles, associated hardstanding and cesspit.

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The evidence indicates that there has been a change of use of the appeal property from agricultural land to a caravan site. When I visited the site as part of the hearing I observed caravans positioned within it along with operational development including an area of hardstanding. There appears to be at least some differences between what was on-site at the time of the hearing and the details that were before the Council when it determined the appeal planning application. I have considered and determined the appeal based on the details which formed the basis of the planning application. I have done so because that is what the appellant formally sought planning permission for and as it is the detail on which interested parties were consulted. I advised the parties of my intention in this regard during the hearing.

3. At the hearing, with reference to the proposed details, particularly those shown on the proposed site layout drawing ref. BP-01, I suggested that the description of the proposed development set out in the heading to this decision better represents the details proposed. This was agreed by the main parties. They also agreed that the address should be changed to be consistent with the appeal property's name '1 Old Half Acre'.

4. The appeal development is proposed to provide a permanent home for the appellant, his wife, their four children (who are all minors) and his parents.

Main Issues

5. The main issues are:
   - The effect of the appeal development on the character and appearance of the area including the Kent Downs Area of Outstanding Natural Beauty; and
   - Whether any harm arising is outweighed by any other considerations, including any identified need for sites for gypsies and travellers in the area, the alternatives for the appellant and any other personal circumstances.

Background

6. The appeal site is the subject of an enforcement notice (the EN)[1] concerning *the material change of use of the Land from agricultural land to land used as a caravan site for the stationing of caravans/mobile homes used residentially*. The current appellant appealed against the EN, including on the ground that planning permission should be granted for the development alleged in the notice. The appeal was dismissed, the EN upheld and planning permission refused on the deemed application[2]. For ease of reference I shall refer to that appeal as the 'EN Appeal'.

7. An appeal against an enforcement notice in respect to similar alleged development on adjoining land was also dismissed (the 'Neighbouring Appeal')[3]. A separate proposal on part of that adjoining land was allowed on appeal. Planning permission was granted subject to a condition which limits the use to a period of three years, having regard to the lack of a five year supply of sites at that time and the social benefits provided[4].

8. At the hearing it was put to me by the Council that the EN Appeal decision should be the starting point for my decision, while the appellant advised that my starting point should be the Neighbouring Appeal decision. As it relates to largely the same land, concerns the same appellant and is for comparable development, I have taken the EN Appeal decision as my starting point. I do, nonetheless, recognise that the Neighbouring Appeal decision is highly material bearing in mind that site's close proximity to the current appeal site and that it concerns similar development to that now proposed.

Reasons

Character and Appearance

9. The appeal site is within the Kent Downs Area of Outstanding Natural Beauty (the AONB), where Policy E9 of the Swale Borough Local Plan 2008 gives priority to the conservation and enhancement of natural beauty which reflects current national policy. For instance, para 115 of the National Planning Policy Framework (the Framework) states that great weight should be given to conserving landscape and scenic beauty in AONBs[5], which have the highest status of protection in relation to those matters.

[1] Council Ref: ENF/BRE/11/004 issued on 7 June 2011. Also Hearing document 6a
[2] Appeal Ref: APP/V2255/C/11/2156335, dated 21 February 2012
[3] Appeal Ref: APP/V2255/C/11/2156341
[4] Appeal Ref: APP/V2255/A/14/2222135, dated 28 January 2015
[5] Section 85 of the Countryside and Rights of Way Act 2000 establishes that the statutory purpose of AONBs is to conserve and enhance the natural beauty of the area

10. The Deans Hill escarpment covers a large area of the parish and is of high landscape value. In this part of the AONB the landscape is generally open and there are long views over open countryside including towards the Thames, Medway and marshes.

11. The appeal site is situated in open countryside and abutted on two sides by a single track road, Blind Marys Lane, which makes a dog-leg along its eastern and northern boundaries. Apart from Cedar Cottage, a detached dwelling on the north side of the lane, and the neighbouring caravan site to the southwest, the surrounding fields are largely in agricultural use. The evidence indicates that prior to its current use the appeal site was a field or paddock, with no building on it.

12. The EN Appeal Inspector described the residential caravan use of the site as being immediately apparent from the adjacent lane, in part due to views of the caravans and associated development, and in part due to the incongruous evergreen planting associated with the new use. The planting has no doubt matured over the intervening years. The evidence also indicates that some of the evergreen species have been removed.

13. Nonetheless, the use was still readily apparent when I visited the area for broadly the same reasons given by the EN Appeal Inspector. I observed that the vehicular access affords a reasonably open view into much of the site. There are also open views in to the site from the public footpath that runs for several metres in very close proximity to the site's southern boundary. Moreover, evergreen species remain a strong feature of the planting within the site and this is clearly visible from the public domain. Like that previous Inspector, I find that the overall effect is of a loss of rural character and natural beauty, directly contrary to national and local policies for the conservation of the AONB.

14. When considering the extent and significance of this adverse effect upon the AONB, I too have given particular weight to the proximity of the site to Blind Marys Lane and the public footpath. At the time of the EN Appeal that Inspector found the Lane to be lightly used by vehicles and this still appears to be the case. Nonetheless, it and linking footpaths are used by walkers.

15. The Neighbouring Appeal Inspector stated that local residents had indicated that the footpath is well-used and this is consistent with my observations as well as with what I have read and heard during the appeal process. I also note that the footpath continues beyond the site via nearby arable fields immediately to the west and to the east on the opposite side of Blind Marys Lane, linking in both directions to the network of rights of way beyond. What was once a walk through fields has now been transformed in the near vicinity of the appeal site due to the change of use and the associated planting and operational development.

16. More distant views to and across the site, including those from the reasonably well-trafficked Swanton Street and from footpaths in the wider area, are also now significantly altered and would remain so as a result of the appeal development. For the reasons outlined above, the proposed use of the site and associated planting would continue to interrupt views across the site and disrupt the otherwise generally open landscape.

17. The site's appearance could be enhanced via the removal of existing evergreen planting and/or planting of more sympathetic native species. Nonetheless, irrespective of such measures, the appeal site would continue to appear at odds with the otherwise largely open landscape when perceived from both nearby and wider points of view as described above. Consequently, the appeal scheme would cause substantial harm to the character and appearance of the AONB.

18. In making this assessment I have had regard, among other things, to the presence of the neighbouring caravan site and the electricity pylons/cables that pass close to the site and their effect on the character and appearance of the area. I note that the Inspector for the Neighbouring Appeal also considered that despite some nearby houses and the electricity infrastructure, the area had retained an open and rural character and appearance.

19. In that case the Inspector found that the development then in question would have a limited effect in the context of such a large scale and expansive landscape. The Inspector concluded, nonetheless, that it would cause moderate harm to the main characteristics of the AONB in this area.

20. To my mind, the proposal before me would cause greater harm due mainly to the site's position to the other side of the nearby right of way and adjacent to Blind Mary's Lane. As a consequence, it is considerably more prominent. Its location adjacent to the dog-leg also means that development within it has far greater potential to interrupt what would otherwise be long-views across it to and from nearby open fields.

21. For the reasons outlined above, therefore, the appeal development would have a detrimental effect on the character and appearance of the area, which would include substantial harm to the AONB. Accordingly, in this regard, it conflicts with Policy E9 of the Local Plan as well as with its Policies E1 and E19, which seek, among other things, to safeguard environmental features and high quality/distinctiveness respectively, and with the Framework.

Other Considerations and the Planning Balance

Need for gypsy sites

22. Planning Policy for Traveller Sites (PPTS), aims to address under provision and maintain an appropriate level of supply. Councils should identify and update annually, a supply of specific deliverable sites sufficient to provide 5 years' worth of sites against their locally set targets.

23. In 2015, the Neighbouring Appeal Inspector concluded that it had not been satisfactorily demonstrated that there was an up-to-date five year supply of deliverable sites. This conclusion was based on the needs evidence contained in the Council's Gypsy and Traveller Accommodation Assessment (GTAA), which was completed in June 2013 and identified a need for 82 pitches to be provided from 2013 to 2031[6].

24. The Council has reviewed its GTAA to reflect the revised definition of gypsy and traveller. This work has led it to reduce its estimated need for new pitches from 82 to 61. The Council's evidence is that over 50 pitches have already

[6] The evidence indicates that, while the need figure identified in the GTAA is 85 pitches, as three pitches were approved during the course of its production, the final target was 82 pitches. This is consistent with the approach followed by the Neighbouring Appeal Inspector

been granted permanent planning permission. On this basis the outstanding need would be no more than 10 pitches to 2031. This approach has informed the Council's draft Bearing Fruits Swale Borough Local Plan: Part 1 (the emerging Local Plan), which is currently undergoing examination.

25. The Council's position is that the remaining need, based on the figure of 61 pitches, could be addressed via windfall provision. This is set out in a proposed main modification. The Local Plan Inspector's Interim Findings, published in March 2016[7], state that the Council's *evidence update provides a well-reasoned and pragmatic solution to ensure that the Plan aligns with up to date policy on Gypsy and Traveller Sites. Unless any government guidance advocating a different approach is issued before the Plan is adopted I consider that this approach will serve to make the Plan effective and consistent with national policy.*

26. At the time of the hearing the proposed main modifications had recently undergone consultation. I was supplied with a copy of an objection which is critical of how the Council has recalculated need and questions the assumptions made regarding supply (the Heine Objection)[8]. In these circumstances I can give the emerging Local Plan only limited weight as it could be subject to further change.

27. Notwithstanding the Heine Objection and the appellant's wider evidence, from the information before me I have found nothing that leads me to believe that the Council's reassessed need figure of 61 pitches to 2031 is incorrect. I would note, however, that the need figure should be seen as the minimum level of provision and that additional delivery of sites that meet national and local policy would increase choice.

28. The appellant has challenged the Council's evidence regarding the supply of pitches, including the number of and appropriateness of pitches that have permanent planning permission. The Council produced a schedule which shows the sites granted permanent planning permission since the GTAA 2013 base date, as well as those that have been implemented[9]. The total number of pitches is indicated as 54, of which 41 are shown as having been implemented. Several of the sites identified show the number of caravans and the number of pitches as being the same value, one caravan per pitch. However, given that the GTAA uses a 1.7 caravan to pitch ratio to determine need, it appears likely that the number of permitted pitches may be overstated.

29. I also note the matters raised by the Neighbouring Appeal Inspector regarding the assessment of supply bearing in mind the size of and facilities available on some of the permitted pitches, the suitability of some of the permitted sites for some gypsies and travellers for ethnic reasons and that some of the pitches and associated facilities had not been implemented. These include the sites at Brotherhood Woodyard (Dunkirk), Orchard Park (Upchurch) and Cricket Meadow (Iwade), which are also cited in the Heine Objection.

30. While there does appear to have been an increase in implementation since the Neighbouring Appeal decision was made, I broadly share that Inspector's reservations in this regard such that, in the absence of contradictory evidence,

[7] Interim Findings on Swale Local Plan, Part 3: Overall Interim Findings
[8] Hearing Document 2
[9] Hearing Document 3

the Council appears likely to have partly over-estimated the supply of usable pitches for gypsies and travellers. Nonetheless, in view of the now significantly reduced level of need combined with the reasonably substantial increase in the number of permitted sites, many of which have now been implemented, overall I consider that the Council has now demonstrated that it does have a five year supply of deliverable sites. On this basis there is no apparent need for further sites in the short term and in the longer term any outstanding need that might be established would be likely to be dealt with through the provisions of the emerging development plan.

Personal circumstances and alternatives available for the appellant

31. At the hearing the appellant advised that he had looked elsewhere for accommodation but that the main obstacles are cost and availability. While there is no documentary evidence to demonstrate the lengths to which he has gone to find alternative accommodation, there is no obligation on the appellant to carry out a search of sites.

32. The appellant advised during the hearing that his family's occupation of the appeal site has been sporadic. Local residents and representatives of the Parish Council also advised that the site was rarely occupied. The appellant explained that this was principally due to his concern that regular occupation could bring about further enforcement action by the Council. From what I read and heard during the appeal process it appears that use of the site is only occasional.

33. The appellant also advised that when not living at the appeal site, he and his family would mainly live with friends and family or by the roadside. He also confirmed that his parents, who he intends to live with him at the appeal site, still live at a permanent pitch at a site in Sidcup. On this basis his parents appear to have existing alternative accommodation, yet I recognise that the appeal development would allow the extended family group to live together and provide mutual support, consistent with the gypsy way of life.

34. The appellant also advised that he had never lived in a house or other 'bricks and mortar' accommodation and that to do so would be contrary to his ethnic preferences. The Council's evidence indicates that there are at least some traveller sites available. As recorded by the Neighbouring Appeal Inspector those at Brotherhood Woodyard are unlikely to be a realistic alternative due to potential social tensions as well as the size, of at least some, of the pitches in question. There is no evidence regarding which of the other sites are actually available now or whether they would meet the needs of the appellant's extended family such that I have no good reason to believe that there are suitable alternative available to the appellant.

35. The Council's evidence indicates that if the appeal were to be dismissed it would take steps to seek compliance with the EN. On this basis and for the reasons outlined above, there is a reasonably high likelihood that the opportunity potentially offered by the site for the appellant's family to establish a permanent base along with the associated stability would be lost, and that they would find it difficult to find alternative accommodation in the event that planning permission were not granted for the site. In these circumstances his family would be likely to have no alternative but to live 'on the road' or find other temporary arrangements.

36. The evidence indicates that the appellant, his wife, their four children and his parents would normally live at the site. The children are all minors. The eldest two are in higher education/training, while the two younger children attend primary school and pre-school respectively. I was advised at the hearing that they attend educational/training establishments in Sittingbourne, which is in reasonably close proximity to the appeal site. It would be in the children's best interests to have a settled base on the land and these interests are a primary consideration.

37. I note the appellant's parents' state of health. Bringing the extended family together on a single site and having a settled base would also support their health needs. Other than in that respect and as outlined above, there is no evidence to indicate that the intended occupants of the site have any particular health or educational needs. Nonetheless, while these general needs are shared with the wider, more settled community, the absence of a settled base is associated with undisputed evidence that nationally the traveller community experience comparatively poor health and educational outcomes.

38. Dismissing the appeal would result in the direct loss of the proposed occupiers' opportunity to establish a permanent home given that the site is only occupied on a sporadic basis. This would represent an interference with the best interests of the appellant's children and with the occupants' home, their family life and their livelihoods in the terms of Article 8 of the Human Rights Act 1998. These circumstances combined with the limited availability of alternative accommodation, as outlined above, have considerable weight in support of the appeal.

Other considerations and overall balance

39. Notwithstanding the appellant's evidence to the contrary, the appeal site is in the open countryside away from Bredgar. It is in this kind of location where the PPTS states that new traveller site development should be 'very strictly limited'. The current version of the PPTS sets a higher bar in this regard than the previous version, which referred only to 'strictly limited'. Access to Bredgar from the site is via either largely unlit, often narrow roads without footways or along un-surfaced/unlit rights of way across the intervening fields. Given these circumstances and the reasonably long distances concerned, residents of the site are likely to largely rely on use of private vehicles to access services in the village and elsewhere. These considerations weigh against the appeal development.

40. I have also found that the appeal development would have a detrimental effect on the character and appearance of the area, which would include substantial harm to the AONB. Given that great weight should be given to conserving landscape and scenic beauty in AONBs, this harm carries very considerable weight against the appeal.

41. As outlined above the identified need for pitches is a minimum figure. The appeal development would deliver more accommodation thereby increasing choice for gypsies and traveller families. This weighs in favour of the development, albeit to a limited extent given the limited quantity of accommodation concerned. I have also found that the personal circumstances and associated human rights at play combined with the availability of alternative accommodation weigh considerably in favour of the appeal.

42. On the evidence before me, I have found that the Council does not have a pressing need for new pitches and that it has a five year supply of gypsy and traveller sites. The accommodation need in the local area is being assessed through the development plan process and, if necessary, a supply of suitable and deliverable sites will be identified to meet that need. Through that process, sites which best meet the need with least harm to the environment would come forward, if necessary. In these circumstances, those sites might be less harmful than, and therefore preferable to, the appeal site.

43. It is also important to bear in mind that the rights under the Human Rights Act 1998 are qualified and interference with them may be justified where in the public interest. The concept of proportionality is crucial. In this case such interference would be in accordance with the law and in pursuit of a well-established and legitimate aim, the protection of the AONB. In the context of this case the harm to the AONB outweighs the human rights of the appellant's family and the best interests of the children. The appellant and his family are gypsies who are a protected group for the purposes of the Equality Act 2010. The requirements of the Public Sector Equality Duty are to eliminate discrimination and to promote equality and good relations between those with protected characteristics and those without. However, in dismissing the appeal, none of these duties would be breached.

44. I have also considered the possibility of a temporary permission. I recognise that while no substitute for a permanent site, temporary permission would offer a period of stability and allow further time to find alternative accommodation, including the pursuit of a site through the plan-making process. However, whilst temporary development would reduce the duration of the harm I have identified, it would not be sufficient to cause the matters in favour of the development to outweigh those that are against it. Even though not applicable in this case I note that since the Neighbouring Appeal was determined the PPTS has been amended such that where a five year supply of deliverable sites cannot be demonstrated, this cannot be a significant material consideration when considering applications for the grant of temporary planning permission where the land is within an AONB. Overall, given the degree of harm that would result from the proposed development especially in respect to the AONB, a temporary permission would not be appropriate.

45. Weighing all these matters in the balance, I conclude that the totality of the considerations that are in favour of the proposal do not outweigh the environmental harm particularly the identified harm to the character and appearance of the area, including the AONB, and the conflict with the development plan. Consequently, the appeal scheme, on either a permanent or a temporary basis, should be resisted.

Other Matters

46. Another appeal decision and an Injunction Order concerning gypsy development elsewhere in the borough were brought to my attention at the hearing[10]. I have taken these into account when making my decision. I note that that appeal decision is several years old such that it was made against a different national planning policy context and at a different site. Consequently it is of limited relevance to this appeal. In any event I have, reached my decision on the basis of the particular planning circumstances of the appeal,

[10] Hearing Documents 1 & 5

including the human rights and the personal circumstances of the appellant and his family, as set out above.

47. I have also taken into account wider matters raised in opposition to the appeal scheme by interested parties, including by those who spoke during the hearing. However, they have not led me to any different overall conclusion.

Conclusion

48. For the reasons given above, the proposed development is unacceptable and the appeal is dismissed.

G D Jones

INSPECTOR

APPEARANCES

FOR THE APPELLANTS:

Joseph G Jones	BFSGC
Joseph P Jones	BFSGC
Samuel Baker	Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Graham Thomas BSc(Hons) DipTP MRTPI	Area Planning Officer, Swale Borough Council
Shelley Rouse MRTPI	Principal Planning Policy Officer, Swale Borough Council

INTERESTED PERSONS:

Cllr Monique Bonney	District Councillor
Cllr Penny Twaites	Chair, Bredgar Parish Council
Cllr Jane Collins	Bredgar Parish Council and local resident
Cllr Andy Dwyer	Bredgar Parish Council and local resident

DOCUMENTS SUBMITTED AT THE HEARING

1 High Court Injunction Order Claim No HQ16X01733, dated 7 September 2016 and related note on behalf of the appellant
2 Response of Heine Planning in respect to gypsy traveller aspects of the Main Modifications to the emerging Local Plan, July 2016
3 Updated 'Monitoring of Gypsy Supply' schedule prepared by the Council
4 Plans of the neighbouring gypsy site considered under appeal reference APP/V2255/A/14/2222135
5 Decision letter for appeal reference APP/V2255/C/06/2022786
6 Copy of Enforcement Notices in respect to (a) the appeal site and to (b) the neighbouring gypsy site