
Appeal Decision

Hearing held on 6 December 2016

Site visit made on 6 December 2016

by David Murray BA (Hons) DMS MRTPI

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

Decision date: 01 March 2017

Appeal Ref: APP/R3650/W/16/3155366

**Old Mill Farm, Old Portsmouth Road, Thursley, Godalming, Surrey,
GU8 6NJ.**

- 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 P Edwards against the decision of Waverley Borough Council.
 - The application Ref. WA/2014/2339, dated 2 December 2014, was refused by notice dated 18 April 2016.
 - The development proposed is the change of use of the land for the stationing of a caravan for residential occupation and ancillary domestic storage, siting of a touring caravan and the erection of a porch.
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Decision

1. The appeal is allowed and planning permission is granted for a limited period of four years for the change of use of the land for the stationing of a caravan for residential occupation and ancillary domestic storage, the siting of a touring caravan and the erection of a porch, at Old Mill Farm, Old Portsmouth Road, Thursley, Godalming, Surrey, GU8 6NJ, in accordance with the terms of the application, Ref. WA/2014/2339, dated 2 December 2014, and the plans submitted with it, subject to the conditions set out in the attached Schedule.

Preliminary matters

2. The application as submitted seeks relief from conditions 1 and 3 imposed on permission WA/2012.0956 where condition No.1 limits that permission (for a similar use) to a limited period and condition No.3 requires the use to cease and the caravans and other structures to be removed from the land, within three months of the expiry of the permission on the 8 October 2014. However, as that permission is spent the conditions cease to have any relevance other than No.3 in terms of compliance. Therefore the current application should be considered as a full application in its own right for the use proposed and as set out in the fourth bullet point above.
 3. The submitted site plan shows the siting of a mobile home, a space for the storage of a touring caravan and another caravan used for residential purposes, however the appellant's agent confirmed that the latter residential caravan has been removed from the site and does not form part of the application. I have amended the description accordingly.
 4. At the Hearing an application for full costs was made by the appellant against the Council. This is the subject of a separate decision.
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Main Issues

5. The main issues are:

- The status of the appellant as a 'gypsy and traveller' as defined in the Planning Policy for Traveller Sites (PPTS);
- Whether the proposal is 'inappropriate development' in the Green Belt and the effect on openness;
- The effect on the Surrey Hills Area of Outstanding Natural Beauty (AONB) and Area of Great Landscape Value (AGLV);
- The effect on the Wealden Heaths Special Protection Area (SPA);
- The provision of and the need for gypsy sites; and whether the Council can demonstrate a 5 year supply of deliverable new sites;
- The availability of alternative sites;
- The appellant and family's personal circumstances.

Reasons

Background

6. The appeal site comprises a triangular piece of land which lies between the Old Portsmouth Road and the A3. The land lies at a much lower level (of about three or four metres) than these roads and the eastern and western boundaries of the site are enclosed by high, mainly evergreen hedges and there is an access to the Old Portsmouth Road. On the site itself, I noted at my visit that the site contains a number of small scale utilitarian agricultural buildings together with vehicles and equipment used for agriculture and related work.
7. The site lies in the Green Belt and in the Surrey Hills AONB and AGLV.
8. The planning history of the site is mostly concerned with the use as a private residential gypsy site which is said to have commenced in 2004. In May 2013 the Council granted permission for a limited period expiring in October 2014 for a similar use to that put forward in the current application as described in paragraph 2 above. The reasons for this permission, in summary, after a balance of considerations, includes reference to the Council's pending revised 'Gypsy and Traveller Accommodation Assessment' (GTAA), with a view to the appellant seeking an alternative site, given that it was considered likely that more appropriate sites could be identified.

Policy Context

9. The development plan for the area includes saved policies in the Waverley Borough Local Plan adopted in 2002. I will consider whether any specific policy is consistent with the more recent National Planning Policy Framework (NPPF) when that policy arises in a main issue. A Draft Local Plan - Part 1, was submitted for Examination and the officers said that it was hoped that the plan would be adopted in late 2017. Consequently only limited weight can be given to its provisions at this stage as its provisions may change. Further, the Part 1 Local Plan does not allocate land for gypsy development but puts forward policy HN4 as a criteria based approach for the consideration of applications for gypsy sites. Formal allocations may come forward in the Part 2 Local Plan which the

Local Development Scheme programmes for adoption in 2019 following the formal plan-making process.

Gypsy status

10. The appellant's agent explained that the appellant was away travelling at the time of the Hearing and so he was also represented by his wife. Mr Edwards sees himself as an English Romany Gypsy and although he and his wife have occupied settled accommodation for a few years in the past, they have lived on the appeal site since 2004. They have long standing connections with the area. Mr Edwards uses this site as a base but travels away for much of the year to find work as an agricultural contractor and sometimes she travels with him. His periods away are frequent and lengthy. Mrs Edwards estimated her husband's time away as over 50% of each month for about two-thirds of the year including during the winter. His travels for work take him to the continent and along the south coast of England but even the more local trips involve living away in the touring caravan.
11. The Council does not challenge Mr Edward's gypsy status. Further, on the basis of the evidence put to me I am satisfied that the appellant has a mainly nomadic habit of life that accords with the definition of a gypsy and traveller as set out in the Annex to the national Planning Policy for Traveller Sites (2015) (PPTS).

Whether inappropriate development and the effect on openness

12. The parties agree and I concur that the change of use constitutes inappropriate development in the Green Belt, therefore paragraph 87 of the NPPF is engaged. This makes clear that inappropriate development is harmful to the Green Belt and should not be approved except in very special circumstances.
13. In terms of the effect on openness, I assessed this at the site visit. The proposal would impact on the spatial aspect of openness but because of the topography of the site the present array of minor buildings is sunken in relation to surrounding land and their overall effect on the openness of the area is very limited. The physical form of the mobile home proposed, together with the storage of the touring caravan when not away in use for travelling, would generally assimilate into the space around the existing buildings on site and I find that the trappings of the use and the associated residential paraphernalia would not harm the openness of the Green Belt.
14. Although the development proposed conflicts with saved policy C1 of the adopted Local Plan, as the development proposed is 'inappropriate development' in principle, I do not find that the proposal conflicts with the second part of the policy as the proposal would not 'materially detract from the openness of the Green Belt'. This policy is generally consistent with the NPPF and therefore commands significant weight.

The effect on the landscape of the AONB and AGLV

15. Saved Policy C3 of the adopted Local Plan indicates that development appropriate to the countryside will be expected to respect or enhance the existing landscape character by being of an appropriate design. Development inconsistent with the primary aim of conserving or enhancing the natural beauty of the AONB will not be permitted unless a lack of alternative sites has been demonstrated. The thrust of this saved policy is consistent with the NPPF

which indicates in paragraph 115 that great weight should be given to conserving landscape and scenic beauty in AsONB.

16. Similar to my assessment under the openness of the Green Belt, I found at the visit that the site is secluded in the undulating topography of the area and also is well screened by mainly evergreen vegetation around the boundaries of the site including along the old and new main roads. Although the mobile home lies adjacent to the existing hardstanding as opposed to being sited on it, this does not result in the caravan being more intrusive in the landscape. Further, the proposal also covers the erection of a porch. While this physical structure would be attached to a moveable caravan, where only a use is involved, the porch is a rudimentary structure constructed in a single skin of timber. It is therefore easily demountable and the status of the structure as operational development is not incompatible with the use as a residential caravan site.
17. Overall on this issue, I am satisfied that the proposed residential and domestic storage use would not harm but would conserve the natural beauty of the area and so would accord with saved policy C3.

The effect on the Wealden Heaths Special Protection Area (SPA)

18. The application site lies about 200m from a Site of Special Scientific Interest (SSSI) which is designated as the Wealden Heaths Phase 1 Special Protection Area (SPA) and also forms part of an Area of Special Conservation (ASC) and is a National Nature Reserve (NNR).
19. In the consideration of the planning application Natural England concluded that there was not enough information to determine whether the proposal is likely to have a significant effect on any 'European' designated site. However, this assessment was made in respect of the proposal to consider the residential use of the site on a permanent basis. The advice of Natural England regarding a temporary permission was that, given that the Council are working on a long term policy for the supply of pitches for gypsies and travellers and that other more favourable locations may be identified, a conclusion could be reached of 'no likely effect without further work being undertaken'. Natural England advises that this is so because there is no evidence that the existing pitch is contributing to the recognised impacts of 'urbanisation' and 'recreational pressure and disturbance', provided that any temporary permission is not a 'rolling programme' of permissions. In summary therefore, Natural England advises that a temporary use of the site would not have a significant effect but that there is not sufficient information to conclude that a permanent use would not.
20. The appellant's agent highlights the Council's decision to allow an additional 5 residential mobile homes on a site at Warren Park, Portsmouth Road, which is to the north of the appeal site and appears to be within or immediately adjacent to the European designated site. The granting of this permission (under ref. WA/2015/0704) suggests that the limited use of the appeal site for residential purposes would be unlikely to have a significant effect on the habitat of the SPA. However, I am not aware of all of the planning circumstances of that case and the justification put forward to be able to give the decision significant weight. Nevertheless, given my finding that the appellant has a mainly nomadic habit of life and lives away for much of the year, consequently, he is likely to spend less time on and in the vicinity of the site than an occupier of a settled dwelling.

21. On the evidence before me I conclude that further evidence would be needed to assess the impact of a permanent residential use of the appeal site on the SPA and SSSI, either alone or in combination with other development and therefore that a risk of a significant effect cannot be excluded. However, the use of the land for a gypsy site for a temporary period pending the preparation of formal policies and proposals would be unlikely to have significant effects on any 'European' designated site.

The provision, need for and supply of gypsy sites

22. The Gypsy and Traveller Accommodation Assessment 2014 concluded that there was sufficient supply of gypsy and traveller sites to meet the identified need in the period 2012-2017. However, the survey information and baseline used in the assessment was successfully challenged at appeal. This influenced the decision to grant a temporary permission at the appeal site to enable the appellant to find an alternative location to residing at the appeal site. In terms of the current position on the need for gypsy sites, the parties refer to the 'Update Report on the Waverley Traveller Accommodation Assessment: April 2016, prepared by consultants 'Cunnane Town Planning' on behalf of the Council. This review of the evidence on the need for gypsy and traveller accommodation is to feed into the emerging Local Plan. The Update Report concludes that there is 'an identified need for 11 pitches over the period 2012-2017 taking into account vacancies and existing permissions.' Further, there is an identified need for 39 pitches between 2017 and 2027.
23. The Council agree that the delivery of pitches for the period 2012 to 2017 has not satisfied the now recognised need. 5 pitches in total have been allowed on appeal over this period but this still leaves a material shortfall. For the next phase, that is the period 2017 - 2022, there is no plan in place to allocate land for the development of gypsy and traveller sites. Current Policy H11 of the adopted Local plan is criteria based and does not positively allocate sites. Further, as mentioned in paragraph 9 above the Part 2 Local plan is not intended to be adopted until 2019. Moreover, Mrs Heine, for the appellant, said that the thrust in the emerging plan is to allow existing sites to expand rather than consider new sites and she felt that that this would not provide a comprehensive solution to resolve the outstanding need for sites. This would be an issue at Examination.
24. Therefore, at the moment it is clear that the Council cannot demonstrate a five year supply of deliverable sites in accordance with Policy B (paragraph 10) of the national PPTS. Further, the implementation of formal plans for the development of gypsy sites is unlikely to be reached until 2019 at the earliest. Given that the planning system is plan-led this amounts to a substantial failure of policy.

The availability of alternative sites

25. The reason for the 2013 permission was in part with a view to the appellant seeking an alternative site. There is no evidence that the appellant has actively done this although Mrs Heine submitted that the onus was on the Council rather than the appellant. Nevertheless, neither the appellant nor his professional agent are aware of any readily available alternative site that he could turn to for residential accommodation. It was said that other gypsy families were in the same position and two recent appeal decisions in the Borough were referred to by Mrs Heine where the inspector concerned

recognised that there was a clear lack of alternative lawful sites. Moreover, in this case the Council was not aware of any alternative sites which the appellant could utilise even on a temporary basis.

26. The lack of any alternative sites at the moment is a significant factor in the appellant's favour.

The appellant's personal circumstances

27. The personal circumstances put forward focus on the appellant's general health, together with that of his wife, and various medical conditions are mentioned including her difficulty in walking. However, it appears to me that the treatment of these conditions is not dependent on or improved by living on this particular site and locality and no special claim is made in this regard. In terms of the rights of children, Mrs Edwards confirmed that there are no children living on the site at the moment. I have therefore not placed significant weight on these personal circumstances in this appeal.
28. Nevertheless, I recognise that if the appeal is dismissed and the Council take enforcement action it is likely that the appellant and his wife would be required to leave the site and they would lose their home. This would be an interference with their human rights. Mrs Edwards said that they have no other residential accommodation to go to therefore they would be homeless or forced to live on the road. However, a right under Article 8 of the Human Rights Act is a qualified right and has to be balanced with the other planning considerations which I will do in the planning balance below

Other matters

29. The representatives of Thursley Parish Council raised concern about the impact of the mobile home on the setting of the Thursley Conservation Area. At the site visit I considered the juxtaposition of the appeal site with the village of Thursley and noted the extensive area of open heathland in between. I am satisfied that the appeal proposal has no discernable effect on the setting of the Conservation Area.

Planning balance

30. At the start of considering the planning balance, I have borne in mind the duties placed on me under the Public Sector Equality Duty as the appellant has a relevant protected characteristic.
31. Bringing together the conclusions I have reached on the main issues, the use of the appeal site for a residential gypsy caravan site would constitute inappropriate development in the Green Belt and as such would conflict with saved policy C1 of the Council's adopted Local Plan and the relevant provisions of the NPPF. However, I have also found that the use would not have a harmful effect on the openness of the Green Belt. As the site is both sunken in its topography and well screened in the landscape the proposal does not harm the AONB and AGLV but would conserve the natural beauty of the area and so would not conflict with saved policy C3 or the relevant guidance in the NPPF.
32. I have also found that there is a clear unmet need for gypsy sites locally at the moment and that the Council cannot demonstrate a five year supply of deliverable sites as required by the PPTS. There is also a lack of other alternative sites in the Borough now and if the proposal is rejected this is likely

to lead to the appellant losing his home and he and his wife would be homeless and probably have to live on the road. This is a factor to which I attach significant weight.

33. In terms of the effect on designated sites of nature conservation importance, there is insufficient evidence before me to demonstrate that a permanent residential use would not have a significant effect on the protected habitat. However, bearing in mind my finding that the appellant lives a mainly nomadic lifestyle with long periods away from the site, the advice of Natural England and the context that the Council need to consider a positive allocation of land for gypsy and related development through the emerging development plan, I am satisfied that a temporary permission for a residential caravan as a gypsy site would be unlikely to have a significant effect, either alone or in combination with other developments, on any 'European' designated site.
34. The NPPF requires great weight to be given to any harm to the Green Belt and the PPTS makes it clear that personal circumstances and unmet need are unlikely to outweigh harm to the Green Belt and any other harm so as to establish very special circumstances.
35. Nevertheless, to be balanced with this is the significant failure of the development plan to make provision for gypsy accommodation in the medium term and that there is no other alternative lawful solution available for the appellant to turn to at the moment and a formal plan-led solution for new sites is unlikely to be reached until 2019. The use was previously accepted by the Council on an interim basis pending its future plans as one which resulted in very special circumstances. Further, as the use proposed would cause little site-specific harm I see this as a substantial factor in favour of the proposal bearing in mind that some 63% of the Borough is designated as Green Belt and up to 78% is AONB/AGLV.
36. To sum up, the other considerations do not clearly outweigh the totality of harm that would result from the grant of a permanent permission. Therefore very special circumstances do not exist. However, considered together the factors clearly outweigh the harm in principle to the Green Belt in the short term and the related general presumption put forward in national guidance. A temporary permission would be consistent with the Council's responsibility to plan positively for such sites and would give the appellant a period of stability. The other considerations amount to very special circumstances. Whilst there would be some interference with Article 8 rights this would not be severe and is necessary and proportionate in the circumstances. The public interest cannot be protected by means that are less interfering of his rights. I will allow the appeal for a temporary period of four years.

Conditions

37. At the hearing the parties discussed conditions that may be appropriate in this case based on the 2013 permission. The Council agreed that a period of 4 years would be reasonable bearing in mind that the Part 2 - Local Plan is not programmed for adoption until 2019 at the earliest and then any proposal to develop an alternative site would need to follow the development management process. A condition requiring the cessation of the use and the removal of the caravans is also necessary. It is also reasonable and necessary to impose a condition restricting the permission to gypsy use only as that is the case put forward and the use should also be restricted to one residential caravan and

one touring caravan only in the interests of maintaining the openness of this part of the Green Belt and the character and appearance of the AONB/AGLV.

38. The appellant's agent said that she understood that foul drainage from the existing mobile home is to a septic tank but there were few details of the location of the facility or its suitability. In order to avoid pollution, I will impose a condition requiring details of the foul drainage system to be submitted to the Council and implemented and this may review the present system. Finally as the vegetation/hedging around the site is important to its screening, I will impose a condition requiring its retention.

Conclusion

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

David Murray

INSPECTOR

Schedule of Conditions

- 1) The use hereby permitted shall be for a limited period only being the period of four years from the date of this decision.
- 2) On the expiry of the limited period specified in condition 1, the use hereby permitted shall cease, the caravans and porch shall be removed from the land along with any domestic paraphernalia, and the land shall be restored to its former condition in accordance with a restoration scheme submitted to the local planning authority within 28 days of the date of this decision and subsequently approved in writing.
- 3) The site shall not be occupied by any persons other than gypsies and travellers as defined in Annex 1 of Planning Policy for Traveller Sites (or its equivalent in replacement national policy).
- 4) No more than one static caravan and one touring caravan, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 as amended, shall be stationed on the site at any time.
- 5) The existing vegetation within the application site and along the eastern and western boundaries of the site shall be retained for the duration of the permission.
- 6) The use hereby permitted shall cease and all caravans, structures, equipment and materials brought onto the land for the purposes of such use shall be removed within 28 days of the date of failure to meet any one of the requirements set out in i) to iv) below:
 - i) Within 3 months of the date of this decision a scheme for the proper disposal of foul sewerage has been submitted for the written approval of the local planning authority and the scheme shall include a timetable for its implementation.
 - ii) If within 6 months of the date of this decision the local planning authority refuse to approve the scheme or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by the Secretary of State.
 - iii) If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.
 - iv) The approved scheme shall have been carried out and completed in accordance with the approved timetable.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

APPEARANCES

FOR THE APPELLANT:

Mrs A Heine, BSc, MSc, MRTPI	Heine Planning Consultancy
Mrs Edwards	Appellant's wife

FOR THE LOCAL PLANNING AUTHORITY:

Mrs J Seaman	Senior Planning Officer, Waverley Borough Council
Mr T Bryson	Area Planning Officer, Waverley Borough Council

INTERESTED PERSONS

Cllr P C Hunter	Thursley Parish Council
Cllr P C Marton	Thursley Parish Council

DOCUMENTS

- 1 Extracts from emerging Local Plan Part 1 from the Council.
- 2 Copy of letters dated 17 November 2014 and 9 January 2015 from Natural England re appeal site.
- 3 Copy of letters dated 9 Feb. and 24 Oct 2016 from Natural England re Warren Park.
- 4 Appeal decisions APP/R3650/W/15/3135386 and APP/R3650/W/15/3132089.
- 5 Update Report on Waverley Traveller Accommodation Assessment April 2016.
- 6 Mrs Heine's written application for costs.