

Appeal Decision

Hearing held on 6 October 2016

Site visit made on 6 October 2016

by Sarah Colebourne MA, MRTPI

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

Decision date: 03 March 2017

Appeal Ref: APP/C1760/W/16/3153872

Furb, Newtown Road, Awbridge, Romsey, SO51 0GG

- 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 David Love against the decision of Test Valley Borough Council.
 - The application Ref 16/00706/FULLS, dated 18 March 2016, was refused by notice dated 16 May 2016.
 - The development proposed is described as '*a new 4/5 bedroom dwelling. In replacement for existing dwelling destroyed by fire 25/12/2015*'.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues in this case are:-
 - whether the proposed new dwelling would result in the loss of an existing gypsy and traveller site;
 - the effect of the proposed development on the character and appearance of the surrounding area;
 - 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 and gypsy status

3. The appeal site is located in the countryside, between the more built up areas of Newtown to the east and west. The family has owned and lived on the site for some 14 years. It has a permanent permission for use of part of the current site as a single general gypsy site, having been granted planning permission for that use in 2010 with conditions limiting the use to a gypsy caravan site only and limiting the number of caravans to one mobile home and one touring caravan. In 2012 two permissions were granted on appeal (against enforcement notices) for blockwork walls, cladding, insulation and an extension to the mobile home. In 2015 it was destroyed by a fire and it is now uninhabitable. The site now includes the remains of that together with a static
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caravan which the appellant and his family (his partner and their two sons) are using as a temporary home.

4. Although the Inspector accepted at the previous appeal that the appellant satisfied the definition of a gypsy and traveller in terms of the planning policy which applied at that time, the Council now considers that it is unclear if the appellant and his family meet the current, revised definition of a gypsy and traveller in the government's 'Planning Policy for Traveller Sites' (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. The Council considers that there is insufficient evidence, other than reference to a 2011 planning officer's report, to confirm this and the appellant's statement says that they no longer travel. It also says that as the appellant has no intention to sell the proposed dwelling, that would prevent a return to travelling. The Council has also referred to the Inspector in another appeal in Bristol in October 2015 (APP/P0119/W/15/3005545) who considered that the appellant's gypsy status would be lost if a residential building were allowed because it would not be a traveller development and it would not facilitate the nomadic way of life. However, that case differs significantly from this one because the site did not have a permission subject to a general gypsy and traveller occupancy condition.
5. Gypsies do not have to live in caravans or even travel in them to comply with the planning or housing definitions. I was told at the hearing that the appellant has ceased travelling for full time work on a temporary basis to care for his partner who had a brain tumour removed two years ago. He says that he continues to travel on a seasonal basis to horse fairs where he sometimes trades in horses, dogs and cars using a yard at his father's property nearby where he also stores a touring caravan. In this case, there appears to be a connection between the travelling and the means of livelihood, that is, an economic purpose. His intention is to return to more travelling and trading as soon as possible and despite the lack of any evidence to corroborate this, I have no reason to doubt Mr Love's word. Given his age and the improving health of his partner, it seems likely that he will be able to achieve this. Regardless of whether or not gypsy status would be lost as a result of the proposed development, I am satisfied that for the time being, the appellant has gypsy status and I have considered the appeal on this basis.

Policy

6. PPTS aims to ensure fair and equal treatment for travellers, to increase the number of traveller sites in appropriate locations with planning permission, to address under provision and maintain an appropriate level of supply. It advises that sites in rural areas can be used as traveller sites as an exception where there is a lack of land for such sites and refers to the need for these to be used in perpetuity.
7. The National Planning Policy Framework ("the Framework") seeks to ensure that new development recognises the intrinsic character and beauty of the countryside whilst supporting rural communities within it.
8. The Council considers that its policy COM12 in the Test Valley Revised Local Plan 2011-2029 (LP) (adopted July 2016) which permits the replacement of an existing dwelling in the countryside, provided that it is not the subject of a

temporary permission and would not be more visually intrusive, is not relevant. It says that policy COM2 which seeks to ensure that outside settlement boundaries development will only be permitted if it is essential for the proposal to be located in the countryside is relevant instead. However, the appellant considers that the proposal should be considered as a replacement dwelling.

9. In the previous appeals for the site in 2012, the Inspector concluded that the proposed development was 'more like a permanent dwelling' and that was also the view of the Council at that time. Although the Inspector fell short of saying that it was a permanent dwelling, I agree with the appellant that the wording of the existing permissions are irrelevant in this respect and that the building was in use as a dwelling house according to caselaw. From what I have seen it had the facilities required for day-to-day private domestic existence and a substantial degree of permanence arising from the blockwork walls and extension. Given the nature of the building that existed on the site prior to its destruction by fire, I consider that for the purposes of planning policy it is reasonable to treat the proposal as a replacement dwelling. This leads me to conclude that the relevant LP policy is COM12.
10. As the previous permissions in 2012 contained occupancy conditions for gypsies and travellers, policy COM13 is also relevant. This seeks to retain permanent, authorised sites for gypsies and travellers. Both of these policies are consistent with the objectives of national policy referred to above.

Whether the proposed new dwelling would result in the loss of an approved gypsy site

11. The appellant claims that national and local policy does not preclude 'bricks and mortar' accommodation (that is, traditional housing). I accept that some gypsies and travellers choose to live in 'bricks and mortar' but although the Hampshire Traveller Accommodation Assessment (TAA) (2013) shows that the wider area has a history of gypsies and travellers in housing, it does not identify any within this district. On the other hand, PPTS refers only to 'pitches' and 'plots' (ie a yard for travelling showpeople) and there is no reference in the document to 'dwellings'. Accordingly, the Council's policy COM13 refers only to 'accommodation' unlike the previous local plan policy which referred to 'caravans'. My interpretation is, therefore, that whilst it does not preclude 'bricks and mortar' houses nor does it imply any acceptability of those on a gypsy site.
12. Moreover, the TAA does not identify any need for 'bricks and mortar' housing in this district for gypsies and travellers or for any pitches for those already living in such accommodation. One of the other main reasons given by the Inspector in allowing the previous appeals on the site was because the extended mobile home would be attractive to some gypsies and travellers. The existing building is of a single storey and therefore not dissimilar in that respect to the mobile homes that are preferred by most gypsies and travellers. I am not certain that would be the case here. This is because the proposed dwelling would have two storeys and the form and style of a conventional house. Furthermore, many gypsies and travellers have a cultural aversion to traditional housing and there is a lack of identified need for this type of accommodation in the area.
13. It seems to me that the basis for the occupancy conditions for gypsies and travellers in the previous permissions in 2012 was the history of the appeal site and the likely attractiveness of the structure to gypsies and travellers. This

case differs because the proposed dwelling is of a different nature and would be unlikely to appeal to most gypsies and travellers. Additionally, although a condition restricting the occupation of the proposed dwelling to gypsies and travellers would maintain the availability of the site to the wider gypsy and traveller population, as there is no identified need for this type of accommodation this would not be reasonable. Even if I had found that personal circumstances are crucial in outweighing any harm, a personal condition would not be reasonable either, given that all personal permissions, because of eventual death, are also time-limited and according to the Planning Practice Guidance are scarcely ever justified in the case of a permanent building. It follows then that those conditions would not meet the tests in the Framework and the proposed dwelling would be unrestricted by occupancy conditions. Therefore, if the appeal were allowed there would be no means of safeguarding the site for gypsies and travellers. I conclude, therefore, that the proposal would result in the loss of an existing, authorised gypsy and traveller site, contrary to policy COM13.

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

14. The TAA provides a starting point for the objectives of policy COM13 and its emerging Site Allocations DPD seeks to deliver that objective. The TAA identifies a need for an additional 10 pitches in the district by 2027, including 7 by 2022 and the appellant broadly accepted these figures at the hearing. The emerging DPD seeks to allocate 13 pitches on three sites but as this document was subject to public consultation in 2015 and is not expected to become adopted until 2019 I have given it limited weight. I was told by the Council that since the TAA, planning permission has been allowed on appeal for an increase from one to two pitches at another site in the district in which the Inspector recognised that the Council's lack of a five year supply was a material consideration. I conclude then that the TAA indicates a moderate level of need over the forthcoming plan period and this is a matter to which I attach significant weight. The Council is unable to demonstrate a robust five year supply of pitches and this also carries significant weight against the proposal.

Alternative accommodation options

15. The appellant contends that there is no suitable alternative to the proposal, either elsewhere or on the appeal site. He considers that Council accommodation would not be acceptable and the Council was unable to say whether or not the family would be eligible for Council or social housing or if any were available that may be suitable. The family has not sought accommodation elsewhere. The appellant maintains that only a house in this location would be financially viable and adequate in terms of its construction. It would provide the standard of insulation and ventilation that would meet the family's health needs (which are discussed below) and would enable him to obtain mortgage funding.
16. I have not been provided with details of local house prices or quotations for the construction of the proposed house but at the hearing I was told that family houses in the area are in the region of £450,000 to £500,000 and that the cost of a self-build for the appellant would be some £80,000 to £100,000. At the hearing the Council suggested that the family could sell the site to another gypsy and traveller family to raise funds towards the purchase of a house

elsewhere and whilst the feasibility of that is unclear and it may not be acceptable to the family it would seem to me that this could be one option that has not been fully explored.

17. Alternatively, although the family has not yet had any confirmation that mortgage funding would be available and at the hearing said that they would receive some financial help from family or friends, it seems to me that if they are in a position to obtain and afford mortgage repayments then they might also be eligible for, and afford, a loan for a mobile home.
18. The appellant insists that even a new mobile home would not provide adequate standards of construction. At the site visit I was shown inside the existing, two years old static caravan that the family is currently living in. Whilst I was shown areas in which damp and condensation are experienced, the bathroom and a child's bedroom, it seems to me that the condition of the bathroom was no worse than those in many houses and that the situation in the child's bedroom is likely to be worsened by the position of the caravan and the proximity of the north-facing window to the high boundary hedge. I am not persuaded that a modern mobile home on the site could not be positioned to provide adequate standards of insulation and ventilation. Despite being told that the family would be unable to obtain insurance for a mobile home I am not satisfied that this is the case, given the large number of other gypsies and travellers who live in that type of accommodation. I consider, therefore, that a replacement mobile home on the site could be another option that would allow the children to continue their schooling and meet health needs. Although the previous Inspector had said that a larger mobile home would not be advantageous in visual terms, he did not say that it would be harmful and the Council said at the hearing that it would discuss alternative options for the site with the appellant if the appeal is dismissed.
19. I acknowledge that the site is already within the ownership of the appellant and that the children are happily settled in school so the family's wish to remain in this location is understandable. However, for the above reasons I give limited weight to the contention that the proposal is the only solution for the appellant.

Personal circumstances

20. PPTS seeks to enable the 'provision of suitable accommodation from which travellers can access education, health, welfare and employment infrastructure'.
21. In the previous appeal the Inspector gave significant weight to the family's personal circumstances and since then their health needs have increased. This is supported by a letter from the appellant's GP. At that time their eldest son had been diagnosed with Crohn's disease and since then the appellant's partner has been diagnosed with the same condition. I heard about the impact that living in inadequate accommodation has on this condition (the static caravan is prone to damp and condensation as referred to above and the eldest son has no bedroom of his own), in addition to the ongoing need for care from her partner at present with regard to the lasting impacts from the brain tumour she had in 2014. I give these matters significant weight.
22. I have also been told that the fire the family suffered in 2015 has resulted in some stress and anxiety for the children (the middle child has attended a hospital clinic) but I have not heard anything to suggest that this has impacted

significantly on their lives and give this only limited weight. Although the eldest son is now a young adult seeking employment and no longer in education, the younger two children are settled in school and the middle child is at a crucial stage of his education starting GCSE's.

23. There is no doubt that the adult members of the family have significant health needs that require an adequate standard of accommodation and that the children have moderate education needs that require a site within reach of their schools but in view of my findings above under *Alternative accommodation options* I see no compelling reason that these needs could not be met by alternative accommodation on this site or elsewhere.

Character and appearance

24. At my site visit I saw that the appeal site is located on a leafy country lane between two areas of housing to the east and west which comprise both modern and traditional dwellings, mostly detached and of varying sizes and style. The appeal site is well screened by both evergreen and deciduous trees and hedges along its front and side boundaries. The proposed dwelling would occupy the site of the existing structure close to the heavily treed side boundary and would be clearly seen only in close views from the entrance to the site and in glimpses through the boundary hedge. I disagree with the Council that it would be unduly prominent despite its two storey height in comparison with the existing single storey structure. Although the gap between the existing dwellings would be reduced by the two storey design, I also disagree that this would be visually harmful. The Council has not fully explained why it considers the design to be too urban and of poor quality. I disagree with that assessment. In my view its hipped roof design would reflect some of the character of other dwellings in this rural locality as would the proposed external materials. Whilst its square plan form is somewhat plain, its boxy appearance is relieved by the hipped roof, dormer windows, gable porch and a chimney. Its positioning with the side elevation to the road would not cause harm to the street scene because that elevation includes a porch, a chimney and a weather boarded gable which provide some interest. Overall it would provide an unassuming, modestly sized dwelling that would reflect some of the local vernacular in its detailing.
25. The appellant considers that the proposed dwelling would suit the locality better than a mobile home. Despite its greater size, given its more sympathetic materials I agree that it would not be more visually intrusive and would therefore accord with policy COM12. However, the proposed house is not necessary to secure an improvement to the area and as this could be achieved through alternative accommodation on the site, it does not amount to a significant benefit. Nevertheless, I conclude that the proposed dwelling would not harm the character or appearance of the area and would in this respect accord with LP policies E1 and E2 which seek to protect such matters.

The planning balance

26. I have found that the proposal would result in significant harm through the loss of a gypsy and traveller site. It would not fulfil the social and economic role of national policy and would be contrary to local policy COM13. This carries significant weight against the proposal and is supported by the significant need for sites in the area and the lack of a five year supply. The family's personal circumstances, taken as a whole, carry significant weight but I am not satisfied

that those needs cannot be met by alternative accommodation on the site or elsewhere. Although I have found that no environmental harm would be caused in terms of character or appearance and that the proposal accords with policy COM12, given the importance that the government attaches to the provision and retention of gypsy and traveller sites, the harm from the loss of a gypsy and traveller site is significant and overriding. When assessed against the Framework and PPTS, the proposal does not constitute sustainable development. It would be contrary to the development plan as a whole and there are no other material considerations that warrant determining the appeal otherwise.

Conditions

27. I have considered whether conditions allowing occupation by the appellant and his family only and/or by gypsies and travellers would overcome the harm I have identified but for the reasons given earlier those conditions would not be reasonable and would not therefore overcome the loss of a gypsy and traveller site.

Human rights, public sector equality duty and best interests of the children

28. 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 would discuss alternative proposals for the site if the appeal is dismissed. As the family would continue to live in their existing accommodation which is causing some harm to the health needs of two of the adult members of the family with Crohn's disease, there would be some interference with their home and family life, although the children could still attend their schools. The Article 8 rights of the children must also be seen in the context of Article 3 of the United Nations Convention on the Rights of the Child which requires that the best interests of the children shall be a primary consideration. No other consideration can be regarded as inherently more important. I have kept these interests at the forefront of my mind in reaching my decision. There would be only a limited interference with the best interests of the children for the reasons given under *Personal Circumstances*.
29. 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 an existing, authorised gypsy and traveller site. The social and economic harm which would be caused by the development in these terms would be significant. In the context of this case it outweighs the human rights of the appellant and his family and the best interests of the children. Despite the need to protect the site for gypsies and travellers and the family's personal circumstances, I have concluded that the granting of a personal and/or general gypsy and traveller planning permission would not be appropriate. I am satisfied that the legitimate aim of the protection of the site as a gypsy and traveller site cannot be achieved by any means which are less interfering with the appellant's rights. They are proportionate and necessary in the circumstances.

30. The dismissal of the appeal would prevent the loss of a gypsy and traveller site and would advance equality of opportunity for persons who share a relevant protected characteristic under section 149 of the Equality Act 2010.

Conclusion

31. For the reasons given above, I conclude that the appeal should be dismissed. I have taken into account all other matters raised where relevant but none are sufficient to alter or outweigh my findings.

Sarah Colebourne

Inspector

APPEARANCES

FOR THE APPELLANT:

Stephen Jupp	Planning consultant
David Love	Appellant
Patrice White	Appellant's partner

FOR THE LOCAL PLANNING AUTHORITY:

Sarah Appleton	Planning Officer
Jennifer Ryan	Planning Officer

DOCUMENTS

1. Statement of Common Ground.
2. Letter from GP.
3. Previous Local Plan policy.
4. Plan – previous application 2011.
5. Plan showing site boundaries.
6. Page 20 Appellant's Statement.