



Appeal Decision

Hearing held on 15 November 2017

by David Smith BA(Hons) DMS MRTPI

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

Decision date: 4th December 2017

Appeal Ref: APP/G5180/W/17/3177124

Land north of Knockholt Station, Sevenoaks Road, Halstead, Kent, TN14 7HR

- 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 Messrs E and J O'Driscoll against the decision of the Council of the London Borough of Bromley.
 - The application Ref DC/16/05061/FULL1, dated 2 November 2016, was refused by notice dated 6 February 2017.
 - The development proposed is a material change of use of land for siting of caravans for residential use for occupation by gypsy travellers with an amenity block, septic tank, hard standing, re-profiling of land and boundary fence.
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Decision

1. The appeal is allowed and planning permission is granted for a material change of use of land for siting of caravans for residential use for occupation by gypsy travellers with a septic tank, hard standing, re-profiling of land and boundary fence at land north of Knockholt Station, Sevenoaks Road, Halstead, Kent, TN14 7HR in accordance with application Ref DC/16/05061/FULL1, dated 2 November 2016, subject to the conditions in the attached schedule.

Main Issues

2. The proposal would be inappropriate development in the Green Belt as referred to in the National Planning Policy Framework and confirmed by the Planning Policy for Traveller Sites (PPTS). Therefore the main issues are:
 - The effect of the proposal on the openness and purposes of the Green Belt and on the character and appearance of the surrounding area;
 - Whether the proposed access arrangements are harmful to vehicular and pedestrian safety with particular reference to the need for reversing;
 - The effect on the Site of Importance for Nature Conservation (SINC); and
 - Whether other considerations clearly outweigh the harm to the Green Belt and any other harm so as to amount to very special circumstances.

Preliminary Matters

3. The appellants moved onto the land in May 2016 having been compelled to leave a previous site in Edenbridge. At the time of my visit there were two mobile homes stationed there corresponding approximately to the positions shown on the indicative layout plan. The appellants have also created a shingle yard area and surfaced the drive, constructed fencing and carried out

- some minor re-contouring of the land. The utility block has not been constructed and WC facilities are currently provided on a portable trailer.
4. The appeal site comprises a thin 'finger' of land directly to the north of Knockholt station. It is located at the top of an embankment well above the level of the railway. The appellants also own some land beyond the site to the south and west but this is not extensive. The field to the north is part of the same 'parcel' but is in separate ownership.
 5. Biographical details of the appellants were provided with the application. These confirm that they are from a family of Irish travellers and continue to travel for work. Indeed, it is accepted that they have a nomadic habit of life and so fall within the definition of gypsies and travellers at Annex 1 of the PPTS. Furthermore, because of the race of the appellants and as part of the public sector equality duty prescribed at section 149 of the Equality Act 2010, I am required to have due regard to the need to advance equality of opportunity between those who share a protected characteristic and those who do not.
 6. There is some enforcement history at the site. Notices were served in 2012 in respect of the stationing of a caravan and the construction of an access road with hardstanding. In 2013 the Council became aware that an animal sanctuary was being run but this use ceased and, as far as the Council is concerned, the enforcement notices have been complied with. An appeal against the refusal of planning permission was dismissed in 2012 for a development originally described as a detached log cabin and dog kennels for the provision of 40 dogs and 20 cats¹. That Inspector's detailed findings are an important material consideration.

Reasons

Openness, purposes and character and appearance

7. The last Inspector described the site and surroundings at paragraph 12 of his decision. In summing up he commented that the character of the area "... is mixed with the site in a largely rural valley but close to two roads and a railway". These words are still apt.
8. Other than the shed adjacent to the drive to the east of the yard the appeal site has no authorised development on it. In 2012 it was noted that the land had been undeveloped for many years previously. In totality the mobile homes, caravans, other paraphernalia, utility block, hardstanding, parked vehicles and fencing would seriously erode openness. According to the Framework this is one of the essential characteristics of the Green Belt.
9. Similarly the cumulative effect of the various elements of the proposal would encroach into the countryside contrary to one of the five purposes of the Green Belt. The proposal is nevertheless fairly small in scale so that the resultant harm would not be of a high order. In itself, the proposed use would not lead to the merging of neighbouring towns given, apart from anything else, that the A21 cutting and golf course to the north provides a substantial buffer. Whilst significant locally the proposal would not be at odds with the purpose of checking the unrestricted sprawl of the large built-up area of London.

¹ Ref: APP/G5180/A/12/2178321

10. The proposal would intrude into the original rural character of the site and detract from it. However, the PPTS indicates that traveller sites are not ruled out in rural or semi-rural settings and therefore some impact should be expected if provision is to be made. In this case the manifestations of the use would be seen from the footpath that runs northwards from Sevenoaks Road past the eastern end of the site and then carries on up the hill to cross the A21. Whilst there is intervening vegetation, clear views down towards the caravans and the other elements would be possible from the upper reaches of the path. These would be seen in the foreground of an attractive long vista along a valley and over other countryside. In this context the urbanising features of the proposal would stand out starkly and spoil the appearance of the locality.
11. Given land ownership and the alignment of the track there would be limited scope to undertake meaningful planting in a manner that would assimilate the proposal into its setting. Indeed, whilst the site is fringed with woodland, a narrow band of landscaping would not be compatible with its original open character. Consequently requiring the introduction of greenery by condition would not overcome the negative impacts identified.
12. Therefore the proposal would reduce openness, conflict with one of the purposes of the Green Belt and harm the character and appearance of the surrounding area.

Vehicular and pedestrian safety

13. Access to the site would be gained via a track that runs up from Sevenoaks Road to the site entrance for about 80m. This is also the public footpath. Along its route is a bridge over the railway. Other than the appeal site it is used by Network Rail vehicles in order to access the lines and in connection with the upkeep of the golf course to the north. The appellants estimated that this occurred about once a month and once or twice a day respectively. In any case, there is no dispute with the previous Inspector's finding that these uses generate only a relatively small volume of traffic. The proposed residential use would be liable to give rise to 8 or 10 movements a day at most although this would be less at weekends or when the occupiers are away travelling.
14. It is apparent that the lower stretch of the track has been widened so that it is now around 5m in places. This has been achieved by cutting back vegetation and, it appears, by some excavation of the bank on the eastern side. The Council referred to these works as unauthorised but it is not obvious that what has been done amounts to operational development. No formal action has been instigated. The track is outside the control of the appellants but it would be in the interests of all users to maximise the space available for vehicles to pass one another. It is therefore reasonable to assess the implications of the proposal on the basis of what is there now.
15. In terms of potential conflict the track is about 3.7m wide across the bridge and so it is only feasible for one vehicle at a time to use it. However, the chance of encountering someone coming from opposite direction would be remote. Whilst the track bends to the west past the bridge, forward visibility is sufficiently good that drivers would be able to recognise an approaching vehicle and respond accordingly. On the lower section there is scope for cars to pass whilst the apron at the top used by Network Rail lorries is a 'pull-in' that could be used to allow another vehicle to proceed. Even in the unlikely scenario that

a vehicle was forced to reverse down the track it would be possible to move aside without affecting the running of traffic along Sevenoaks Road.

16. For walkers on the footpath the only 'pinch point' is across the bridge. Those moving to and from the appeal site would have the opportunity to spot anyone and to stop to allow them to pass through. There would therefore be nothing inherently hazardous for pedestrians if the use were to be permitted.
17. As highlighted by the previous Inspector reversing up or down the track is not desirable. However, the risk of this happening would be very small. The situation is materially different to that considered in 2012 in that the proposal would not result in the "significant volume of traffic" expected in connection with that use. Furthermore, there was previously no space to pass but that is no longer the case. All in all, there would be no adverse effect on road safety and no conflict with Policy T18 of the Unitary Development Plan (UDP) of 2006.

Site of Importance for Nature Conservation

18. The appeal site is included within the wider Knockholt Station and Chelsfield Lakes Golf Course SINC. It is of Borough importance but has been extended to include uncommon habitats within Bromley and also upgraded from Grade 2 to Grade 1. However, there is nothing in the description schedule to indicate that the appeal site itself contains any identifiable attributes. Nevertheless the aerial photographs suggest that as recently as 2010 the land (including the field immediately to the north) had value as chalk grassland.
19. In recent times and in common with other land nearby this part of the SINC has partially reverted to scrub. There is no mechanism in place for the Council to reverse this or to insist upon a grazing regime that would allow the flora and fauna associated with chalk grassland to return. Against this background UDP Policy NE2 requires an assessment of whether development would significantly affect nature conservation interests. The Framework also provides that protection should be commensurate with the status of any designated sites and the contribution they make to wider ecological networks.
20. The appeal site and other land controlled by the appellants are within the middle of a wider area and so could perform a 'corridor' function. However, the land to the north-east is at quite an advanced state of re-colonisation and its nature has altered significantly since the SINC assessment of 2000. Furthermore, no recent ecological assessment of this part of the SINC or the wider area has been undertaken. That said, the citation also refers to scrub which is likely to have some biodiversity value in itself and it is wise to take a precautionary approach since areas lost for good will not be recoverable.
21. The permanent retention of the extensive hard surfaced areas including the drive would prevent any restoration of important habitats or of any nature conservation interest. In theory, an ecological management plan could be required by condition to enhance habitats and impose a management regime on the appellants' land outside the appeal site. However, these slithers are not large so any benefits would be limited and it is not obvious how they would be accessed. Therefore the long-term harm could not be overcome by mitigation.
22. Therefore, notwithstanding the changes in character to this part of the SINC, the proposal would significantly affect the nature conservation value of the site. Policy NE2 nevertheless establishes that development will be permitted if it can

be shown that the reasons for the development or benefits to the local community outweigh the interest or value of the site. This will be returned to in the final balance in due course.

Other considerations

General need for and supply of traveller sites

23. The Bromley Traveller Accommodation Assessment (TAA) of 2016 identifies a need for up to 34 pitches to 2031 with a current need of up to 14 pitches with a further 6 required by 2021. This forms part of the evidence base of the draft Local Plan which has been submitted for examination. Hearings are due to take place in December 2017 with adoption anticipated in spring/summer of 2018. No adverse representations have been received to the Council's approach which is embodied in draft Policy 12 but this is no guarantee of soundness. Nevertheless, having regard to paragraph 216 of the Framework, I give some weight to the emerging policy.
24. At face value the TAA findings suggest a significant amount of immediate and future need when compared to the existing 22 pitches on 9 private sites throughout the Borough. In addition, there is no evidence that the TAA has made adequate allowance for in migration or for those living in bricks and mortar who wish to have a caravan site. A previous study identified about one thousand gypsies living in conventional housing some of whom may require a pitch. However, the TAA has taken the numbers on the waiting list for Council-run sites as the expression of need even though this is likely to exclude those who do not wish to live on a public site in Bromley.
25. The robustness of the evidence supporting the draft Local Plan will be a matter for the examination Inspector in due course. For the time being and for this decision, the figures given in the TAA should be treated as a minimum.
26. In order to meet future need the policy response is to address this within existing traveller sites. The Council stated that there is capacity for the requisite number of pitches based on the findings of the TAA. This would be achieved by allocating those sites and removing them from the Green Belt as insets in line with paragraph 17 of the PPTS. Exceptional circumstances are required to alter Green Belt boundaries. Because the local plan examination is on-going it cannot be said that the pitches are currently deliverable and therefore there is not a 5 years' worth of supply in the Borough at the moment.
27. Even if the emerging plan is found sound relying on the expansion of existing sites would have some drawbacks for the O'Driscolls. They have no family connections with any of the occupiers and as Irish travellers, who are said to have been individually ostracised in the past, they may find existing owners reluctant to allow them to share. In any event, there is no certainty that any additional pitches would be made available to the wider traveller community. This is because they may be reserved for new households likely to be formed by existing family members as is often the custom. Because of these factors this does not seem to be something for these families to pin their hopes on.
28. The appeal site is very close to the Borough boundary with Sevenoaks. The latest assessment for that District has identified a need for 51 pitches to 2035. Its intended approach is to make permanent existing sites with temporary permission and to accommodate additional pitches on existing sites subject to

their suitability. This is to be pursued through a Local Plan which is expected to be adopted in 2019. The 2016 appeal decisions in respect of Station Court, which lies in Sevenoaks a little way to the east along Station Road, refers to the policy failure there². Consequently there is little immediate prospect of a new site coming forward in the adjoining authority area that might be suitable for the appellants and their families.

Alternatives for the appellants

29. As far as alternatives are concerned the options are few. Pitches at the public site at Old Maidstone Road are not currently available and once re-furnished the appellants would not occupy them anyway because of a clash with the dominant family group there. Star Lane had a vacant pitch prior to the hearing but is occupied by English gypsies. It was also referred to as small and cramped with some issues with asbestos and tipping. The Council did not attempt to paint a different picture or suggest that either of these were a suitable solution for the appellants. They are not opposed to a public site per se but have major misgivings about those in Bromley.
30. Edward O'Driscoll is on the waiting list for the new site at Coldharbour in Tonbridge and Malling. This is proving to be popular and anecdotal evidence at the hearing was that there could be as many as 35 families on the waiting list. So pitches are unlikely to be offered to the appellants any time soon. The Council suggested that there might be possibilities on other public sites elsewhere in Kent but there is no hard evidence of availability at suitable sites and locations. Overall there are no obvious alternative sites which the appellants could occupy.

Personal circumstances, best interests of the child and human rights

31. The appellants are both married and Edward has 4 children. John's first child was due to be born soon after the hearing. Those old enough attend a local school. They are also preparing for communion and confirmation classes. There is medical evidence about the health of one of the appellants and the family are registered at a surgery. The brothers also expressed a wish to have adjoining pitches as they work together and one assists the other as a carer.
32. The best interests of the children living at the site would be served by allowing them to stay. This would give them a settled base so that their education can continue or commence, allow for ready access to health facilities and enable their religious instruction to proceed. In theory these interests could be met by another site elsewhere recognising that children often have to move home. However, given the family's specific accommodation requirements, the problem is that there is nowhere else for them to go. This is a primary consideration and no other consideration should be given more importance or weight than the best interests of the O'Driscoll children.
33. The Council's expectation is that, if the appeal were dismissed, the appellants would comply with the enforcement notice against the use which took effect in October 2017. Whether this is exactly how events would unfold, the matter would be pursued by the Council to secure the cessation of the use compelling the appellants to leave the site. In that scenario they would have nowhere else to go and so would have to resort to life on the road as they did when fleeing

² Refs: APP/G2245/C/15/3134905, C/15/3134906 & W/15/3025094

the Edenbridge site. It is more than likely that a similar pattern of short-term stopping and eviction would be repeated with all the uncertainty and trauma that brings together with the adverse impact on health and schooling. Public authorities would also be faced with the burden of moving them on.

34. Dismissing the appeal would represent an interference with the home and family life of the appellants and their families such that Article 8 of the Human Rights Act is engaged. There is also a positive obligation imposed by Article 8 to facilitate the gypsy way of life.

Intentional unauthorised development

35. The appellants have undertaken intentional unauthorised development which is a material consideration according to the Dear Chief Planning Officer letter of 31 August 2015. However, the harm directly caused by the appellants' actions has not been extensive since the operational development is reversible. Furthermore, the Council has only taken enforcement action recently and this has not been expensive or time consuming to date. The application of this policy is a further factor that weighs against the proposal but not heavily because of the nature of the development undertaken and its implications as well as the lack of other options for the appellants.

Final balancing

36. The proposal would be inappropriate development within the Green Belt. In accordance with the Framework substantial weight should be given to any harm to the Green Belt. The Government attaches great importance to Green Belts. In addition, there would be a reduction in openness and a conflict with one of the purposes of the Green Belt. These factors also weigh significantly against the proposal. Nevertheless, the totality of harm is tempered somewhat by the strong likelihood that any new or expanded site would also be within the Green Belt. There would also be harm to the character and appearance of the surrounding area and to the long-term value of the SINC.
37. UDP Policy G1 pre-dates the Framework but age alone does not determine its degree of consistency. Its general stance regarding inappropriate development coincides with the Framework and therefore the policy conflict should be given significant weight. Policy H6 indicates that gypsy sites will not be acceptable in areas of constraint such as the Green Belt but makes no allowance for very special circumstances to be demonstrated in accordance with national policy. The proposal is strictly contrary to Policy H6 but the weight to be given to this is limited given its unequivocal nature.
38. In support of the proposal there is a significant amount of immediate and future general need for pitches in Bromley. There is currently no 5 year supply of sites. The steps being taken to increase supply in Bromley by means of the draft Local Plan are not guaranteed to assist the O'Driscolls. In adjoining Sevenoaks, where the families have connections, progress in adding to the stock of pitches has been slow and any outcomes are still some way off. Whilst the site at Coldharbour is a possibility it is a remote one and currently there are no alternative options for a caravan site for the appellants and their families.
39. The personal circumstances of the appellants themselves and their spouses are of limited weight. However, the best interests of the children are a primary consideration and this is a matter of substantial weight. There would also be

an interference with the appellants' human rights. Avoiding a situation where the O'Driscolls are required to resume an itinerant lifestyle favours allowing the appeal but set against that is the weight to be given to the undertaking of intentional unauthorised development.

40. Paragraphs 16 and 24 of the PPTS stipulate that subject to the best interests of the child, personal circumstances and unmet need are unlikely to clearly outweigh harm to the Green Belt and any other harm so as to establish very special circumstances. However, that is not always going to be so and the best interests of the children are a primary consideration that is relevant in this case. In terms of human rights there would be a direct loss of the appellants' homes. As there are no alternatives available this interference is serious.
41. The objections to the proposal are considerable. Because of the adverse visual and nature conservation impacts this is not a site where the only harm is that intrinsic to the Green Belt. Whilst the other considerations that favour the grant of permission are strong they are not, even when added together, of such magnitude that they clearly outweigh the totality of harm. As a result very special circumstances do not exist. This finding also means that there would be a conflict with Policy NE2. The human rights interference associated with this conclusion is in accordance with the law and is necessary in a democratic society to protect the Green Belt and other environmental interests.
42. Having found that a permanent permission should not be granted consideration should now be given to the possibility of a temporary permission. The appellants suggest that a minimum period of 3 years should be allowed. Within that time frame the emerging Local Plan should have been adopted although in its present form this is very unlikely to offer a solution to the families. More to the point, progress should have been made in Sevenoaks resulting in a potential change in circumstances. Consequently the option of a temporary permission should not be rejected as a matter of principle.
43. Substantial weight should still be given to the harm to the Green Belt. However, the harm to openness and purposes would be short-lived. In addition, in the expectation that the land would be restored in due course, the harm to character and appearance and nature conservation would be of limited duration. There are no objections that are so serious that a temporary permission should not be countenanced. In the meantime the family would be able to enjoy a period of stability. The other considerations in support of the proposal would apply. When these adjustments are made the totality of harm would be clearly outweighed in the short term.
44. Looking at the case as a whole and especially the significance of the appellants' homes given the lack of alternatives, the best interests of the children, the general need for gypsy and traveller sites and the supply situation in Bromley and Sevenoaks, very special circumstances exist which justify permitting the proposal temporarily.
45. Any time frame should be realistic. Even if the Sevenoaks Local Plan is adopted when expected and a suitable planned site identified, it will take some while for permission to be secured. Therefore 3 years is a reasonable period. This would leave the matter 'hanging' giving rise to uncertainty for the appellants. At the same time they are likely to become more established on the land. However, there should be no expectation that their occupation will become permanent in due course especially as the site has been found to be

unacceptable. The parties should all take this into account as reiterated at footnote 9 of the PPTS. Rather this decision is a recognition of the predicament that the appellants find themselves in and allows time for the local authorities to address their needs as part of the wider policy making process.

46. Therefore a temporary planning permission for a period of 3 years is appropriate. The protection of the public interest and the relevant planning objectives cannot be achieved by means that cause less interference with the appellants' rights. Overall, having regard to the situation of the families outlined above and the best interests of the children, this decision would be a proportionate response which is necessary in the circumstances. Hence a violation of rights under Article 8 of the Human Rights Act would not occur.
47. Finally, in exercising the public sector equality duty, steps have been taken to minimise disadvantages suffered by the appellants and to meet their needs in so far as they are different to those without a relevant protected characteristic.

Conditions

48. As indicated above, permission should be restricted to 3 years. The justification for my decision does not rely wholly on the appellants' own circumstances so a personal permission is not warranted. However, occupation should be limited to gypsies and travellers given the specific policy basis for accepting the proposed use. To limit the visual impact, the number of caravans and the size of vehicles to be kept at the site should be restricted. Commercial activities should be precluded for a similar reason. It would be unreasonable to expect the implementation of an ecological management plan given the limited duration of the permission. The site entrance is in place and there is no requirement for further works to be undertaken to it.
49. Planning Practice Guidance (PPG) confirms that a condition requiring the demolition of a building that is clearly intended to be permanent after a stated period is unlikely to pass the test of reasonableness. Whilst it would be a matter for the appellants as to whether to erect the amenity block or not requiring its removal within 3 years of its construction would not be a good use of resources. The PPG advice should therefore be applied to the amenity block which should be omitted from the description of development permitted.

Conclusion

50. For the reasons given my conclusion is that temporary permission should be granted subject to conditions and therefore that the appeal should succeed.

David Smith

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The site shall not be occupied by any persons other than gypsies and travellers as defined in Annex 1: Glossary of the Planning Policy for Traveller Sites (or its equivalent in replacement national policy).
- 2) The use hereby permitted shall be for a limited period of 3 years from the date of this decision. At the end of this time the use hereby permitted shall cease, all caravans, buildings, structures, materials and equipment brought on to, or erected on the land, or works undertaken to it in connection with the use shall be removed, and the land restored to its former condition in accordance with a scheme of work, including an implementation period, previously submitted to and approved in writing by the local planning authority in accordance with Condition 6).
- 3) There shall be no more than 2 pitches on the site and on each of the pitches no more than 2 caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968, shall be stationed at any time of which no more than 1 shall be a static caravan or mobile home.
- 4) No commercial activities shall take place on the land including the storage of materials.
- 5) No vehicle over 3.5 tonnes shall be stationed, parked or stored on the site.
- 6) The use hereby permitted shall cease and all caravans, structures, equipment and materials brought onto the land for the purposes of the 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 details of the restoration of the site to its condition before the development took place as required by Condition 2) shall have been submitted for the written approval of the local planning authority and the said scheme shall include a timetable for implementation.
 - ii) Within 11 months of the date of this decision the submitted details shall have been approved by the local planning authority or, if 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 details shall have been approved by the Secretary of State.

---END OF CONDITIONS---

