



Appeal Decision

Inquiry Held on 16 October 2018

Site visit made on 18 October 2018

by Philip Major BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 November 2018

Appeal Ref: APP/G2245/W/17/3170535

Land north-west of Eagles Farm, Crowhurst Lane, West Kingsdown, Kent TN15 6JE

- 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 Ridgley against the decision of Sevenoaks District Council.
 - The application Ref: SE/16/03285/FUL, dated 26 October 2016, was refused by notice dated 14 February 2017.
 - The development proposed is the change of use of land to provide 4 mobile homes and 4 day rooms with access drive, hardstanding and space for 4 touring caravans and use of land for grazing by horses.
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Decision

1. The appeal is dismissed.

Preliminary Matter – Gypsy Status

2. The occupation of the site is proposed to be by Mr J Ridgely (senior) and his wife; his grandson Mr J Ridgley (junior), his wife and 2 young children; Mr J Hedges, his wife and 3 young children; and Mr S Sheen, his wife and their 2 young children. The group is all related. The Council, in its reasons for refusing planning permission, did not question the Gypsy status of the Appellant or his family group. However, the Council's officer report on the proposal made it clear that information in this respect was limited. As a result Gypsy status was contested at the time of the appeal by both the Council and the Rule 6 party.
3. The definition of gypsies and travellers is set out in the glossary to Planning Policy For Traveller Sites (PPTS) published in August 2015. I heard a good deal of evidence at the inquiry in relation to this matter, from 3 of the proposed occupants and from Mr Ridgley (middle) on behalf of his father and others. On the basis of the information provided there can be little doubt that the family group has a Gypsy background in the Kent, Sussex, Surrey and Hampshire area.
4. I also heard more detailed evidence relating to the current way of life of each of the group. The 3 younger male members of the group have each developed businesses which serve a wide area in the south and east. Leaflets are delivered and work sought in various fields. It seems clear to me that the work location largely drives the current location of their residency, albeit that the residency may be doubling up on existing Gypsy pitches, roadside camping, or

utilising pitches where the usual resident is away. There is clearly some element of a nomadic lifestyle involved as evidenced by the different residential locations which have been utilised in recent times. It was explained that the granting of planning permission on the appeal site would provide a secure base for the families so that the male members of the group could travel and work away safe in the knowledge that their wives and children were not in danger.

5. That the members of the group wish to have a more settled base in order to enable greater access to education for the children of the families is entirely understandable. It is also understandable that Mr Ridgely (senior) should wish to have access to medical facilities, even though I note that he continues to travel, particularly to horse based fairs across the south.
6. I do not put much importance on the fact that members of the group are named as directors of companies with permanent correspondence addresses. The addresses are not residencies to which the group members seem to resort for residential purposes – rather they are an administrative convenience. It would be wrong to place too much emphasis on the fact that those addresses are listed as being associated with any particular individual.
7. I have weighed the evidence before me and reached a conclusion that all the members of the family group are from a Gypsy background. Furthermore, current lifestyle and travelling lends weight to a conclusion that the members of the group carry on a nomadic way of life. They travel to find and carry out work in their chosen fields and, importantly, also keep and deal in horses as part of the Gypsy tradition, travelling to various gatherings and fairs. I am therefore satisfied that, on the balance of probabilities, all members of the group fall within the PPTS definition of gypsy and traveller at the present time.

Main Issues

8. The appeal site lies within the Green Belt and it is acknowledged by all parties that it is inappropriate development by definition. The main issues in the appeal, therefore, are:
 - (a) The impact of the proposed development on the character and appearance of the surrounding area;
 - (b) Whether the harm by inappropriateness, and any other harm, is clearly outweighed by other considerations sufficient to amount to the very special circumstances necessary to justify the grant of planning permission (the planning balance).

Reasons

Character and Appearance

9. Notable characteristics of the area include gently undulating topography, some narrow lanes connecting with larger highways, medium sized fields and boundaries delineated by hedges or tree belts. There is also significant woodland cover interspersed with the presence of dispersed development. In some locations land has been divided into smaller parcels for the purposes of raising livestock, as is the case immediately to the south. There is a scatter of buildings in such locations. The area is also traversed by the M20, which runs close to the site. Taken in the round the locality is predominantly rural but with a number of urban influences which dilute any impression of tranquillity. As such I judge the sensitivity of the landscape to change as being moderate.

10. The appeal site is extensive and has a long boundary with Crowhurst Lane. That boundary has a belt of trees alongside the road, but this is relatively thin and spindly so that there are views into the site. That said, these views are glimpsed and most likely to be taken from a moving vehicle as the highway here is not conducive to walking. Nonetheless the extent of the proposed development within the site would be quite apparent. In particular I note that the proposed location of the 4 pitches would be quite close to the lane, and the configuration of the proposed static caravans and dayrooms would lead to a lengthy stretch of development as seen from the lane. The dayrooms would be substantial and large buildings even though they may have been designed to resemble stables.
11. Furthermore the view from the public right of way to the south would be across open land, with little in the way of mitigating vegetation. Although this view would be 'end on' it would provide clear lines of sight to the development and recreational users of the footpath should be regarded as sensitive receptors. The magnitude of the visual impact in that case would be significant. Any mitigation by landscaping would take years to become effective.
12. There would be a backdrop of vegetation from the public viewpoints, but even so the development would stand out as being at odds with the prevailing rural character. The magnitude of the impact would be of a moderate level and adverse. Similarly the development would impinge on the visual amenity of the locality, introducing built development where none currently exists. That visual impact would be of moderate magnitude from the lane but significant impact from the public footpath given the extent of the proposed development. Taking these matters together I find that the proposal would introduce a significant level of harm to the character and appearance of the area. The possibility of requiring the layout of the site to be further addressed by planning condition in order to reduce any impact was raised at the inquiry and I deal with this later.
13. The development plan includes the Allocations and Development Management Plan (ADM) and the Sevenoaks Core Strategy (CS). Amongst other things Policy LO8 of the CS seeks to protect the distinctive features of the Green Belt landscape. The proposal conflicts with this policy. Similarly there is conflict with CS Policy SP1 and Policy EN1 of the ADM which, taken together, require development to respond to local character. I take the finding of significant harm forward into the planning balance. CS Policy SP6 sets a number of criteria for the provision of sites for gypsies and travelling showpeople and I assess this 'in the round' later in this decision.

Other Considerations

14. There is an acknowledged need for sites for gypsies and travellers in the District. At the inquiry the need was described as being for those who meet the PPTS definition of gypsy and traveller, and those who do not but still regard themselves as travellers requiring a site on which to live. The latter group have been described as 'cultural' gypsies or travellers. I accept that the Council has a duty to provide for all housing needs, and the Council deserves credit for including in its future calculations the needs of 'cultural' gypsies and travellers.
15. The Council concedes that it cannot demonstrate a 5 year supply of sites. Whilst the quantum of current shortfall is not agreed (varying from about 40 to

almost 100 pitches) I regard the shortfall as a substantial figure in either case. Added to this general need it is clear that the Appellant's family group has a personal need for a site or sites. I was told that the search for a suitable site has been undertaken for a lengthy period. As is commonly found there is limited availability of land, and it is often unaffordable for the families concerned. In this case the family has been able to purchase the appeal site and I accept that they have not been able to find any other suitable, affordable and available land. However the members of the group have been able to access places to stay on a temporary basis and it was not satisfactorily demonstrated at the inquiry that the rejection of this proposal would lead to a roadside existence for any of the group. I recognise that temporary stopping places, doubling up and the like is not ideal, and that a long term solution is necessary. For that reason I give the general and personal needs for Gypsy sites significant weight.

16. I heard at the inquiry, and it is documented in previous appeal decisions, that there has been a lack of site provision in the District for a considerable number of years. This has been regarded as a failure of policy and I see no reason to disagree in general with that position. The Council has had many years to come up with potential remedies in the form of development plan documents, but has failed to do so. I acknowledge that there is now a new Local Plan in the process of being brought forward which includes gypsy and traveller site allocations, but this is optimistically scheduled for adoption in late 2019. I refer to it as optimistic because there is as yet no final plan for submission, and the plan then has to be examined. The Council is now clearly doing its best to take this matter forward but the time it has taken can only be seen as a failure of policy making so far. However the failure of policy is intimately related to the lack of a 5 year supply of sites and is essentially indivisible from it. This is a significant factor in favour of granting planning permission.
17. Even allowing for the Local Plan to be adopted in about a year there remains some doubt as to whether it will fully satisfy the need for sites. I heard that many if not all allocations proposed are extensions of existing private sites, and that the owners may not make them available to members of other families, but retain the extra capacity for their own expanding family. That seems to me to introduce a significant risk that the sites proposed by the Council in its draft Local Plan will not prove sufficient. But there is little concrete evidence to indicate the true picture in this regard. In any event, the allocation of sites should not be seen as a bar to other sites coming forward if they are suitable and available.
18. In Sevenoaks District it is agreed that the most likely location for gypsy and traveller sites is in the Green Belt. That simply stems from the fact that something over 90% of the District lies within the Green Belt. However that does not reduce the weight attached to inappropriate development; it simply places the burden of demonstrating very special circumstances on applicants.
19. As I noted above, there are a number of young children in the family group. These range from current school age, to those approaching school age, and younger still. The best interests of the children are a primary consideration in the appeal, though not necessarily determinative. Their best interests would be served by having a settled base from which to access education. This matter carries significant weight in favour of the proposal.

20. Dismissal of the appeal would interfere with the human rights of the Appellant if there is no other lawful home currently available to the group or to individuals in the group. This is a qualified right but nonetheless carries some weight. As I have noted above, however, it seems that each of the proposed residents of the appeal site has to date been able to find somewhere to reside, albeit for temporary periods.

Other Matters and Policy SP6

21. The Council and Rule 6 party have expressed concern that the location of the site is unacceptable in relation to nearby settlements, a component of CS Policy SP6. But in this case West Kingsdown is quite close. Another site has been allowed by the Council with access from the same lane and it is therefore unclear to me why the proposal before me should be opposed on this ground. The 2 locations are sufficiently similar that differentiation between them is difficult to justify. In any case I consider that the site is sufficiently well related to West Kingsdown. I would not go as far as to say it would be realistically accessible on foot but it is a short distance in relative terms and provides day to day requirements. The geographical location of the site does not therefore weigh against the proposal.
22. It is agreed by the Council and the Appellant that there are no highway matters of concern. This is a matter taken up by the Rule 6 party. Having seen the site access and experienced the approach to the site at varying times, I agree with the Council and the Appellant. I find visibility and proposed access configuration to be acceptable. Despite the narrowness of Crowhurst Lane in places it appears to function satisfactorily, and forward visibility around bends is adequate for the likely speeds of traffic. It is notable that the site access is located in one of the places where the width of the highway allows 2-way traffic to pass safely. I find no conflict with development plan policy here. Likewise I have no reason to doubt that adequate parking would be available within the site.
23. There is agreement between the Council and the Appellant that there would be no issue in relation to flood risk, and no undue impact on the amenities of the nearest residents. Nearby residents are sufficiently far away to preclude the likelihood of any unacceptable disturbance from residents on the site. These matters also do not weigh against the proposal. As for biodiversity and ecological matters I have no reason to conclude that there would be any unacceptable harm through the proposed use. Ancient woodland is some distance away and the site itself is unremarkable grassland with several mature trees. The local wildlife brought to my attention does not seem to me to be exceptional in any way. Hence there is nothing so special about this location which would preclude development on ecological grounds.
24. It is therefore apparent that the site performs reasonably well against some of the criteria of CS Policy SP6. The site is of a scale appropriate to accommodate the facilities required but the extensive nature of the proposed development in this case means that there would be significant landscape harm as I have set out above. Taking the criteria of Policy SP6 as a whole there is clear conflict in relation to landscape impact and pedestrian access to the land. This proposal is not one which mirrors the situation at the site to the south-east as they share very different detailed characteristics. As such I find this proposal to be in conflict with Policy SP6.

25. I find the requirement for land to facilitate the keeping and breeding of horses to be a less than convincing argument in favour of the development. Whilst supervision of horses may be desirable there are many instances of stock being kept remotely on other land. This was confirmed at the inquiry. I see no reason why the potential for keeping horses here should be a favourable material consideration.
26. The Parish Council has expressed concerns that granting permission here would add further to the concentration of sites in the locality. Whilst I acknowledge that most existing sites are in the northern part of the District I have heard nothing to suggest that there is an unacceptable cumulative impact from these sites.
27. It was suggested at the inquiry that details of the development could be changed by a condition requiring an amended scheme. The Appellant indicated a willingness to accept such a condition. Planning Policy Guidance indicates that it may be possible to impose a condition requiring a minor modification to the development permitted, depending on the case. Here any modification would seek to address the impact of the proposal on the character and appearance of the locality and to reduce that impact. Such a modification would be likely to fundamentally change the scheme or make it substantially different to that set out in the application. Whether or not that would change the balance of considerations sufficient to allow planning permission to be granted should in the first instance be subject to proper consultation and assessment by the Council. This would preclude the possibility of prejudice to other parties. For that reason I consider that it would not be reasonable to impose a condition effectively setting aside the details submitted with the application in this case.

The Planning Balance

28. As inappropriate development the proposal is harmful, by definition. There would be a loss of openness in the Green Belt and the proposed development would encroach into the Green Belt (conflicting with one of the purposes of Green Belt designation). The National Planning Policy Framework (NPPF) makes it clear that substantial weight attaches to the totality of such harm. There is conflict with the NPPF and ADM Policy GB6 which, amongst other things, requires the siting of caravans and mobile homes in the Green Belt to be acceptable in terms of environmental considerations. I have also identified above significant harm to the character and appearance of the landscape. This attracts significant weight.
29. The considerations in favour of the development I have set out above. These can be summarised as the general and personal needs for sites, the lack of a 5 year supply (including the failure of policy to provide sites over many years) the uncertainty of the availability of future supply and the needs of the children. These matters all attract at least significant weight and in combination are of considerable weight. Added to this is the fact that any future sites in the District are almost certain to be in the Green Belt. I also take into consideration the interference with the human rights of the Appellant.
30. The PPTS makes it clear that subject to the best interests of the child, personal circumstances and unmet need are unlikely to clearly outweigh the harm to Green Belt and any other harm. The unmet need is substantial and is not certain to be met in the immediate future. There is understandable doubt as to

whether the Local Plan will come on stream as predicted, and whether the allocations therein would provide the pitches necessary. However, in my judgement this combination of factors is not sufficient to clearly outweigh the harm by inappropriateness and other harm. The substantial harm to the Green Belt, and the significant harm to the character and appearance of the area, are of greater weight. I therefore find the proposed development to be unacceptable as submitted.

31. As I have determined that the appeal site is not acceptable, on the basis of the submitted details, to enable a permanent planning permission to be granted, I have considered whether a time limited permission would be appropriate. However, I am again unable to agree that this would be acceptable. Any such permission would relate to the detailed plan submitted and would bring with it the Green Belt harm and the landscape harm. Whilst the weight of that harm would be reduced by granting a time limited permission, the quantum of harm would still be such that other considerations in favour of the development would not outweigh it.
32. For the reasons given above I conclude that the appeal should be dismissed.

Philip Major

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr A Masters	Of Counsel
He called	
Mr J Ridgely (middle)	Appellant's son
Mr J Hedges	Proposed site resident
Mr S Sheen	Proposed site resident
Mr J Ridgely (junior)	Proposed site resident
Mr B Woods BA(TP)	Managing Director, WS Planning & Architecture
MRTPI	

FOR THE LOCAL PLANNING AUTHORITY:

Mr G Atkinson	Of Counsel
He called	
Mrs C Shearing	Principal Planning Officer, Sevenoaks District
BA(Hons) MA MRTPI	Council

FOR THE RULE 6 PARTY:

Mr B Fullbrook	Of Counsel
He called	
Mr R Mace	Local Resident

INTERESTED PERSONS:

Mrs J Watchorn	West Kingsdown Parish Council
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DOCUMENTS SUBMITTED BEFORE THE CLOSE OF THE INQUIRY

- 1 Draft guidance on periodic review of housing needs (March 2016) from Mr Masters
- 2 Alternative calculations of need from Mr Masters
- 3 Appeal decision APP/J0405/W/18/3193773 from Mr Masters
- 4 Opening statement from Mr Atkinson
- 5 Agricultural land classification extract from Mr Atkinson
- 6 Opening submissions from Mr Fullbrook
- 7 Ancient woodland map from Mr Fullbrook
- 8 RAC stopping distances from Mr Fullbrook
- 9 Closing submissions from Mr Masters
- 10 Closing submissions from Mr Atkinson
- 11 Closing submissions from Mr Fullbrook
- 12 Further comments from Mr Atkinson
- 13 Further comments from Mr Fullbrook