The Planning Inspectorate

# Appeal Decision

Hearing held on 11 December 2019
Site visit made on 11 December 2019

**by Tom Gilbert-Wooldridge BA (Hons) MTP MRTPI IHBC**

**an Inspector appointed by the Secretary of State**

**Decision date: 12 February 2020**

**Appeal Ref: APP/V2255/W/18/3213955**
**One Acre, Blind Mary's Lane, Bredgar ME9 8AR**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr Ben Brazil against the decision of Swale Borough Council.
- The application Ref 18/500003/FULL, dated 29 December 2017, was refused by notice dated 1 May 2018.
- The development proposed is described on the application form as "Change of use of land to a residential caravan site, for one Gypsy/Traveller family. The site to contain one static caravan, one touring caravan, a utility shed, parking for two vehicles with associated hardstanding and water treatment plant. This application is part retrospective".

## Decision

1. The appeal is dismissed.

## Preliminary Matters

2. The appeal site at One Acre, which essentially was a field in the countryside, was enclosed by fencing in late 2006. In April 2011, the site and adjacent land at 1 Old Half Acre were occupied by caravans with hard surfacing laid out. An enforcement notice was issued by the Council and was appealed. The appeal[1] was dismissed on 21 February 2012 due to the harm to the character and appearance of the Kent Downs Area of Outstanding Natural Beauty (AONB). A planning application for the change of use was refused in 2014 and was also appealed. On 28 January 2015, the appeal[2] was allowed and a temporary planning permission was granted for 3 years. The Inspector dealing with the 2015 appeal found that there was harm to the AONB but concluded a temporary permission would be justified based on the failure to demonstrate a 5 year supply of deliverable gypsy and traveller sites in Swale. The time period was considered sufficient for further sites to be identified by the Council and for the appellant to find an alternative location.

3. The appellant submitted a planning application on 29 December 2017 shortly before the expiration of the temporary permission. It sought permission for development similar to the temporary permission but not identical in terms of the description or red line site boundary (as noted at the hearing). Therefore, the appeal has progressed as a refusal of planning permission for the development as a whole rather than as a refusal of permission to vary or remove conditions. All of the features mentioned in the description already

[1] APP/V2255/C/11/2156341
[2] APP/V2255/A/14/2222135

exist on site and so I have treated this appeal as seeking planning permission retrospectively in its entirety.

4. The land between the site and Blind Mary's Lane at 1 Old Half Acre has also been subject to an enforcement notice and 2 appeals[3] relating to change of use to a caravan site. Both were dismissed and the land is currently unoccupied with only one disused structure next to an area of hard surfacing.

5. It was common ground at the hearing that the appellant Ben Brazil, his wife Kelly Fuller, and sister Patience Brazil, are Romani Gypsies in line with the definition in Annex 1 of the Planning Policy for Traveller Sites (PPTS) published in 2015. I have no reason to disagree. Therefore, the policy context that applies to gypsies and travellers is engaged.

## Main Issues

6. The main issues are:

- The effect of the development on the character and appearance of the area including the Kent Downs AONB; and
- Whether any harm would be outweighed by other material considerations, such as the need for gypsy and traveller sites and the personal circumstances of the occupiers of the site.

## Reasons

*Character and appearance*

7. The appeal site is situated adjacent to a dog-leg bend on Blind Mary's Lane within the Kent Downs AONB. This part of the AONB is characterised by its open countryside with long views northwards to the estuaries and marshes of the Thames and the Medway. Blind Mary's Lane is a narrow rural lane through agricultural fields with little built development. The exceptions are the appeal site and a residential property to the north, with the remains of the unauthorised caravan site at 1 Old Half Acre. There is a network of public footpaths, including one that crosses the north-west corner of the site (ZR166).

8. Although tall pylons cross the countryside immediately to the west of the site, they do not greatly affect the open views due to their narrow frame design. Likewise, although there are a number of trees in the vicinity, including poplars to the rear of the appeal site and others around residential properties, they do not detract from the overall openness and are mostly deciduous species. Photographic evidence from the Council indicates that the site was largely open in late 2006 to early 2007 except for fencing and was laid to grass as a field or paddock. As such, the site made a positive contribution to the AONB.

9. The site includes a vehicular access off Blind Mary's Lane that leads to an area of hard surfacing and grass in the middle of the site containing a static caravan and a wooden utility block along with space for a touring caravan and car parking. This middle part of the site is enclosed by close boarded fencing with further areas of grass to the front and rear of the site. Compared to the previous appearance of the site in 2006/2007, the land has changed markedly from an open field or paddock to an enclosed yard.

[3] APP/V2255/C/11/2156335 dated 21 February 2012 and APP/V2255/D/15/3141240 dated 6 February 2017

10. A native deciduous hedgerow along the site's eastern boundary largely screens its structures from view heading towards the site from Swanton Street even in winter months. Along the western boundary, a row of conifers provides screening from views to the north-west along the lane and public footpaths. Boundary planting around 1 Old Half Acre screens the site from view around the dog-leg bend apart from at the site access where there is a glimpse of the structures. However, walking through the site on public footpath ZR166, the vegetation planting is recent and has little screening effect.

11. The conifers are an incongruous feature compared to more native and deciduous species in the surrounding area. The 2015 Inspector found that they contributed to much of the harmful effect of the site on the character and appearance of the area. The temporary permission required a landscaping scheme via a planning condition to replace them with more suitable planting. The appellant has removed conifers along the north-west corner of the site and replaced them with native hedgerow planting. Native tree species have been planted along the western boundary but most of the conifers remain which has limited the growth of the native species and makes them harder to spot.

12. There was some debate at the hearing regarding the extent of conifer removal that was required as part of the 2015 appeal decision. The Inspector did not specify the extent, but the Council was required to discharge the landscaping condition. Correspondence between the Council and appellant from 2015/2016 is sufficiently clear that the Council expected all of the conifers to be removed.

13. At the hearing, the appellant outlined his reluctance to remove the western boundary conifers as the site would be more exposed to begin with and it was not considered to be beneficial on a relatively short temporary permission. Nevertheless, the continuation of the conifers does present a dense and heavily enclosed screen not in keeping with the general openness and deciduous planting of the surrounding area, including what can be seen from Blind Mary's Lane as a rural lane.

14. Even with the mitigation effects of a landscaping scheme and more appropriate planting, the 2015 Inspector still found moderate harm. The development has a limited effect on the appearance of the landscape due to its size and extent and the screening effects of vegetation. Tree planting can take place without the need for permission and could remain even after the development itself has gone. Nevertheless, the development detracts from the openness and landscape character of the AONB when compared to the site's previous appearance in 2006/2007, with a variety of structures including solid fencing and hard surfacing. This is particularly apparent from the site access on Blind Mary's Lane and walking through the site on public footpath ZR166. Therefore, I concur with the 2015 Inspector that there is moderate level of harm to the character and appearance of the area including the AONB. Paragraph 172 of the National Planning Policy Framework (NPPF) places great weight on conserving landscape and scenic beauty in the AONB and so the harm is material and significant.

15. I acknowledge that there are other caravans in the surrounding area, including at Westfield Dairy to the north and a large site at Swanton Farm to the south. There is also a variety of dwellings dotted across the countryside. However, as far as I am aware, these are authorised residential sites and I do not know their full planning history. As such, these sites do not justify this development.

16. As a consequence of the harm I have identified, the development does not accord with Policies ST1, ST3, DM10, DM14, DM24 and DM26 of the Swale Borough Local Plan 2017 (LP). Amongst other things, these policies seek to protect the character of the landscape, countryside and rural lanes, and to conserve the AONB, having regard to matters such as siting, appearance, openness and landscaping. The development also conflicts with the Kent Downs AONB Management Plan 2014-2029 which seeks to conserve the character, quality and distinctiveness of the AONB.

17. In addition, the development conflicts with PPTS paragraph 4 which requires due regard to be given to the protection of local amenity and local environment amongst other things. It does not accord with PPTS paragraph 26 which requires weight to be attached to sites that are soft landscaped in such a way as to enhance the environment and increase its openness. It also conflicts with NPPF paragraph 172 as set out above.

*Other considerations*

18. The LP seeks the provision of a minimum of 61 gypsy and traveller pitches over the plan period to 2031. 74 pitches had been approved by the time the Council refused the application leading to this appeal and further pitches have been approved since. The LP does not allocate any pitches but instead relies on a windfall based approach using the criteria in Policy DM10. This approach is likely to continue as part of the Local Plan Review.

19. The LP target was based on a 2013 version of the Gypsy and Traveller Accommodation Assessment (GTAA) which has since been updated with a November 2018 version. This update identifies a need of an additional 54 pitches to 2037/2038. The current 5 year pitch need is 13.75 with an annual pitch need of 2.75. At the hearing, it was reported that the current supply of pitches is 17, which equates to a 6.2 years' worth of supply. There may be a regional and national need for pitches, but the situation in Swale is positive.

20. The appellant highlighted concerns with the site at Brotherhood Woodyard where provision of pitches had been found to be substandard in terms of size and layout. However, planning permission was granted in 2018 to remedy the pitch provision, while action has been taken against those occupying the site contrary to planning conditions. Therefore, I am satisfied that there are no significant deliverability issues and that the delivery of 11 pitches at Brotherhood Woodyard as part of the 17 is likely within the 5 year period. The appeal decision at Windmill Farm[4] dated February 2018 concluded that a supply was lacking, but that predated the more recent permission at Brotherhood Woodyard and the updated GTAA. Thus, I have no reason to doubt that a 5 year supply exists.

21. The appellant pointed towards the most recent Caravan Count figures for Swale (January 2019) which identifies 42 caravans on unauthorised sites either tolerated or not tolerated, along with 14 caravans on sites with temporary permission. Several sites were mentioned explicitly at the hearing, some of which await decisions at planning committee or appeal. I note the Council's response that the number of sites with permanent permission has been increasingly steadily within Swale and that the unauthorised sites may be in the wrong location for whatever reason. The Caravan Count indicates an issue

[4] APP/V2255/W/17/3176865

with unauthorised sites, but it is less clear about the degree of unmet need, while the number of caravans on such sites is small compared to the number of authorised sites. With a positive 5 year supply of sites against the GTAA requirement, I can only give moderate weight to the Caravan Count figures.

22. In terms of alternative sites, the appellant is part of a wider Romani Gypsy family based in the local area. He stated at the hearing that no alternatives have come up in recent years. It was noted that the Brotherhood Woodyard site is not available to the appellant as it is intended for Irish Travellers, but it is not clear whether the remaining pitches that make up the 5 year supply are also unrealistic alternative options. The Council underlined its flexibility towards accommodating sites through the planning process and referred to sites that were up for approval in early 2020. Neither main party was able to identify any specific alternative options that were suitable, affordable, available and acceptable, but with a positive 5 year supply of sites and an increase in sites with permanent permission, the weight I afford to this consideration is moderate.

23. The appellant's sister has health issues that requires prescription medicines and limits the amount she can travel. She is registered at a nearby doctor's surgery and has attended consultant appointments at a local hospital. The lack of a settled base would make access to medicines and appointments more difficult and so moderate weight can be attached to this personal circumstance.

24. The appellant's children are of primary school age and are home educated as the family travels regularly. There was no dispute at the hearing that better education for the children of gypsies and travellers improves their life chances including employment opportunities. There is a duty for decision makers to give consideration to the best interests of the child as a primary consideration. The appellant indicated that having a more settled position on a permanent authorised site would allow more integration in terms of schooling. However, given that the family has been on the site since 2011 including 3 years with a temporary permission, this would be a significant change to the practice to date. Therefore, I can only give moderate weight to this personal circumstance.

*Other matters*

25. Although not mentioned explicitly in the reason for refusal, the Council indicated that the accessibility of services is not ideal and the relative remoteness of the site means that an integrated co-existence between all communities is less likely. PPTS paragraph 25 seeks to very strictly limit new sites in the open countryside away from existing settlements. LP Policies ST3 and DM10 seek to provide gypsy and traveller sites in line with the overall settlement strategy with the open countryside such as this site at the bottom of the hierarchy. Bredgar has a number of services and facilities but from the site the roads to the village are narrow, unlit and without pavements. Footpath links are only a realistic option in suitable weather and lighting and so driving is the most likely option. While the distances involved are not excessive, the site's location within the settlement strategy does not weigh in favour of the development.

26. Intentional unauthorised development has been a material consideration to weigh in the determination of planning applications and appeals received from 31 August 2015 onwards (as set out in the government's policy statement of the same date). However, it is not possible to be certain that the initial

occupation of the site in April 2011 was intentionally unauthorised. Moreover, the development was authorised for 3 years via a temporary permission and the appellant has sought to authorise it again with the application that has led to this appeal. Thus, I give no weight to this matter in the overall balance.

*Overall balance*

27. The development results in moderate harm to the AONB even with attempts to mitigate the effects through planting. In line with the NPPF, great weight should be given to conserving and enhancing the landscape and scenic beauty of AONBs and so I give considerable weight to this harm.

28. While the development if approved would provide an additional gypsy and traveller site, there is a positive 5 year supply of sites and permanent permissions are increasing. Thus, I can only give moderate weight to the evidence of unauthorised sites in the Caravan Count and the lack of alternative sites. Moderate weight can be afforded to the appellant's personal circumstances including the best interests of the child. Taken individually or collectively, the other considerations in favour of the development would be insufficient to outweigh the harm to the AONB.

29. The Council clarified at the hearing that enforcement action would be undertaken in the event this appeal is dismissed. This would require the appellant to restore the site to its previous condition. If there are no alternative places to go, there is a reasonable likelihood that the appellant and his family would revert to a roadside existence.

30. As a consequence, there would be an interference with the appellant's home, private and family life having regard to Article 8 of the European Convention on Human Rights as incorporated into UK law by the Human Rights Act 1998. However, these human rights are qualified and need to be balanced against the protection of the public interest which includes in this instance the protection of the AONB. For this appeal, the harm to the AONB outweighs the human rights of the appellant and his family and the best interests of the children. I have also had due regard to the Public Sector Equality Duty contained in the Equality Act 2010 which seeks to eliminate discrimination, advance equality, and foster good relations between those with protected characteristics and those without. However, dismissing this appeal would be justified as I have weighed the harm against the other considerations relating to the appellant's case.

31. The 2015 appeal decision found that a temporary permission would protect the public interest by a means that would be less interfering to the appellant's human rights and thus would be a more proportionate response. There was discussion at the hearing as to whether another temporary permission would be appropriate. This is a material consideration regardless of the positive 5 year supply of sites and the AONB location. Nevertheless, footnote 9 of PPTS paragraph 27 states that there is no presumption that a temporary grant of planning permission should be granted permanently. The Planning Practice Guidance[5] states that it will rarely be justifiable to grant a second temporary permission and that further permissions should normally be granted permanently or refused if there is clear justification for doing so.

[5] Reference ID: 21a-014-20140306

32. The 2015 decision was based on the lack of a 5 year supply of pitches which is not the case now. It was also based on the anticipation of gypsy and traveller site allocations coming forward to provide for more permanent sites. As noted above, the LP now takes a windfall and criteria based approach to the provision of sites and is looking to carry that approach forward into the Local Plan Review. Based on the material before me, there is no clear evidence of unmet need in Swale.

33. While not supportive of a temporary permission, the Council suggested a 2 year limit to allow the appellant sufficient time to find a new location. In contrast, the appellant while seeking a permanent permission, suggested a 5 year limit to assist with health and education needs and to find an alternative site. However, it is not evident that circumstances will change significantly in the next 2 to 5 years. The health and education needs are likely to continue beyond that time period and the current supply situation is positive. As a result, there is little justification for a further temporary permission that would prolong the harm to the AONB and so it would not be a necessary or proportionate response. I recognise that other gypsy and traveller sites have been permitted in the AONB within the same local authority area, but each case needs to be considered on its own merits.

34. In conclusion, the other considerations advanced in this appeal do not outweigh the harm to the AONB and the conflict with LP Policies ST1, ST3, DM10, DM14, DM24 and DM26. There would be no violation of human rights for the appellant or his family. Therefore, the development should not be granted either a permanent or temporary permission.

**Conclusion**

35. For the above reasons, and having had regard to all other matters raised, I conclude that the appeal should be dismissed.

*Tom Gilbert-Wooldridge*

INSPECTOR

## APPEARANCES

FOR THE APPELLANT

| | |
|---|---|
| Joseph G Jones | BFSGC |
| Ben Brazil | Appellant |
| Kelly Fuller | Appellant's wife |
| Karen Ransley | |

FOR THE LOCAL PLANNING AUTHORITY

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| Graham Thomas BSc (Hons) DipTP MRTPI | Swale Borough Council |

INTERESED PARTIES WHO SPOKE AT HEARING

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| Penny Twaites | Bredgar Parish Council |
| Brian Clarke | Bredgar Parish Council |

## DOCUMENTS SUBMITTED AT THE HEARING

1. Appeal representation dated 7 December 2019 from Mr and Mrs Ingram, submitted by Bredgar Parish Council.
2. Signed and dated Statement of Common Ground between the appellant and the local planning authority, submitted by the appellant.
3. January 2019 Caravan Count figures for Swale, submitted by the appellant.
4. Health information with private and confidential statement on front page, submitted by the appellant.