



Appeal Decision

Site visit made on 4 February 2020

by S J Papworth DipArch(Glos) RIBA

an Inspector appointed by the Secretary of State

Decision date: 17 February 2020

Appeal Ref: APP/E2205/W/19/3236217

Woodland Vale, Nickley Wood Road, Nickley Wood, Shadoxhurst, Ashford, Kent TN26 1LZ

- 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 Jimmy Cosgrove against the decision of Ashford Borough Council.
 - The application Ref 19/00550/AS, dated 8 April 2019, was refused by the Council by notice dated 10 June 2019.
 - The development proposed is removal of existing bungalow and erection of a replacement dwelling, resubmission of 18/01311/AS.
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Decision

1. I dismiss the appeal.

Main Issues

2. These are;
 - The effect of the proposal on the supply of gypsy and traveller sites.
 - The effect of the proposal on protected trees.
 - The weight to be attached in the planning balance to other considerations.

Reasons

The Supply of Sites

3. Nickley Wood is not listed in Policy HOU5 as a settlement and the appeal site is outside any other settlement boundary and therefore in the countryside for planning purposes, where policies of restraint apply. The proposed use is not on the list of housing types that may be permitted in paragraph 79 of the National Planning Policy Framework, nor in Policy HOU5 of the Ashford Local Plan 2030, and the site is not sufficiently close to Shadoxhurst to be appropriate under the provisions in that policy for development adjoining or close to such settlements.
4. The provision of a gypsy and traveller site is however permitted in a location such as this under Planning Policy for Traveller Sites and the strategic approach to housing stated in Policy SP2. The site has planning permission for the stationing of 3 static caravans (Ref 13/00495/AS), was not personal but was restricted to the occupation by only gypsies and travellers. It is therefore

- available to be occupied by anyone satisfying that requirement and as a permanent site, is to be retained as a traveller site under Policy HOU17.
5. Whilst there had been some correspondence at the time of the Council's consideration over whether the appellant and his family are travellers as defined in Annex 1 Glossary to Planning Policy for Traveller Sites, it must be assumed by their continued occupancy of the site, restricted as it is to gypsies and travellers, that this status is agreed.
 6. On inspection it was found that the structure sought to be replaced is not a permanent house but a caravan as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 as amended, and as controlled within the extant permission. As such its replacement does not fall to be judged and permitted under Policy HOU7 on replacement dwellings.
 7. The Council refer to an unmet need for traveller sites in the area and as demonstrated in the latest Gypsy and Traveller Accommodation Assessment. The loss of a permanent site would reduce further the supply and would deprive future generations of travellers of a lawful and suitable site. The loss of a part of this large site to bricks and mortar housing could compromise the ability of the remainder of the site to operate as a suitable traveller site. Many travellers have a cultural aversion to living in bricks and mortar, and the nomadic way of life results in the use of static caravans, with sites changing hands within the traveller community for the new occupier to place their own caravan on the site. That opportunity would be lost were a conventional house be built as proposed.
 8. The appellant lists distances and facilities in Shadoxhurst, Bromley Green and Ham Street, and there is transport, including a school bus which stops at the end of the lane. It is accepted that traveller sites may be in locations some distance from settlements, but having mind to the nature of the journey as well as the distances, the site is not in a sustainable location for a dwelling, were it to fall out of use as a traveller site.
 9. To conclude on the principle of the proposal, there is no permanent dwelling on the site to be replaced under Policy HOU7, the site is restricted to the use of gypsies and travellers and such sites are to be retained under Policy HOU7, and the location of the site militates against the grant of permission for a permanent dwelling under Policies SP2 and HOU5. The loss of the site, or part of the site, would put greater pressure on the already unmet need for sites.
 10. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that if regard is to be had to the Development Plan for the purpose of any determination to be made under the planning Acts, as is the case here, the determination must be made in accordance with the plan unless material considerations indicate otherwise. The other considerations put forward by the appellant will be considered after the next main issue.

Protected Trees

11. The Reason for Refusal is couched in the terms of there being insufficient evidence to show that harm would not be caused to Daring Wood, a designated Ancient Woodland, protected by Order No1 of 2010.
12. The proposal is to replace the existing static caravan near the eastern boundary with the permanent dwelling, and that could be within the root

protection area of trees, or the 15m buffer zone for the ancient woodland. The Council do not appear to claim that there is no part of the larger site that does not sit within the precluded areas, and much of the northern part is under hardstanding at present.

13. Were all else acceptable, conditions could be appropriate to secure the removal of the caravan but to place the dwelling somewhere else on the site, outside the 15m zone. That possibility could have been canvassed with the parties in order that compliance with Policies ENV1, ENV3a and ENV5 could have been assured. The Council have suggested conditions to address root protection and the ancient woodland.

Other Considerations

14. The appellant has put forward various other considerations in favour of the proposed development. It is claimed that the proposal would be affordable housing and there is considerable policy support at local and national level, including on rural exceptions sites in paragraph 77 of the Framework. As the appellant would presumably not have to bear land costs and intends self-building, the development would certainly be low-cost when compared with that of a fully serviced plot with residential planning permission. However, no mechanism has been put forward to secure that affordable status in perpetuity and the present status of the site ensures affordable housing in the right place for travellers.
15. At the time of the site inspection, 5 other static caravans were seen on the site, in addition to the one proposed to be replaced, and the touring caravan. The extant permission is restricted to 3 but the appellant states that they were stationed on the site and occupied in summer 2013. Any claim to lawfulness would need to be taken up under separate provisions of the planning Acts and is not a matter that can be determined in a section 78 Appeal.
16. Be that as it may, the site is only able to be occupied by gypsies and traveller as defined, although it could be considered unreasonable to restrict a bricks and mortar dwelling to that use, and the presence of what could become an open-market dwelling could reduce the ability of the remainder of the site to operate as an effective traveller site.
17. The appellant states that it is common practice for dayrooms to be placed on traveller sites and that since they are permanent buildings, the dwelling is little different. Such day rooms or utility rooms are common and are often associated with cultural requirements over washing and laundry. They are a feature that can be passed on to the next occupier of the site, whereas the static caravan would often be relocated and replaced by a new occupier. The common allowance for a utility room, or other building such as stables, does not justify a permanent dwelling.
18. In addition to numerous caravans in the vicinity, there are various permanent buildings in use as dwellings. The appellant has referred to some of these and the reference numbers of the planning permissions granted;

Reference 17/00295/AS at The Three Horseshoes concerned a structure which the Council found to be a dwelling rather than the previously permitted caravan and were satisfied that it had been in place long enough to allow the proposal

to be considered under the then policy for a replacement dwelling. That is not the case at the appeal site.

Reference 14/01142/AS involved a site with an extant but unimplemented permission for a dwelling and was not a traveller site.

In any event, appeals are to be determined on their merits and the circumstances of each case.

19. The appellant asserts that these permissions and others would not have been granted if it were thought that harm would occur. That is not necessarily the case, as planning decisions are often taken on balance, and the 2 referred to above appear to have resulted from situations where permission would be hard to resist no matter what harm might be perceived.
20. The improved energy efficiency of a permanent dwelling is cited, and that would almost certainly be the case as compared with a caravan. However, as previously stated, the use of caravans is for cultural reasons, and in support of the nomadic way of life, the latter being a prerequisite of being able to claim traveller status.
21. The appellant states that the additional accommodation is required due to the number of dependents, and it does appear to be the case that the static caravan is not large enough and that the touring caravan is in use. The precise occupancy of the other permitted caravans is uncertain, and without pre-judging any future application, the site does appear large enough to accommodate additional caravans, which would not result in a density greater than was seen elsewhere in the area.
22. The appellant claims to be a Romany Gypsy and that is not a matter which stands to be tested in this appeal. That is a protected characteristic under the Equality Act 2010, and the Public Sector Equality Duty applies. In addition, the appellant has rights under Article 8 of the Human Rights Act 1998 to respect for his private and family life, and under Article 1 of the First Protocol to the peaceful enjoyment of his possessions.
23. These are qualified rights in any event, and whichever way this appeal Decision is determined, the appellant and his family would not be deprived of their home and possessions. It is proportionate in the public interest to determine planning applications in accordance with the Development Plan, provided other material considerations have been afforded appropriate weight in the planning balance.
24. As with the considerations over the number of dependants, it would not be appropriate to attach a personal restriction to any permission for a permanent dwelling, and the rights of other travellers to be able to secure a suitable site could be affected by the loss of this site, a part of it or any compromise to the ability of the site to remain suitable for that use in the future.
25. Taken together, these considerations do not indicate a decision other than in accordance with the Development Plan and national policy.

Conclusions

26. The question of the ancient woodland could be addressed by conditions, as suggested by the Council. However, the site is a lawful gypsy and traveller site

in a local authority area where there is unmet need. The appeal proposal would result in the loss of all or part of the site and the loss of its availability to meet the need which is recognised as being for the stationing of caravans. The site is in the countryside where policies of restraint apply, the proposal is not for the replacement of such a dwelling and there is no policy backing for a new permanent dwelling.

27. The proposal is contrary to the Development Plan policies which seek to protect the countryside and direct development to settlements. The other considerations put forward do not carry sufficient weight to overcome the objections. For the reasons given above I conclude that the appeal should be dismissed.

S J Papworth

INSPECTOR