



Appeal Decision

Hearing Held on 4 and 5 February 2020

Site visit made on 5 February 2020

by David Cliff BSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 03 March 2020

Appeal Ref: APP/M3645/W/19/3232423

Land between Downalong and The Retreat, Kemsley Road, Tatsfield, Surrey TN16 2BH

- 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 J Devall against the decision of Tandridge District Council.
 - The application Ref TA/2019/24, dated 31 December 2018, was refused by notice dated 6 June 2019.
 - The development proposed is described in the application form as 'change of use of the land for the stationing of one static mobile home and one touring caravan for Gypsy/Traveller occupation; a detached 2-bay stable with associated hard and soft landscaping'.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. At the hearing the appellant provided amended plans deleting the previously proposed two bay stable building from the application proposals. The amended plans also reduced the extent of the area within the red edged site boundary with the land removed now included as blue edged land under the applicant's ownership but not part of the application site. No objections to these changes were raised by the numerous parties attending the hearing. I am satisfied that no party would be prejudiced by the revisions which reduce the scope of the proposals. I have therefore gone on to determine the appeal on the basis of these amended plans. The description of the proposal consequently changes from that stated on the application form (and in the banner hearing above) through the removal of the 'detached 2-bay stable' element.
3. The appellant's surname is spelt differently across the appeal documents. However, the appellant's agent has confirmed the correct spelling which I have used in this decision.
4. The emerging 'Our Local Plan 2033' (the emerging Local Plan) is currently being examined. The public hearing sessions, which included consideration of Gypsy and Traveller matters, concluded in November 2019 and the Inspector's subsequent report is currently awaited. Policy TLP15 of the emerging Local Plan sets out several criteria that need to be met in order for permission to be granted for Gypsy, Traveller and Show people sites. Policy TLP16 relates specifically to the design of traveller sites. Given that the Inspector's report is

not yet published and that the hearings included consideration of the proposed Gypsy and Traveller policies, I have given the emerging Local Plan only limited weight at this stage.

Gypsy and Traveller status

5. The main parties disagree that the appellant and Ms Webb, who would occupy the site with him, meet the definition of Gypsies and Travellers in Annex 1 of *Planning policy for traveller sites* (PPTS). The Council agrees that both the appellant and Ms Webb have a Gypsy/Traveller background but considers that neither have demonstrated that they retain such a status in the context of the PPTS definition.
6. I heard that the appellant's primary source of income is from his employment as a roofing contractor during the winter months. I do not consider that the travelling in connection with this demonstrates a nomadic way of life as it appears to be no different to any other contractor carrying out work on a regional basis. However, I heard further evidence that he gains some further income from trading whilst travelling and therefore it has some economic purpose. The appellant says that the family travel for most of the summer months, mostly to engage in horse trading and for cultural reasons. I heard details of horses kept by the appellant. The appellant has stated that he has never ceased to travel and that it is his intention to continue travelling in the future and that this would also be the case for Ms Webb. At the moment, due to the educational requirements of their children, this travel is limited though the appellant indicated that he travels for approximately 15 weeks of the year.
7. There is little documented evidence to support the appellant's arguments that he and Ms Webb both meet the PPTS definition and Ms Webb was not able to attend the hearing. I also note that Ms Webb has lived in a house for the past eleven years, though that does not necessarily mean that she has stopped travelling on a permanent basis, noting her circumstances including childcare responsibilities for the children.
8. It is clear that both adults have a Gypsy/Traveller background. The matter of their current and future travelling is less clear. However, from the written and oral evidence before me it appears that the appellant carries out a nomadic way of life for part of the year and that Ms Webb accompanies him subject to the educational needs of the children. On the balance of probabilities and for the purposes of this appeal, I am satisfied that the appellant and Ms Webb fall within the PPTS Gypsy and Traveller definition at the present time. The PPTS is therefore of relevance in assessing the proposal.

Main Issues

9. I agree with the Council and the appellant that the proposal would amount to inappropriate development within the Green Belt. Paragraph 143 of the National Planning Policy Framework ('the Framework') states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.
10. The main issues are therefore:
 - i) The effect of the proposed development upon the openness and purposes of including the land in the Green Belt;

- ii) The effect upon the character and appearance of the appeal site and of the surrounding area;
- iii) The accessibility of the site to services and facilities;
- v) The effect upon biodiversity and ecology; and
- vi) Whether or not the harm by reason of inappropriateness within the Green Belt, and any other harm, would be clearly outweighed by other consideration, so as to amount to the very special circumstances required to justify the proposal?

Reasons

Green Belt openness and purposes

11. The application site is currently free of any buildings or structures and comprises of sloping land with a covering of trees and other foliage. Several residential properties are located along Kemsley Road. These generally form a loose knit layout of existing development interspersed with open spaces.
12. The presence and footprint of the static mobile home and touring caravan would adversely impact upon the openness of this part of the Green Belt. Some further limited effects would result upon openness from the retaining wall that would be required at the rear of the site along with any domestic paraphernalia that would be likely to accrue with the proposed use. The overall effect upon Green Belt openness would be moderate.
13. In spite of the presence of other buildings and structures on Kemsley Road, the additional structures on the appeal site would also serve to undermine the purposes of the Green Belt to assist in safeguarding the countryside from encroachment.
14. Paragraph 144 of the Framework makes clear that, when considering any planning application, substantial weight should be given to any harm to the Green Belt. I go on to consider the compliance with the relevant Green Belt development plan policies later in the decision and following my consideration of whether or not very special circumstances exist in this case.

Character and appearance

15. The undeveloped appearance of the site, including the presence of trees and foliage within it, contributes positively to the prevailing rural character of the locality. The proposed siting of the mobile home and caravan, along with the hardstanding, retaining wall and other domestic paraphernalia would be located close to and would be clearly visible from Kemsley Road which is also a public bridleway. As noted above there is other, mainly residential development on the road encompassing a variety of forms of design. The majority of this development is set back from the road and within generally large plots, although there are existing examples of garages and other buildings located closer to the road. The undeveloped spaces along the road, including the appeal site, contribute positively to the overall rural character and appearance of the surroundings.
16. The site would only be visible in short distance views. Nevertheless, the loss of existing trees and foliage from the site along with the visual impact of the proposals would detract from the character and appearance of the area. Whilst

some new landscaping may be possible, given the limited size of the site, I do not consider that it would be able to satisfactorily mitigate against the visual impacts. Given the perceived separation to the existing property to the southwest the proposal would not be tantamount to an infill proposal. Although the proposal would not represent an intrusion into the wider countryside, the rural character and appearance would be eroded.

17. The harm, which I consider would be significant, would be contrary to the landscape and design aims of Policies CSP9, CSP18 and CSP21 of the Tandridge District Core Strategy 2008 ('the Core Strategy') and Policy DP7 of the Tandridge Local Plan Part 2: Detailed Policies 2014-2019 (2014) ('the Local Plan'). Whilst the Council's decision notice also refers to Policy DP17 of the Local Plan, this policy is no longer of relevance following the deletion of the stable from the proposals.

Accessibility to services and facilities

18. Kemsley Road is an unlit and unmade road with no public transport provision along it. Limited bus services serving local centres are available along the nearby Ricketts Hill Road with links to other bus services to larger service centres such as Orpington. A limited range of local services are available within 1km of the site in Tatsfield Village with a more varied and comprehensive range of services and facilities located slightly further afield at Biggin Hill to the north. The site is also reasonably close to local primary and secondary schools.
19. Whilst the wider area is therefore generally well served for services and facilities, the location of the site on Kemsley Road means that I would still expect a good proportion of journeys to be made by the private car. However, the journeys to local services would be of a short duration and there would be opportunity for some journeys to be made on foot or by bicycle particularly when weather and daylight conditions are good.
20. The proposal would be outside of the existing built up areas where Policy CSP1 of the Core Strategy seeks to locate development in order to promote sustainable means of travel and make the best use of previously developed land. Core Strategy Policy CSP9 states that a preference will be given to Gypsy and Traveller sites that are accessible by non-car modes of transport though this wording does not specifically rule out sites that are not. I also note that Policy C of the PPTS recognises that sites may need to be located in rural areas and the countryside and Policy CSP9 recognises that Gypsy and Traveller sites might need to be provided outside of the urban area subject to other criteria.
21. Overall I consider that the site would be in a reasonably accessible location for the proposed use. I have consequently found there to be no material conflict with the Development Plan with regard to the accessibility of the site to services and facilities. Local Plan Policy DP1 is a more general policy regarding *sustainable development* and the Framework which I will return to later in this decision.

Biodiversity and ecology

22. The appellant's Preliminary Ecological Appraisal (February 2019) has been supplemented by a Dormouse Report (February 2020) submitted at the hearing. As the main parties and those attending had the opportunity to read and make representations on this, I have accepted this document as part of the

appeal. The Dormouse Report recommends precautionary avoidance along with habitat enhancement measures for dormice. The original appraisal also recommended precautionary measures for badgers and birds. The Council accepted at the hearing that the reduced site area arising from the appellant's decision to delete the stables and any associated grazing requirement has resulted in the biodiversity and ecological impacts being reduced. Given the findings of Dormouse Report and the fairly modest size of the area of land that would be affected by the proposals I consider the proposed precautionary measures to be appropriate and proportionate, and I do not consider a further dormouse survey to be necessary in this case.

23. Further to discussions at the hearing, the main parties have agreed additional suggested conditions to mitigate against biodiversity and ecology impacts. These would include a requirement for the proposed precautionary measures to be implemented through a landscape and ecology management plan.
24. Taking account of the fairly modest area of land that would be impacted upon by the proposal, the findings of the ecological reports and the potential for conditions to be imposed to protect and promote ecological interest, I am satisfied that no significant biodiversity or ecological harm would arise from the proposals. The proposal therefore accords with the relevant biodiversity protection and management aims of Policy CSP17 of the Core Strategy and Policy DP19 of the Local Plan.

Other considerations

Need

25. The Council has published a Gypsy and Traveller Accommodation Assessment (GTAA) in 2017 in order to support the emerging Local Plan. The public hearings sessions for the emerging Local Plan were completed in November 2019 and the examining Inspector's report is awaited so there is currently no indication as to whether the conclusions of the GTAA will be taken forward.
26. The GTAA found there to be a need for 5 additional Gypsy and Traveller pitches between 2016 and 2033. In this respect, my attention has been drawn to an appeal decision¹ in July 2019 for 4 gypsy and traveller pitches at Highview, Beech Farm Road within Tandridge District. In that case, the Inspector concluded that based on the evidence before her there would appear to be a far greater need for pitches than recorded in the GTAA.
27. I do not have the same amount of evidence before me as the Inspector in that case. However, at the hearing the Council has accepted that need is likely increase through the emerging Local Plan although there is no indication at this stage as to what that increase would be given the current stage of the examination proceedings. Furthermore, both the appellant and the Council agree that significant weight should be afforded to the need for pitches in the district. Despite some uncertainty on the precise level of need, I agree that the need for pitches is a matter to be afforded significant weight.

Supply and alternative sites

28. The main parties agree that the Council cannot demonstrate a five year supply of gypsy and traveller pitches. Core Strategy Policy CSP9 states that the

¹ APP/M3645/W/18/3205027

Council will make provision for Gypsies and Travellers through a Site Allocations Development Plan Document, though no such document has been produced. No sites are proposed to be allocated through the emerging Local Plan. Instead Policy TLP15 of the emerging Local Plan sets out a criteria-based approach for the consideration of sites on a case-by-case basis through planning applications.

29. The extensive Green Belt designation within the District and the competition from non Gypsy and Traveller residential occupiers for suitable sites outside of the Green Belt limits the likelihood of any sites coming forward outside of the Green Belt.
30. The Council has drawn attention to two new pitches being granted permission at Beech Field, Moss Lane in early 2019 and four pitches were retrospectively approved at appeal at the aforementioned Highview site. These permissions are undoubtedly a welcome boost to approved sites in Tandridge though the need for additional sites still appears to be significant and such sites appear not to be available to the appellant. It is also recognised that the South Godstone Garden Community site could provide an opportunity to deliver pitches and the Council considers that this could be delivered through an Area Action Plan. However, the main parties agreed that this would be likely to take five to six years to produce. Hence, it would not address the current need for pitches. The Inspector concluded in the Highview appeal that the circumstances of the Council's lack of provision of and unmet need for sites has amounted to a policy failure in this regard. The evidence before me does not lead me to disagree with this finding.
31. In this context, I consider that the lack of supply and alternative sites weighs considerably in favour of the appeal proposal.

Personal considerations and the interests of children

32. I have taken into consideration the appellant's personal circumstances including the option of granting a personal planning permission. The appellant has explained that he wants to bring his family together to live at the appeal site. Although no argument was made that either the appellant or Ms Webb and the four children would be homeless if the appeal were to be dismissed, they are currently living in a manner which keeps them apart. The appellant has an aversion to living in bricks and mortar accommodation which means he is unable to live in the house where Ms Webb currently resides in the Borough of Bromley and he does not see his children as often as he would like. I heard that for the last eleven years the appellant has been moving between family sites and friends.
33. I have limited information regarding the appellant's attempts to seek accommodation for him and his family over the past eleven years. Notwithstanding that there is a long waiting list, the appellant has not applied to be on the waiting list in Bromley. The appellant explained that he has not considered alternative sites within Tandridge because he is the owner of the appeal site.
34. I have taken into consideration the evidence provided regarding the children. The best interests of the children are a primary consideration in the appeal, although not necessarily determinative. All four of the children currently live in

a rented house with Ms Webb. They therefore have a settled base and their educational needs appear to currently be satisfactorily met.

35. Whilst recognising the appellant's wish to live together on the site as a family unit and taking into account Article 8 of the Human Rights Act, this is not a case where the dismissal of the appeal would lead to any of the proposed occupants being in a situation that would be likely to lead them to be otherwise homeless. The interests of the children would appear to be best served by the family living together as a unit and the appellant stressed that it would enable him to raise his eldest son and the other children in the gypsy and traveller lifestyle and culture.
36. Whilst there appears to be no risk of anyone losing a place to reside and live, dismissal of the appeal would interfere with the human rights of the appellant and the other proposed occupiers in that, in the absence of any other alternatives, they could be denied the opportunity to live together as a family group. This is a qualified right but nevertheless carries some weight.
37. Taking account of all these factors, I have given significant weight to the personal circumstances of the appellant, Ms Webb and the children who would occupy the site.

Further considerations

38. There is some inconsistency between the part of Policy CSP9 relating to the Green Belt and the relevant provisions of the PPTS resulting in this policy being out of date. However, the remaining provisions remain generally consistent with the PPTS and the Framework.
39. Whilst the emerging Local Plan only carries limited weight at the current time, I have considered the proposal against Policy TLP15 which seeks to make provision for Gypsy and Traveller sites. The proposal would be contrary to this emerging policy as the site is not within or adjacent to the settlement boundary, I have found that it does not sympathetically assimilate with its surroundings and it would have an unacceptable adverse impact on the character of the countryside. As such this proposed policy, whilst carrying limited weight, does not support the proposal.
40. The appellant has submitted several appeal decisions where Gypsy and Traveller proposals have been permitted in Green Belt locations across the country. I have read and considered all these. However, whilst there may be some general similarities between those cases and the current appeal, it is important that each case is considered on its individual merits and circumstances. Whilst being mindful of these decisions, it is on this basis that I have considered the current proposal taking account of all the evidence before me.
41. At the hearing my attention was drawn to the preparation of the Tatsfield Neighbourhood Plan. Given the early stage of the plan's preparation in advance of the Regulation 14 pre-submission consultation stage, I have attached minimal weight to it at this stage.
42. I note that this is not a retrospective application and that the appellant has sought planning permission in advance of any development. However, this does not alter the overall planning considerations of the case based on its particular

merits and circumstances. Indeed in cases where intentional unauthorised development has occurred this has to be weighed in the determination of the application.

The Planning Balance

43. The proposal would amount to inappropriate development within the Green Belt. It would lead to moderate effects upon Green Belt openness and would conflict with the Green Belt purpose of assisting in safeguarding the countryside from encroachment. In accordance with the Framework I have given this Green Belt harm substantial weight. I have also found that significant harm would result upon the character and appearance of the area contrary to Policies CSP9, CSP18 and CSP21 of the Core Strategy and policy DP7 of the Local Plan.
44. There is some inconsistency between the part of Policy CSP9 relating to the Green Belt and the relevant provisions of the PPTS resulting in this policy being out of date. However, the remaining provisions remain generally consistent with the PPTS and the Framework and I therefore still give considerable weight to the conflict with it.
45. The considerations in favour of the development are set out above. In brief, these are the general need for gypsy and traveller sites, the lack of a five year supply of sites and the Council's persistent failure to make appropriate provision, the constraints of finding appropriate sites in the Green Belt and the personal circumstances of the appellant and his dependants (including the best interests of the children). I have also taken into consideration the interference with the human rights of the appellant and the proposed occupiers. These matters all carry at least significant weight and in combination are of substantial weight. I have also considered the possibility of granting a personal planning permission.
46. The Framework makes clear that inappropriate development should not be approved except in very special circumstances and that very special circumstances will not exist unless the harm to the Green Belt by reason of inappropriateness and any other harm resulting from the proposal, is clearly outweighed by other considerations. Policy E of the PPTS states that subject to the best interests of the child, personal circumstances and unmet demand are unlikely to clearly outweigh harm to the Green Belt and any other harm so as to establish very special circumstances.
47. Taking all these matters into account, in my judgement the combination of factors in favour of the development would not clearly outweigh the harm by inappropriateness and other harm. Therefore, very special circumstances do not exist in this case and the proposal would be contrary to the general Green Belt protection aims contained within policy CSP9 of the Core Strategy and policy DP10 of the Local Plan. Policy DP13 of the Local Plan is not strictly relevant in this case as the proposals do not amount to 'buildings'. This does not however detract from the weight given to the harm to the Green Belt as set out above.
48. Whilst policy CSP9 is out of date, the tilted balance in paragraph 11 of the Framework is not applicable in this instance as the application of the Framework's Green Belt policies provide a clear reason for refusing the development in this case.

49. My conclusion on very special circumstances is different to the findings of the Inspector in the recent Highview appeal. In that case the proposal was for four pitches rather than the one pitch proposed here resulting in a more significant provision of sites. Furthermore, in comparison to this appeal where I have found there to be harm to the character and appearance of the area, no harm other than Green Belt harm was found to result in the Highview appeal. The personal needs of the respective appellants are also different although I note that personal need was not a determinative issue in the Highview appeal. Nonetheless, I am satisfied that there are material differences between the two cases that justify a different outcome. The Highview case also demonstrates that it is possible for Gypsy and Traveller sites to be permitted in the Green Belt without any non-Green Belt harm resulting such as character and appearance.
50. I have also considered whether a temporary permission would be appropriate. It is difficult to predict the timing and availability of suitable sites in future years but there is a possibility that a site such as the South Godstone Garden Community might be available in around five or six years, though there is no certainty about this. Even should a temporary permission be granted, the harm to the Green Belt whilst being temporary would still carry substantial weight and harm to the character and appearance of the area would still arise albeit on a temporary basis. I have also taken into account paragraph 27 of the PPTS which states that where a local planning authority cannot demonstrate an up-to-date 5 year supply of deliverable sites, this should be a significant material consideration in any subsequent planning decision when considering applications for temporary permission except in the Green Belt or other prescribed areas. Although the weight of the overall harm would be reduced by granting a temporary permission, the harm would still be such that other considerations in favour of the development would not outweigh it. Consequently, very special circumstances do not exist, even in the context of a temporary planning permission.
51. I have considered the Human Rights of the appellant and the proposed occupiers including the best interests of the children. Dismissal of the appeal would not result in any adult or child losing their home although it would lead to a continuation of the existing situation where the appellant, Ms Webb and the children are not able to live together as a family unit. In this case, taking account of the harm to the Green Belt and to the character and appearance of the area, I am satisfied that the dismissal of the appeal would be proportionate and necessary.
52. The proposal conflicts with the development plan when considered as a whole. There are no other material considerations that suggest the decision should be taken otherwise than in accordance with the development plan. It would therefore also be contrary to policy DP1 of the Local Plan which generally promotes sustainable development.
53. For the reasons set out above, I therefore conclude that the appeal should be dismissed.

David Cliff

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

J Devall	Appellant
Simon McKay	SJM Planning
James Bellsham-Revell	former Project Worker at Bromley Council

FOR TANDRIDGE DISTRICT COUNCIL

Clifford Thurlow	Planning Consultant
Alda Song	Regulatory Specialist

INTERESTED PARTIES

Kim Jennings	Chair of Tatsfield Parish Council
Nichola Stokoe	Cameron Clarke Lawyers
Gareth Evans	White & Sons
Martin Allen	District Councillor
John Wohlgemuth	Local resident
Ian McLean	Local resident
David Parker	Local resident
Lexy Parker	Local resident
Ray Phillips	Local resident
Rosemary Phillips	Local resident
Jay Aston Colquhoun	Local resident
David Colquhoun	Local resident
Fiona Boorn	Local resident
Kim Scott-Clark	Local resident

DOCUMENTS SUBMITTED AT THE HEARING

1. Dormouse Report by Icen Ecology Ltd (February 2020)
2. Amended Site Local Plan (2018-072v1-Location)
3. Amended Block Plan (2018-072v1-Block)
4. Appellant's email dated 4 February 2020 regarding removal of proposed stable building from application and suggested landscape management condition
5. Updated list of suggested conditions
6. Appellant's email dated 5 February 2020 including suggested badger survey condition

DOCUMENTS SUBMITTED AND ACCEPTED FOLLOWING THE HEARING

1. Schedule of revised draft planning conditions agreed by the Council and the appellant