



Appeal Decision

Hearing Held on 28 January 2020

Site visit made on 28 January 2020

by D J Board BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 06 April 2020

Appeal Ref: APP/U2235/W/19/3224066

The Three Sons, Hampstead Lane, Nettlestead, ME18 5HN

- 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 Bill Webb against the decision of Maidstone Borough Council.
 - The application Ref 18/504395/FULL, dated 28 August 2018, was refused by notice dated 10 December 2018.
 - The development proposed is described as *'retrospective application for a temporary change of use of land to Residential use for one Gypsy & Traveller Family. To include the stationing of one static mobile unit and one dayroom'*.
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Decision

1. The appeal is dismissed.

Background and Procedural Matters

2. There is a significant site history, including an enforcement notice, which was the subject of a previous appeal¹. The wider site has been occupied as a gypsy and traveller site without planning permission. At the time of my site inspection there was a single mobile home and dayroom on the site. The appellant's sister occupies a further plot located close to the main entrance of the wider site. This benefits from temporary planning permission².
3. The Council accepts that the appellant and his daughter meet the definition of gypsies and travellers set out in the Glossary to the Planning Policy for Traveller sites (PPTS) and it was confirmed at the Hearing that this is the case. I see no reason to come to a different view on this matter.
4. At the Hearing the Council submitted an aerial photograph and linked site history document³. In particular it sought to highlight the extent of the enforcement notice and therefore the development within the wider site that is and is not lawful. More specifically the Council highlighted areas within the area of the enforcement notice that it considers can be taken into account when assessing openness and landscape character. The extent of lawful development was not disputed by the appellant. As such my assessments of both openness and landscape character have taken into account the document HD3.

¹ APP/U2235/C/15/3138039

² APP/U2235/C/15/3138039

³ HD3

Main Issues

5. The appeal proposal includes a change of use to a gypsy site, stationing of a mobile home and operational development in the form of a day room, parking, patio, gates and fencing. The submitted plans show one single gypsy and traveller pitch for siting of a mobile home and the provision of a day room. It was evident on the site that the layout plan for the dayroom does not accord with what is built. I have considered the scheme for a dayroom as shown on the submitted plans.
6. Accordingly, the main issues in this case are:
 - Whether the proposal would be inappropriate development in the Green Belt for the purposes of the National Planning Policy Framework (the Framework) (including its effect on openness and the purposes of the Green Belt);
 - The effect of the proposal on the character and appearance of the surrounding area;
 - Whether the proposal would comply with national planning policy which seeks to steer new development away from areas at the highest risk of flooding; and
 - If it is inappropriate development, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations, so as to amount to the very special circumstances necessary to justify the development.

Reasons

Whether inappropriate development?

7. The Framework is clear that the government attaches great importance to Green Belts and that their essential characteristics are their openness and permanence. Policy E of the PPTS specifically defines traveller sites as inappropriate development in the Green Belt (paragraph 16). The main parties agree that the proposal is inappropriate development in the Green Belt as set out in paragraph 16 of the PPTS.
8. Policy SP17 of the Maidstone Local Plan (LP) sets out that within the Green Belt development will be managed in accordance with national policy. Paragraph 146 of the Framework establishes that certain forms of development are not inappropriate within the Green Belt provided they preserve its openness and do not conflict with the purposes of including land within it. These include material changes in the use of land (criterion e).
9. Openness is an essential characteristic of the Green Belt. It has a visual dimension as well as a spatial aspect. The proposal would introduce one residential pitch, which would include a static caravan, an amenity block in the form of a dayroom and provision for one touring caravan. A lawn, parking area and patio would also be constructed and the development as a whole would be served by a new gated access. Boundary fences would also be erected and the residential use of the site would introduce associated paraphernalia and activity including the parking of vehicles. In spatial terms it would introduce development into what was an open field and a consequent loss of openness.

10. The plot is set back from Hampstead Lane. The site of the nearby plot which has temporary consent is located closer to the road frontage. There is some limited landscaping beyond the wider boundaries. The fencing and the upper parts of the mobile home and building would be visible in the backdrop from Hampstead Lane or when viewed down the driveway. It is also likely that glimpses of vehicles would be visible from Hampstead Lane and some domestic activity would be noticed when the gates are open. I was not made aware of any other viewpoints from where the development would be readily seen.
11. I have taken into account the position regarding what development is in fact lawful and that the Council consider the site to be open countryside apart from the authorised development. Therefore, overall, the proposal would lead to that part of the Green Belt in which the appeal site is located being more built up. This would lead to a loss of openness. Given the open nature of the site, the harm caused in this regard would be considerable.
12. The purposes of the Green Belt are set out at paragraph 134 of the Framework and include to assist in safeguarding the countryside from encroachment (criterion c). The proposal would introduce built development to the countryside. In doing so, and impinging on openness as described, the proposal would not be consistent with site's role in safeguarding the countryside from encroachment. It would therefore have an adverse effect on one of the purposes of including land in the Green Belt.
13. Bringing matters together, I consider that the proposal would fail to preserve the openness of the Green Belt and would conflict with one of the purposes of including land within it. Thus, it would not meet the terms of criterion (e) of paragraph 146 of the Framework. I therefore conclude that the proposal would be inappropriate development for the purposes of national Green Belt policy as set out in the Framework. This harm attracts substantial weight as set out at paragraph 144 of the Framework. It would also be contrary to LP Policy SP17.

Character and appearance

14. LP policy DM15 refers to planning permission for gypsy, traveller and travelling showpeople accommodation. It sets out various criteria one of which seeks to ensure that the development would not result in significant harm to the landscape and rural character of the area. LP policy SP17 addresses development in the countryside seeking to ensure that there is not harm to the character and appearance of the area. In addition to this the Council referred me to LP policy DM30 and its Landscape Character Guidelines which set out further design principles.
15. The site is located within the 'Nettlestead Green Farmlands' as identified in the Maidstone Landscape Character Assessment 2012 and amended 2013. This area is characterised as flat and low lying with small field patterns and native hedgerows. It is suggested that long range views in the landscape are limited with hedgerows providing an intervening feature. I understand that the landscape sensitivity is described as 'low with visual sensitivity moderate'. Nevertheless, it is set out that new development should respect local vernacular.
16. In terms of the particular landscape effects of the development, the site lies to the south and west of the sites that are agreed to be lawful. It would be adjacent to existing development and it would contain a mobile home, day

room and associated ancillary works. The proposal has replaced part of an open field with fences, gates and an area of hard landscaping partly enclosed by urban style fencing. I agree with the Council that it is fair to assume that the intervening land between the appeal site and the authorised development is undeveloped in the absence of any permission. Thus, the proposal does not represent an organic extension of the existing pocket of development. The appellant suggested that landscaping could be provided to mitigate the effects of the scheme. However, given the constraints of the site area there would be very limited scope to introduce planting to soften the impact. Therefore, it would result in an urbanising effect within the landscape.

17. It was submitted that, due to the low-lying nature of the landscape, the development would not be visible from roads and footpaths surrounding the site. Any views would be mainly those obtained by passing motorists. Some cyclists, horse riders and pedestrians may use Hampstead Lane. There are examples of scattered development nearby and a number of properties along Hampstead Lane. Nonetheless the site adjoins the road to the north with open fields to the north east and open fields are located to the south and west. As such there would be some localised adverse landscape effects.
18. The Council contends that, subject to the injunction, the immediate area surrounding the majority of the site would be an open field. Without the appeal scheme in place the site would have an open and undeveloped character and would be part of the wider surrounding countryside. In this context, and taking into account my findings above, I consider that the proposal as a whole would be appreciated as an unwelcome pocket of urbanising development in the countryside that would fail to protect the rural character of its surroundings. Even taking into account the location of Three Acres to the east and the sporadic dwellings further east, I do not consider that the proposal could be readily assimilated into its surroundings without any adverse effect.
19. I therefore conclude on this main issue that the proposal would be harmful to the character and appearance of the surrounding area. This would be contrary to LP policies DM15, DM30 and SP17. It would also be at odds with paragraph 127 of the Framework which requires development to be sympathetic to local character including landscape setting and paragraph 170 of the Framework which requires planning decisions to contribute to and enhance the natural and local environment.

Flood Risk

20. The site plan shows that the proposed mobile home and day room would be in Flood Zone 3. The proposed development for use of the site for the stationing of a mobile home for residential use is classed as a 'Highly Vulnerable' use⁴. As such the Technical Guidance to the Framework requires the sequential and exception tests to be passed.
21. Paragraph 155 of the Framework states that inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk, but where development is necessary, making it safe without increasing flood risk elsewhere, and Local Plans should apply a sequential, risk based approach to the location of development to avoid where

⁴ Table 2, STM Flood Risk Assessment, pages 19 & 20

- possible flood risk to people and property and manage any residual risk, taking account of the impacts of climate change, by applying the sequential test.
22. Paragraph 158 of the Framework further states that the aim of the sequential test is to steer new development to areas with the lowest probability of flooding. Development should not be allocated or permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower probability of flooding, and a sequential approach should be used in areas known to be at risk from any form of flooding. The Council has also referred to LP policy DM15 which seeks to discourage gypsy and traveller development in areas at risk of flooding.
23. The appellant has provided a site-specific Flood Risk Assessment (FRA). Within the FRA it is submitted that there may be a requirement to apply the sequential or exception test but the assessment does not take this further. The Planning Practice Guidance (PPG) is unambiguous in what can be excluded. It does not exclude a new dwelling in the form of a mobile home. The PPG is also clear that the sequential test should be applied to guide development to Flood Zone 1, then Zone 2, then Zone 3; only when there are no reasonably available sites in Flood Zone 1 should sites within Flood Zone 2 or 3 be considered. The aim being to keep development out of medium and high flood risk areas (Flood Zones 2 and 3).
24. In this case the Council suggest that consideration of other sites outside of Flood Zones 2 and 3 should be borough wide. The PPG is also clear that the area to apply the sequential test will be defined by local circumstances for the type of development proposed. The appellant considers that there is a lack of other pitches, no houses available and that when he arrived in 2011 that the site was designated at Flood Zone 2. Nonetheless, in this case it is realistic that sites within the immediate area could be considered as a reasonable alternative for the provision of a plot for the mobile home and there is not information on this matter in the FRA.
25. Whilst the Environment Agency's (EA) written response does not object on this point, the comments go on to note that it is for the Local Planning Authority to make the sequential test assessment, this is reinforced in the PPG⁵. Furthermore, at the Hearing it was confirmed that the scheme did not pass the sequential test. In this case, I agree with this view and I do not consider that the scheme passes the sequential test.
26. If the sequential test were passed, then paragraph 160 of the Framework sets out the requirements for the exception test to be passed. Both elements have to be passed for a development to be permitted. In this case the scheme is for a single mobile home and would not provide wider sustainability benefits that would outweigh flood risk. The site-specific FRA seeks to demonstrate that the development would be safe for its lifetime taking account of the vulnerability of its users and without increasing flood risk elsewhere. I understand that the FRA has been submitted and the EA consider that, if the sequential test were passed, it would be acceptable subject to conditions that secure minimum finished floor levels set above the predicted flood level. Further I note that the appellant has considered the provision of a flood evacuation plan. The flood evacuation plan seeks to demonstrate that there are routes out of the site that are mainly through Flood Zone 1. However, whilst I note the high proportion of

⁵ Paragraph: 034 Reference ID: 7-034-20140306

these routes are in Flood Zone 1, this does not alter the fact that parts of both routes shown would be through Flood Zone 3. Furthermore, these routes commence from the site access rather than within the site in Flood Zone 3. As such, even if I were to accept the routes in the plan, there would be a need to travel from the appeal site to the main site access through Flood Zone 3.

27. However, where the sequential test has not been satisfied there is no need to progress to the exception test which refers to these documents. The appellant refers to the previous appeal decision⁶ and that it indicates that the concerns raised by the EA could be overcome by conditions. Nonetheless, at that time of that decision the wider site was in Flood Zone 2 and it is now clearly in Flood Zone 3.
28. I therefore conclude that the proposed development would not be acceptable in terms of flood risk because it would locate residential accommodation within a high-risk flood risk area, where the sequential test indicates that there are safer locations available for residential use. Thus, the development would be in conflict with criterion iv of LP policy DM15 which sets out that gypsy and traveller accommodation should not be located in an area at risk from flooding (zones 3a and 3b) based on the latest information from the Environment Agency and it would not accord with the Framework.

Other considerations

29. According to paragraph 143 of the Framework inappropriate development is by definition harmful to the Green Belt. Paragraph 144 advises that very special circumstances to justify inappropriate development will not exist unless the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations. The appellant has put forward a number of other considerations in this case.

The need for and supply of gypsy sites

30. The PPTS aims to promote more private traveller site provision and to increase the number of traveller sites in appropriate locations with planning permission to address under provision and maintain an appropriate level of supply. It also requires local planning authorities to identify and update annually a supply of specific deliverable sites sufficient to provide 5 years' worth of sites against their locally set targets.
31. LP Policy SS1 identifies a need for 187 pitches over the period 2011-2031. This is based on the findings of the GTAA. The Council indicates that 210 permanent pitches have been granted since 1 October 2011. Overall the Council submits it has 7.7 years of deliverable pitches. The appellant does not dispute this. I accept that this exceeds the requirements set out in LP and means that the Council has maintained 5 years' worth of deliverable sites against its locally set target.
32. The appellant is concerned that all of the allocated sites are already occupied by gypsy and traveller family groups and that, in any event, all the pitches are taken. However, the assessment of need that informed the LP is not before me for consideration. That said, I am mindful that the requirement set out in the LP is not a cap and does not prevent other appropriate sites coming forward.

⁶ APP/U2235/C/15/3138039

This is recognised by the Council through the provision of LP policy DM15 which allows for 'windfall' sites to come forward and be considered on their merits.

33. The appellant considers that the enforcement notice for the wider site represents an indication of unmet need in the borough. Furthermore, it is submitted that the turnover rate of Council sites is about 1.2 per year. As such the likelihood of a pitch becoming available is extremely low and whilst private sites are being allocated it is not clear how a pitch could be secured. This point was not disputed by the Council at the Hearing. Fundamentally, even if a pitch were available elsewhere the appellant submits that the interdependency, he requires with his sister is an exceptional circumstance, I consider this further below.
34. I am also conscious that the GTAA is a number of years old, being dated January 2012. Policy SS1 of the LP contains the same targets for gypsy and traveller sites as the GTAA. As a result of the ongoing Examination of the Emerging Local Plan the GTAA is being updated and a new study has been commissioned. This is yet to be published and is not before me. Any updated GTAA (and any consequent modifications to Policy) are in any event matters for the Examination of the Emerging Local Plan. However, as things stand, the evidence base is somewhat out of date and it is not possible to accurately estimate current levels of need.
35. The Council accepts that there are some unauthorised encampments in the borough, and although the Council has provided no information on the availability of pitches on public sites, the appellant refers to these being overcrowded and full, with no waiting lists in operation. These factors, along with the appellant's failure to find an alternative site, add to this argument. Accordingly, although the targets in the Local Plan have been met, that updated evidence may find a greater level of need for gypsy and traveller sites in the borough cannot be ruled out.

Alternative sites

36. The appellant has been looking for a suitable site nearby but has not found any. He sets out that in his experience, nearby public sites are full and overcrowded, and pitches on private sites are not for sale and are kept for family members. Whilst the Council refers to some brownfield sites in the borough that are available for purchase, it recognises that these do not have planning permission to be used as gypsy sites (and may have permission for other uses including residential development) and accepts that their cost can be prohibitive. Based on the evidence before me, no known suitable alternative sites are available for the appellant and his family.
37. Within the wider site area, the appellant tried to acquire the plot closest to his sisters. This was not possible and the appeal site was purchased as the next best option. The appellant does not own any other land.

Personal circumstances and accommodation needs

38. The appellant stated that he and his daughter previously lived in a shed structure. He bought the plot in 2016 and shortly after this his wife passed away and he became the primary carer for his daughter. He did live with his mother in law for a period of time but this did not provide a stable environment for his daughter. The appellant's daughter attends school locally. I understand

that she is doing well and has established friendships. The school is also providing ongoing bereavement support (with links to wider support services) and this is supported by a letter from the Headteacher⁷. In addition to allow the appellant to sustain his business he relies upon the close link and support from his sister who already lives on the wider site. In particular, the wrap around care she can provide and the family environment for the appellant's daughter being cared for with her cousins. It is the appellant's intention to maintain this arrangement when his daughter moves on to secondary education.

39. The appeal site would provide a settled base from which the appellant and his daughter could continue to access education and family support more readily. This would be advantageous to the well-being of the family and it would also be in the best interests of the child. These matters count in favour of the proposal and accord with the aims of the PPTS to enable the provision of suitable accommodation from which travellers can access education, health, welfare and employment infrastructure. Additionally, the proposal would allow the appellant to continue to run his business to support himself and his daughter now and in the future.
40. The benefits of a settled base are well-documented in terms of education and access to health care. There would also be advantages for the general wellbeing of the family in being settled and having continual access to basic amenities and a secure living environment. In particular a settled base would be in the best interests of the child and her education, health, safety and welfare.

Whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations, so as to amount to the very special circumstances necessary to justify the development

41. The proposal would be inappropriate development in the Green Belt and as such would cause substantial harm. It would also cause considerable harm to the openness and harm to one of the purposes of the Green Belt. These factors attract substantial weight against the scheme. Additionally, the proposal would cause harm to the character and appearance of the area and would introduce residential development to an area at high risk of flooding and would be in conflict with the development plan in these regards.
42. There is no unmet need in relation to the LP target for Gypsy and Traveller sites. In addition, the scale of any practical unmet need is unknown at present as the GTAA requires updating. However, the currently unknown nature of the likely future need for sites limits the weight I attach to this benefit.
43. The personal circumstances of the family carry weight in favour of the scheme. As set out above, the appellant's personal circumstances and the provision of a settled base for the family to maintain access to education, provide stability and proximity to family members are all benefits of the proposal which add a good deal of weight in its favour. The proposal is for one pitch and the appellant clarified that it would all be occupied by himself and his daughter. These personal circumstances carry significant weight in favour of the scheme.

⁷ HD2

44. I confirm that I have considered the possibility of granting a temporary planning permission (since a permission with a limited period would to some extent lessen the scheme's impact on the Green Belt and the character and appearance of the area and reduce the amount of resultant harm). However, the PPG indicates that circumstances where a temporary permission may be appropriate include where a trial run is necessary in order to assess the effect of the development on the area or where it is expected that the planning circumstances will change in a particular way at the end of that period. It has not been put to me that such circumstances apply in this instance. The Council does not consider a time limited permission to be appropriate due to the levels of harm that would arise even on a temporary basis and given the scale and extent of the development proposed. In this case the effects of the scheme are known and given my findings on harm on the main issues I concur with the Council's position that a temporary permission would not be justified. Therefore, no justification exists for a trial run.
45. Since it was raised at the Hearing, I have also considered whether a personal permission (to restrict the occupation of the site to the appellant and his immediate family) would be appropriate. As set out in the PPG, planning permission usually runs with the land and it is rarely appropriate to provide otherwise. There may be exceptional occasions where development that would not normally be permitted may be justified on planning grounds because of who would benefit from the scheme. In this case, there is a strong and clear link between the appellant and his sister and the need for support in caring for his daughter. However, I do not regard this to be an exceptional occasion and even if I were to grant the permission on a personal basis this does not alter or outweigh the known harm to Green Belt and the character and appearance of the area and flood risk in this case.
46. I have had regard to the requirements of Article 8 of the First Protocol to the Convention, as incorporated by the Human Rights Act 1998, and am aware that the Article 8 rights of a child should be viewed in the context of Article 3(1) of the United Convention on the Rights of the Child. However, I am mindful that the appellant's individual rights for respect for private and family life (along with the best interests of the child) must be weighed against other factors including the wider public interest and legitimate interests of other individuals.
47. I have also considered the Public Sector Equality Duty (PSED) at section 139 of the Equality Act 2010 to which I am subject. Because there is the potential for my decision to affect persons (the appellant and his daughter) with a protected characteristic(s) I have had due regard to the three equality principles set out in Section 149 (1) of the Act. 48. To dismiss the appeal would disrupt the education of the child and the healthcare of the child and the appellant. The negative impacts of dismissing the appeal arise since the family may be forced into a roadside existence and intermittent use of unauthorised sites. This would interfere with the best interests of the child and each member of the family's right for respect for private and family life and lends some additional weight in favour of the appeal. However, I have found that the proposal would cause substantial harm to the Green Belt and further harm to the character and appearance of the surrounding area and there would also be conflict with national policy which seeks to steer development away from areas at the highest risk of flooding.

48. Dismissal of the appeal could result in the Council pursuing enforcement action such that the family could not live on the site. If they have nowhere else to stay this would lead to a return to a roadside existence. I have carefully considered whether such a result would be proportionate in the circumstances have regard to Human Rights provisions, including the right to a home and family life and the positive obligation to facilitate a gypsy way of life. I have also had particular regard to the best interests of the child as a primary consideration. However, the environmental harm and safety concerns which would continue to be caused by the development would be considerable. Taking into account all material considerations I am satisfied that these legitimate objectives can only be adequately safeguarded by dismissal of the appeal.
49. Policy E of the PPTS advises 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. Therefore overall, the other considerations in this case and the benefits of the proposal, even taking into account the family's Article 8 rights and the PSED considerations, do not clearly outweigh the totality of the harm identified. As such, the very special circumstances necessary to justify the development do not exist.

Conclusion

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

D J Board

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Simon McKay	SJM Planning
Bill Webb	Appellant
Nancy Webb	

FOR THE LOCAL PLANNING AUTHORITY:

Graham Parkinson	Maidstone Borough Council
Claire Cutts	Maidstone Borough Council
Jon Byne	Environment Agency
Karen Rigg	Environment Agency

DOCUMENTS SUBMITTED AT THE HEARING

HD1	Flood Evacuation Plan - Appellant
HD2	Headteacher's Letter – Appellant
HD3	Aerial Photographs and Site History – Council
HD4	Signed Statement of Common Ground – Both