



Appeal Decision

Site visit made on 22 June 2021

by Darren Hendley BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 06 July 2021

Appeal Ref: APP/U2235/W/19/3225715

Plot 4, 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 Dean Marney against the decision of Maidstone Borough Council.
 - The application Ref: 18/504139/FULL, dated 6 August 2018, was refused by notice dated 10 December 2018.
 - The proposed development is described as the stationing of 1 no mobile and 1 no touring caravan for use by Gypsy & Traveller family with associated hardstanding, dayroom and parking.
-

Decision

1. The appeal is dismissed.

Application for Costs

2. An application for costs was made by Maidstone Borough Council against the appellant. This application is the subject of a separate Decision.

Procedural Matters

3. The planning appeal was originally due to follow the hearing procedure. A hearing was scheduled for 25 March 2020 but this was postponed due to the Covid-19 pandemic. The hearing was then rescheduled for 9 June 2021. Subsequent to the fixing of the rescheduled date, matters were raised in relation to whether the appellant still had an interest in the site. The appellant did not however withdraw the appeal. In light of these circumstances, I sought the views of the main parties over the appeal procedure and decided that the appeal should proceed under the written representations procedure.
4. With the change in the appeal procedure, the main parties were given the opportunity to update their evidence and I also requested responses on a number of questions that I posed. The Council also submitted draft versions of the Statement of Common Ground. I have considered all of this evidence in my decision, along with the submissions prior to when the appeal procedure was changed.
5. Whilst it is apparent that some development has taken place on the site and over a prolonged period, the development is still essentially a proposal in the sense that it has not been completed. What is for my consideration is the development that is shown on the submitted plans, as is also set out in the

description of development in the banner heading above. Accordingly, I have considered the appeal on this basis.

Main Issues

6. The main issues are a) whether the appellant has gypsy status, b) whether the proposal would constitute inappropriate development in the Green Belt for the purposes of the National Planning Policy Framework (Framework) and the development plan policy, c) the effect on the openness of the Green Belt, d) the effect on the character and appearance of the area, e) the effect on flood risk, and f) 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

7. The appeal site comprises a small area of land that is set back from Hampstead Lane. The site boundary also includes an existing access track that leads on to this road. The site is found within the Metropolitan Green Belt.
8. This access track also serves a number of caravans and structures on other plots, associated with gypsy and traveller use. The appeal site, amongst other plots, has been the subject of a dismissed appeal¹ against an enforcement notice related to gypsy and traveller development, and the subject of an injunction² against further such development. The enforcement appeal also allowed one plot close to the road frontage on a temporary basis.
9. There are further gypsy and traveller sites to the east, some of which are lawful and some of which are not, according to the submissions. The broader surroundings are countryside in nature, with occasional development. A mobile homes park is found near to the site, between Hampstead Lane and Station Road. The village of Yalding lies around 2 kilometres from the site, although its train station is located considerably closer. Otherwise, land in the vicinity of the site is principally in agricultural use.

Gypsy Status

10. Whether the appellant has gypsy status is in dispute, with regard to the Government's Planning Policy for Traveller Sites (2015) (PPTS). For the purposes of the PPTS gypsies and travellers means "*persons of nomadic habit of life whatever their race or origin, including such persons who on grounds only of their own or their family's or dependants' educational or health needs or old age have ceased to travel temporarily, but excluding members of an organised group of travelling showpeople or circus people travelling together as such.*"
11. The family comprise the appellant, his partner, a daughter and 2 sons. The appellant has stated that he comes from a genuine gypsy and traveller heritage. He travels for economic purposes in the south and the south east. This involves work as a tree surgeon and with other members of the larger family network. The appellant's partner is the primary carer for the children, who are in attendance at a local school. The daughter is employed locally. The

¹ Appeal ref: APP/U2335/C/15/3138039

² Claim No: HQ17X02472

family also attend traditional events, such as at Appleby, Kenilworth and the Selby Horse Fair.

12. Based on the evidence before me, the appellant and his family are of a nomadic lifestyle. There is not substantive evidence to the contrary. The cessation of travelling would be so that educational and caring needs could be met and there is no reason to believe that the nomadic lifestyle would not resume in the future, especially given the employment of the appellant and the attendance at horse fairs. The appellant and his family meet the definition of gypsies and travellers, as is set out in the PPTS.
13. Nor is it the purpose of the definition, in my view, to differentiate between different members of the same gypsy and traveller family unit that reside together. To do so would be unreasonable in terms of the effect on family life and would not be a situation that members of the settled community would have to face.
14. Therefore, the PPTS applies, as does the Framework and the relevant development plan policies. These include, amongst others, Policy DM15 of the Council's Maidstone Borough Local Plan (2017) (Local Plan) which is the main development plan policy against which gypsy and traveller development is considered for development management purposes. Part 1 of the policy sets out the criteria against which gypsy and traveller accommodation that is not allocated for that use will be assessed, as is relevant to this site.

Inappropriate Development

15. Policy SP17 of the Local Plan states that in the Metropolitan Green Belt development will be managed in accordance with national policy for the Green Belt. Paragraph 143 of the Framework states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. This is re-iterated by Policy E of the PPTS. Policy E goes on to state that traveller sites (temporary or permanent) in the Green Belt are inappropriate development.
16. Hence, none of the provisions in the Framework which concern exceptions to inappropriate development in the Green Belt can apply. This is because of the type of development proposed as a gypsy and traveller site.
17. Accordingly, when judged against the Framework and Policy SP17, the proposal would be inappropriate development in the Green Belt.

Openness

18. Openness is an essential characteristic of the Green Belt. The proposal would alter the area of land on which it would be sited considerably so that it would contain the built form of the day room, as well as 1 mobile and 1 touring caravan. There would also be a parking area that would accommodate up to 2 cars and the residential use would likely introduce related domestic paraphernalia. Whilst I have limited definitive evidence on the nature of the site in its former state, in all likelihood, the proposal would give the site a greater developed presence. It would have a notably more pronounced spatial impact due to its greater size and form.
19. In terms of the visual aspect of openness, the potential screening afforded by structures on other plots on the larger site only has a limited bearing because

these are by and large unauthorised, based on the evidence that the Council has provided. On this basis, there would be visibility of the structures from vantage points on neighbouring land and more distantly from Hampstead Lane, albeit with some screening afforded by the lawful plot and the roadside vegetation. That the land in the vicinity of the site is itself largely open would further contribute to the appreciable loss of openness by way of the site becoming more built up through the scale of development.

20. In taking these factors together, the proposal would result in a significant adverse impact on the openness of the Green Belt. It would not therefore preserve the openness of the Green Belt.

Character and Appearance

21. The site falls within the Nettlestead Green Farmlands under the Council's Landscape Character Assessment (as amended, 2013) (LCA). The immediate surroundings to the site ably demonstrate a number of the main landscape characteristics of this area under the LCA, including a reasonably flat and low lying landscape, native hedgerows and a small field pattern. As the LCA acknowledges, it is an incoherent landscape. Traditional houses and farmsteads are present in the LCA, but recent development is more apparent.
22. The Council's Landscape Capacity Study: Sensitivity Assessment (2015) (LCS) identifies that this landscape is in poor condition overall. The landscape sensitivity is deemed to be low. The guidelines and mitigation state that new development should respect the local character and improve the strength of character through promoting the use of local materials and style of development. Both the LCA and LCS identify that caravans do not respect the local vernacular.
23. As the proposal would include the provision of 2 caravans, it would further detract from the landscape character. The same applies to the proposed dayroom as it would not be evident how this relates to the local vernacular. It would be abruptly more modern and functional in its appearance. Whilst the landscape character is influenced by more recent development along Hampstead Lane, this would not in itself justify the proposal in landscape character terms. The LCA and the LCS seek for the landscape to be improved and for it to be restored. Thus, the landscape would not satisfactorily absorb the harmful change that would result from the proposal.
24. The lawful plot nearest Hampstead Lane would provide a degree of screening of the adverse visual impact because of the various structures that are on it, albeit this would only be for the temporary duration of the related permission. In the same context, and whilst the proposal in conjunction with the lawful plot would not reasonably amount to an area devoted to gypsy and traveller development, there would be harmful combined effects on landscape character. The screening afforded by the rest of the development on the overall site is effectively discounted because of its planning status.
25. There would also be views from adjoining land and glimpses from Hampstead Lane, despite that longer views of the proposal would be limited by enclosure. As the proposal would not be in accordance with the positive aspects of the local character, it would also detract from it in visual terms. The effect on the character and setting of the countryside would be much diminished.

26. In taking these considerations together, I conclude that the proposal would have an unacceptable effect on the character and appearance of the area. As such, it would not comply with Policies SP17, DM15 and DM30 of the Local Plan where they concern development in the countryside not harming the character and appearance of the area, not resulting in significant harm to the landscape and rural character of the area; and high quality design in the countryside, amongst other considerations.

Flood Risk

27. The site lies within a zone 3 flood risk area, and so has a high probability of flooding under the Planning Practice Guidance: *Flood Risk and Coastal Change* (PPG)³, the technical guidance to the Framework on flood risk. The Environment Agency's (EA) appeal representation advises that whilst flooding on the site from a watercourse may not have been experienced, flooding through waterlogging or surface water ponding during prolonged or heavy rainfall may have occurred. Poor drainage is also considered to affect a section of Hampstead Lane to the north west of the site.
28. 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. The managing of such risk is to be achieved by the application of the sequential test which aims to steer new development to areas with the lowest risk of flooding. Only if there are no reasonably available sites available in zone 1, should sites in zone 2 be considered, and only after that zone 3, where the site is found.
29. The evidence that I have before me concerning the application of the sequential test is limited. It is of a more general nature related to a lack of sites that are available. It does not amount to a robust assessment of sites that would lead me to believe that it is not possible for the development to be located in zones with a lower risk of flooding.
30. As the sequential test has not been passed, it is not then necessary to apply the subsequent exception test. Even if it was to be applied, it would not favour the proposal because the PPG classifies caravans and mobile homes intended for permanent residential use as a highly vulnerable use that should not be permitted in flood zone 3⁴.
31. Information on how the impacts from flood risk would be addressed is also lacking. There is reference to a Flood Risk Assessment (FRA) from 2007. I have not been provided with a copy of this document, but it is evident from the representation of the EA that it now predates the most up to date modelling. On this basis, it is no longer applicable, despite that it was used to support the appeal for the nearby plot that is lawful. There is also not a more up to date FRA before me. Matters in relation to why the shortcomings in the FRA was not brought to the attention of the appellant during the course of the planning application are not for my consideration.
32. In relation to emergency vehicles and persons being able to gain access to the site, this does not lessen the probability of flooding occurring because this is determined by the site's flood zone classification. Public safety would be compromised through a lack of demonstrable safe access and escape routes.

³ Table 1: Flood Zones

⁴ Table 3: Flood Risk Vulnerability Classification

Thus, the proposal would have a significant potential to lead to a danger to life, damage to property and place an additional strain on emergency services in times of flood, as the EA has set out.

33. I conclude that the proposal would have an unacceptable effect on flood risk. Therefore, it would not comply with Policy DM15 where it considers that such development is not to be located in an area at risk from flooding (zones 3a and 3b) based on the latest information from the EA unless, alternatively, a specific Flood Risk Assessment has been agreed by the EA.
34. It would also not accord with the Framework where it concerns planning and flood risk, nor with the PPG in relation to the advice it provides on how to take account of and address the risks associated with flooding.

Other considerations

Need for and provision of sites

35. The PPTS 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. Policy SS1 of the Local Plan sets out an objectively assessed need for gypsy and traveller development at 187 pitches over the period October 2011 to March 2031. This is based on the Council's Gypsy and Traveller and Travelling Showpeople Accommodation Assessment: Maidstone Final Report (GTAA) (2012), with the pitch figure rolled forward a further 5 years to 2031.
36. The Council's position is that it can demonstrate a 6.2 year's supply of deliverable sites, based on the need that is expressed in Policy SS1. On the face of it, this is well in excess of the 5 year requirement.
37. The GTAA is however dated in respect of the need which it identifies and the evidence which Policy SS1 relies on also has to be considered within this context. With regard to whether acknowledging additional need would represent a departure from the development plan that would lead to proposals being dealt with on an ad-hoc basis, Policy DM15 in any event allows for this eventuality by the criteria based approach that it applies to unallocated sites. Relying solely on the GTAA need figure, and rolling it forward to 2031, would risk gypsies and travellers not having access to accommodation to meet their housing needs.
38. The Council is currently preparing a new GTAA and its Local Plan review is also intending to produce a Gypsy, Traveller and Travelling People Development Plan Document. As a more up-to-date need figure is not before me, such matters have a limited bearing on my decision. Nevertheless, it shows some recognition that the need position may have moved on since the existing GTAA which Policy SS1 is reliant upon. The same applies as regards the appeal decisions that I have been referred to on this matter because they are also now dated.
39. I would accept that the current situation does not amount to a policy failure with the number of pitches that have been granted permission. Permanent consents without the restriction of a personal condition alone amount to 214 pitches since 2011. However, it remains open to question over whether there is a need for additional gypsy and traveller pitches that has not been identified by the GTAA.

Alternative Sites

40. The appellant is not required to prove that no other sites are available, from a gypsy and traveller need perspective. However, whether there are alternative sites is useful in understanding local provision in practical terms, including how the appellant has fared in conducting a search for such a site.
41. The appellant's statement of case sets out that in speaking with the Council there was not accommodation that could be provided within a 40 mile radius and that the Council owned sites are at full capacity. Allocated sites are also said to be occupied by existing gypsy and traveller families. Whilst the Council can point to the supply position, the experience of the appellant does not suggest that sites are readily available. Reliance on turnover at Council run sites does not equate to a ready alternative site. The sites with personal permissions would also not be available for the appellant and his family.
42. I do not have substantive evidence to the contrary over the difficulties that the appellant has had finding an alternative site, albeit that the appellant's evidence is also now somewhat dated and there is the issue of whether the appellant still retains an interest in the site. However, there are no obvious alternatives sites which the appellant could occupy that would meet the needs of the family that have been put to me.

Personal Circumstances

43. I have described the details of the appellant and his family earlier in my decision. The appellant has stated that a family member suffers from a medical condition. The appellant's partner is the primary carer for that member of the family. Medical assistance is of importance and the family are registered at a local medical practice. The children are also settled at a local school. Local sports clubs are attended, including for the purposes of playing football for a local team. It is said that the upheaval of locating elsewhere would cause a significant detrimental effect.
44. The appellant has also stated that they had to leave the site they previously occupied due to a dispute. It is said that they have nowhere else to go and there is not the finance to purchase another site. Bricks and mortar accommodation would take away their nomadic lifestyle, whereas the proposal would provide a base that would also allow the family to come and go with the touring caravan. It would also allow the appellant to carry on running his business to support himself and the family.
45. The evidence that I have over the personal circumstances of the appellant and the family is also dated. An updated position was not forthcoming when the opportunity was given to update the evidence. Given the nature of the issues that the appellant has raised, it would seem to me to be likely that some of these issues would have moved on from the evidence that is before me. Nevertheless, I am not unsympathetic to those needs and having such a base would clearly be advantageous to the appellant and the family, as well as serving the best interests of the children.

Other Matters

46. The proposal would be in a location that would be accessible to local services, in particular in nearby Yalding. The Highway Authority raised no objection during the planning application on highway safety grounds and I see no reason

to disagree given that the proposal would make use of the existing access arrangements and with the likely low traffic levels that would be generated. The appellant has also drawn my attention to a lack of local resident objections and the proposal would have a minimal impact on the settled community due to its location. These matters attract neutral weight.

47. As well as the enforcement appeal, I have also been referred to a more recent appeal decision⁵ on a neighbouring plot within the broader site. I have, though, considered the appeal before me on its own merits in light of the particular circumstances that have been put forward.
48. The Council has also referred to the Written Ministerial Statement, Green Belt Protection and Intentional Unauthorised Development (2015) (WMS). As the appellant's justification centres on carrying out works that are deemed necessary to create a habitable environment, I am not persuaded that it falls particular foul of what the WMS is concerned with. Planning powers also exist separate to this appeal in relation to enforcement, a path which the Council has already embarked upon.
49. I have also been referred to Policy DM1 of the Local Plan, although it does not add substantively to my deliberations on the issues that are contained within the reasons for refusal.

Balancing Exercise and Conclusion

50. The proposal would constitute inappropriate development in the Green Belt. It would also not preserve the openness of the Green Belt. Paragraph 144 of the Framework states that substantial weight is to be given to any harm to the Green Belt. 'Very special circumstances' will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations. Harm would also arise by way of the effect on the character and appearance of the area, and on flood risk grounds. There would be conflict with the policies of the development plan, the Framework and the PPG in these respects.
51. The appellant acknowledges that a permanent permission may still not be justified and has referred to a 5 year temporary permission during which alternative arrangements would be made. Whilst this would time restrict the harm, I am mindful that the Government attaches great importance to Green Belts under the Framework and of the substantial weight that must be given to the harm that would arise over this period. In addition, the potential consequences of flooding would also be a clear risk over a five year period, with the site lying in flood zone 3. There is not sufficient justification for a temporary permission.
52. Against the harm that I have identified, it is necessary to balance the other considerations. In this case, these centre on the personal circumstances of the appellant and the related need for a settled base. It is tempered somewhat by a lack of up to date information, but nevertheless it carries significant weight. The dated nature of the GTAA and the lack of alternative sites also supports the appellant's case.
53. In exercising my function on behalf of a public authority, I am also consciously aware of my duties under the Public Sector Equality Duty (PSED) contained

⁵ Appeal ref: APP/U2235/W/19/3224066

within the Equality Act 2010 which sets out to eliminate discrimination, harassment and victimisation, advance equality and foster good relations, and the protected characteristics under the PSED, including for gypsy and traveller groups. I am also aware of my duties under Article 8 of the Human Rights Act 1998 (Article 8) that bestows the right to private and family life and for the home, and that the Article 8 rights of a child should be viewed in the context of Article 3(1) of the United Nations Convention on the Rights of the Child.

54. The protection of the Green Belt is a matter of legitimate wider public interest. The same applies as regards character and appearance, and flood risk issues. This is reflected in both development plan and national planning policy. In addition, the needs of the appellant and the family could also be jeopardised by the potential level of flood risk in Flood Zone 3 with the associated consequences from flooding on family life. On the other hand, I am also mindful of the potential consequences in respect of where the family may end up having to live, if not on the appeal site. This includes potential unauthorised encampments and on the roadside, and the effects on the medical care and education of the children.
55. Taking into account all of the considerations, I am satisfied that the objectives in relation to the Green Belt, character and appearance and flood risk can only be adequately safeguarded if the proposal does not proceed. The identified harm would not be overcome through the imposition of planning conditions. I find that not granting planning permission would be a proportionate response that would not violate the appellant's human rights. In reaching this view, I have had due regard to my duty under the PSED, as well as under Article 8.
56. In taking these considerations together, the other considerations in this case do not clearly outweigh the harm that I have identified. Consequently, the very special circumstances necessary to justify the development do not exist.
57. The proposal conflicts with the development plan as a whole and there are no material considerations to outweigh this conflict. Accordingly, I conclude that the appeal should be dismissed.

Darren Hendley

INSPECTOR