



Appeal Decision

Hearing held on 5 October 2022

Site visit made on 5 October 2022

by G Pannell BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 December 2022

Appeal Ref: APP/E2205/W/20/3250418

Cob Tree Meadows, Brook Street, Woodchurch, ASHFORD, TN26 3SZ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73A of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 for use of land for the stationing of 1 no static caravan and 1 no. touring caravan, the erection of a day room and shed for one gypsy/traveller family for which a previous planning permission was granted for a limited period.
 - The appeal is made by Mr M Connor against the decision of Ashford Borough Council.
 - The application Ref 19/01514/AS is dated 30 January 2017¹, was refused by notice dated 13 February 2020.
 - The application sought planning permission for use of land for the stationing of 1 no static caravan and 1 no. touring caravan, the erection of a day room and shed for one gypsy/traveller family, granted planning permission for a limited period under Ref 17/00132/AS, dated 28 March 2017.
 - That permission is subject to a condition requiring the cessation of the use and removal of the buildings or works on or before 28 March 2020.
 - The relevant condition is no 2 which states:
 - 2) The use hereby permitted shall be for a limited period being the period of 3 years from the date of this decision. At the end of this period, the use hereby permitted shall cease, all materials and equipment brought on to the land in connection with the use shall be removed, and the land restored in accordance with a scheme previously submitted to and approved in writing by the Local Planning Authority.
 - The reason given for the condition is: The site is not considered to be suitable for a permanent occupation.
-

Decision

1. The appeal is allowed and planning permission is granted for use of land for the stationing of 1 no static caravan and 1 no. touring caravan, the erection of a day room and shed for one gypsy/traveller family at Cob Tree Meadows, Brook Street, Woodchurch, Ashford, TN26 3SZ effective from 27 March 2020 in accordance with application Ref 19/01514/AS dated 24 October 2019 subject to the conditions set out in the attached schedule.

¹ The submitted application form is dated 30 January 2017 as set out in the banner heading above, however the parties agreed that the application was submitted and registered on 24 October 2019.

Preliminary Matters

Background and Planning History

2. The planning history relating to the current use of the land dates back to 2011 with a planning application for change of use of land for the stationing of 1 no static caravan and 1 no touring caravan, the erection of a day room and shed for one gypsy family (retrospective). That application was refused by the Council and a subsequent appeal ref: APP/E2205/A/12/2177300 (2012 appeal) was allowed subject to eight conditions. Condition 1 restricted the use to specific individuals and for a limited period of no more than 3 years from the date of the decision.
3. An application was submitted to the Council in 2015, reference 15/00769/AS, seeking to vary condition 1 to make the temporary and personal permission general and permanent. The planning application was approved but for a further temporary period of 3 years from 23 May 2016. It removed reference to occupation by any particular individual.
4. In 2017 a further planning application, 17/00132/AS was submitted to the Council to make the temporary permission permanent. The Council approved planning permission on 28 March 2017 but for a temporary period of three years, expiring on 27 March 2020.
5. Section 73A(2)(b) of the 1990 Act allows for planning permission to be granted for development carried out before the date of the application in accordance with planning permission granted for a limited period. Section 73A (3)(b) of the 1990 Act allows for such permission to be back dated to have effect from the end of the limited period granted by the previous permission. Thus, I have dealt with the appeal under Section 73A of the 1990 Act. If the appeal is allowed a new permission would be granted with any relevant conditions, attached to the previous permission, being imposed.
6. The Council's decision notice gives the description of development as "Variation of condition 2 on planning permission 17/00132/AS (Variation of condition 1 to remove personal reference to Ms S Bristow and Mr C Turner and replace with gypsy/traveller family and removal of reference of temporary to allow for permanent occupation on Planning Permission Reference 11/01048/AS (as varied under 15/00769/AS)) to allow for permanent occupation."
7. This description is somewhat unclear and has led to some misunderstanding from third parties as to whether the appeal would also be considering the removal of a personal permission. However, the site is no longer subject to a personal permission as this matter has already been dealt with by the Council through earlier planning permissions.
8. The effect of granting planning permission under 15/00769 and 17/00132 was to create a second and third permission for the original development and therefore the description of development needed to reflect that. In the interests of both clarity and certainty, I have reverted to the original description of development given planning permission under 11/01048/AS and used this in my formal decision. I have sought and obtained agreement from the parties to this change.

Legal Judgement

9. After the hearing was closed, the Court of Appeal issued the *Smith v SSLUHC & Ors* [2022] EWCA judgement on 31 October 2022 (Smith) regarding the interpretation of the Planning Policy for Traveller Sites (PPTS) and the application of that policy to gypsies and travellers who have ceased to pursue nomadic lifestyles. The parties have had the opportunity to comment on the implications of this. The Council have not provided any further comments on this matter, but the appellant considers the PPTS should continue to be applied as so far as it relates to evidence of local need.

Main Issue

10. The main issue in the consideration of this appeal is the effect of the development on the character and appearance of the area.

Reasons

11. The appeal site is located within the countryside and aside from woodlands and the hedgerows lining the fields, the wider landscape is relatively open, with the land rising up on both sides of the road in the distance.
12. The appeal site is located within the Woodchurch Undulating Farmlands within the Low Weald Landscape Character Area (LCA) according to the Council's Landscape Character Supplementary Planning Document (SPD). This is of moderate sensitivity and the guidelines are to conserve and reinforce the landscape. The landscape description sets out that there is a strong sense of enclosure provided by the network of hedgerows and the appeal site exhibits these characteristics.
13. The character is very much that of a rural setting, where Policy C of the Planning Policy for Traveller Sites (PPTS) indicates that some sites may be located, whilst ensuring that they do not dominate the nearest settled community. However, Policy H expects that within the open countryside new traveller sites should be very strictly limited.
14. The previous use of the site as a paddock did not include the buildings and paraphernalia that would be retained if the appeal were allowed, albeit that the parties agreed that the site was last undeveloped in 2005. However, the appeal site is well screened from the road, with glimpsed views possible through the winter foliage.
15. The Council have previously considered that the harm arising was acceptable for a temporary period, but that it would be inappropriate to accept long term harm from a permanent pitch. However, this site has been occupied in its current form for a decade and this is a length of time that cannot be considered short term.
16. The site has, given the period of time that it has been occupied as a Gypsy and Traveller pitch, assimilated into the wider landscape and is not unduly prominent within it. This is confirmed by the two previous Inspectors findings on this site. The landscaping that has been put in place has matured and now forms part of the rural character of the area.

17. The layout of the site has been carefully considered with the static mobile home being located centrally within the site, such that views from the access would be minimised, to ensure that any visual impact is limited and localised.
18. The proposal also includes provision for additional landscaping, to be secured by condition, which would enhance the boundary planting including landscaping along the boundary between the appeal site and the adjacent paddock.
19. In the 2012 appeal, the Inspector concluded that the impact on the character and appearance of the area would be limited and localised, which would fail to accord with relevant policy at the time, which protected the countryside from adverse impacts of growth. This policy has subsequently been superseded by the adoption in 2019 of the Ashford Local Plan 2030 (the LP)
20. Policy HOU16 of the LP sets out that planning permission for new sites for Gypsy and Traveller accommodation will be permitted if sites are of an appropriate scale to their surroundings and would not cause significant visual harm to an area and its landscape. The parties agree that the visual harm resulting from the development would not be significant and that it remains limited and localised.
21. My findings on harm are therefore consistent with the 2012 appeal and there would, as a result of the continued use of land for the siting of a mobile home and static caravan, be some limited and localised visual harm which would fail to conserve and enhance the Boroughs natural environment.
22. In conclusion, the impact on the character and appearance of the area would be in conflict with policy SP1 and SP6 of the LP, which together seek to ensure that development demonstrates a careful consideration of the character of the area, and that development conserves and enhances the Boroughs natural environment.
23. However, the proposal would accord with policy HOU16 and ENV3a of the LP as it would not result in significant visual harm to the area and would recognise the landscape characteristics of the area.

Other Considerations

The general need and supply of pitches

24. The PPTS requires local authorities to set pitch targets and to identify and update annually a supply of specific deliverable sites sufficient to provide five years' worth of sites against this target. In 2017 the Council undertook a Gypsy Traveller Accommodation Assessment (GTAA) which identified a cultural need for 194 pitches and subtracting the supply of 140 pitches generated a 5-year pitch need of 54. Once this took into account those considered to meet the PPTS definition this is calculated as a 5-year need for 37 pitches.
25. The Council has a criteria-based policy, HOU16 of the LP aimed at guiding Gypsy and Traveller sites to appropriate locations. The evidence presented at the hearing indicates that this has enabled the provision of 22 permanent pitches. However, not all of these permissions resulted in the provision of new sites and therefore could not all count towards meeting the identified need. On this basis, the Council accepted at the hearing that the current unmet need is 27 pitches.

26. In this context, the Council acknowledge that they are unable to identify a five year supply of pitches. The appellant has expressed a view that this figure may be greater having regard to findings of the Court of Appeal in Smith, however the implications of this remain to be clarified.
27. In 2019 the Council were in the process of preparing a Gypsy and Traveller Development Plan Document (DPD), which would aim to address the unmet need identified in the GTAA and expected that this document would be adopted in 2020. However, this has now been delayed with the timetable uncertain, due to the effects of nutrient neutrality which affects any development in the Stour catchment. This document was first anticipated in 2011, and it is therefore apparent that unmet need has posed a challenge for the Council for over a decade and there has been no resolution.
28. Representations have been made by third parties which suggest that the appellant's daughter should be accommodated at a Council owned site at Chilmington, as a suitable alternative and available site. The Council confirmed that this site comprises 16 pitches, of which 4 are available. However, the site currently has a waiting list comprising 6 households and it is agreed the site has previously offered only limited turnover. The appellant outlined that the site was not a suitable alternative for cultural reasons and the Council accepted that this could make it difficult for them to reside on the site. Therefore, I have discounted this site as a suitable alternative.
29. In these circumstances, I afford the absence of a five-year supply of sites significant weight as a matter in favour of the proposal.

Planning Balance

30. The Council is currently unable to meet the identified accommodation needs of gypsies and travellers and this position has existed for some time. Addressing this to a modest degree by permitting a single pitch is therefore a contribution to the undersupply and attracts weight accordingly. In addition, the proposal conforms to the specific development plan policy concerned with gypsies and travellers.
31. I have given moderate weight to the harm I have identified to the character and appearance of the area and had regard to the sites location within the open Countryside, where the PPTS seeks to very strictly control the development of traveller sites, but this does not outweigh the benefits that I have outlined above.
32. Whilst this outcome, in allowing a permanent permission, is not the same as in the 2012 appeal, I am satisfied that the policy backdrop has changed, in particular with the introduction of Policy HOU16 with which the development complies. Furthermore, despite the time that has lapsed since the original appeal, the intended policy document to address the need for sites has not been adopted. It is these factors which justify a different decision to that made in the 2012 appeal.
33. In light of the above the development is in accordance with the development plan as a whole. Of the material considerations, the limited harm to the character of the area is outweighed by the general need for gypsy and traveller sites, the lack of progress made in meeting them and the uncertainty about any future provision.

Other considerations

34. The appeal scheme would facilitate the establishment of a settled base for the appellant's daughter and her children who have previously pursued a nomadic lifestyle but have ceased to travel temporarily on grounds of their dependant's education and health needs. This would allow cultural traditions to be balanced with the practicalities of modern living thereby, advancing equality of opportunity.
35. In addition, living an uncertain roadside existence would not support the children's welfare and development. Instead, an enduring settled base would enable access to education, healthcare and generally supporting the children's welfare by, for example, attending clubs, making friends and being close to family.
36. The absence of a five-year supply of pitches also indicates inequality in housing opportunities and the proposal would help to offset this in a modest way. These are important points in achieving the social sustainability sought by Paragraph 13 of the PPTS.
37. However, whilst the traveller status and personal circumstances of the potential occupants have been given careful and proper consideration, they have not been factors which have been decisive in the planning balance. This is because there is a general need for additional pitches in the Borough, which is a material consideration sufficient to outweigh the identified harm in this instance.

Other Matters

38. The appellant has also submitted details of personal circumstances that have affected the wider family which has also led to additional households visiting the site for an extended period. This has resulted in concerns being raised by third parties that in allowing one pitch on the site could result in further pressure for development on the site for other family members. However, I am not aware of any such proposals, which would need to be considered on their own merits. As a result, the information before me does not suggest that allowing this appeal would inevitably result in further development.
39. It has also been raised that the site has been occupied in breach of previous planning conditions. Intentional unauthorised development is a material consideration to be weighed in the determination of planning applications and appeals. However, the current application was registered by the Council on 24 October 2019, while 17/00132/AS was still extant but it has subsequently expired. The use and structures remain on site, and so the appellants are effectively seeking planning permission retrospectively.
40. I am satisfied that the appellant has sought to regularise development on the site and it is only through delays experienced in the appeal process that the existing permission on the site has lapsed.
41. Interested parties have raised concerns about anti-social behaviour in the area, including littering and the running of a dog-breeding business from the site. Such matters are not inherent to the development being applied for and are covered by other legislation.

Temporary Planning Permission

42. The Planning Practice Guidance sets out that a temporary planning permission may be appropriate in order to assess the effect 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. The guidance goes on to state that it will rarely be justifiable to grant a second temporary permission and that further permissions can normally be granted permanently or refused if there is a clear justification for doing so.
43. The Council has previously extended the temporary planning permission on two separate occasions, beyond that temporary period which the Inspector in the 2012 appeal considered would be sufficient for alternative sites to come forward. However, the ongoing lack of certainty over the delivery of alternative sites in the Borough, resulting from the continuing delay over the adoption of the DPD leads me to conclude that it would not be appropriate to place a further temporary permission on the site.

Conditions

44. The Council has suggested conditions which I have considered against the advice in the National Planning Policy Framework and Planning Practice Guidance. As the development has already commenced it is unnecessary to impose a condition in this regard. However, I have attached a condition specifying the relevant plans as this provides certainty.
45. The Council have suggested that, if planning permission is to be granted, it should be subject to a condition limiting occupation of the site to Gypsies and Travellers as defined in Annex A of the PPTS. However, the Court of Appeal in *Smith* held that the exclusion of Travellers who have ceased to travel permanently is discriminatory and has no legitimate aim.
46. There is no foretelling as to whether any occupiers might be forced to cease travelling permanently during the anticipated lifetime of the permission. Imposing the suggested condition would be liable to result in unlawful discrimination, with members of the family being unable to live on this site.
47. I shall therefore grant planning permission subject to a condition which restricts occupation to Gypsies and Travellers, defined so as to not exclude those who have ceased travelling permanently.
48. To limit the visual impact the number of caravans, the siting of the mobile home and the size of vehicles to be kept at the site is to be restricted. For similar reasons details of landscaping, including the retention of the roadside hedge, and any external lighting are also required to be submitted.
49. Commercial activities should be precluded and details of the proposed foul and surface water drainage are to be submitted to protect the wider amenities of the countryside and the living conditions of future occupiers. In the interests of highway safety a condition securing the visibility splays has also been imposed.

50. I have not found it necessary to impose a temporary permission for the reasons I have previously outlined. I have also not found it necessary to impose a personal permission as there is a general identified need for pitches in the Borough. I have also not imposed a condition requiring the development to be made available for inspection, the condition suggested is imprecise as it does not define what is a reasonable time and is unnecessary as the Council has its own powers of entry with regard to monitoring.

Conclusion

51. Therefore, for the reasons given, the proposal is acceptable and the appeal should succeed.

G Pannell

INSPECTOR

DOCUMENTS SUBMITTED AT THE HEARING

1. Appeal Decision APP/E2205/W/22/3290557
2. Written Submission from The Brook Street Resident Group (also presented orally by P Huckin)

APPEARANCES

FOR THE APPELLANT:

B Woods BA (TP) MRTPI
M Miller
J Connor
J Connor
M Connor
M Connor

FOR THE LOCAL PLANNING AUTHORITY:

M Apperley Deputy Team Leader
L Payne

INTERESTED PARTIES:

P Reeves
P Huckin
M Connolly (observed virtually)

Schedule of Conditions

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans: Site Location Plan; Block Plan showing proposed site layout Scale 1:500.
- 2) The site shall not be occupied by any persons other than Gypsies and Travellers, defined as 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 or permanently, but excluding members of an organised group of travelling showpeople or circus people travelling together as such.
- 3) No more than 2 caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 as amended (of which no more than 1 shall be a static caravan) shall be stationed on the site at any time.
- 4) No vehicle over 3.5 tonnes shall be stationed, parked or stored on this site.
- 5) No commercial activities shall take place on the land, including the storage of materials.
- 6) The caravans shall be sited in accordance with plan no. Block Plan showing proposed site layout Scale 1:500.
- 7) No obstruction to vision above 0.6m in height shall be placed within the visibility splays of 2.4m by 150m at the site entrance.
- 8) The amenity building hereby permitted shall only be used for purposes ancillary to the use of the land at Cob Tree Meadow, Brook Street, Woodchurch, TN26 3SX for the siting of caravans and shall not be used as a separate dwelling.
- 9) Within 3 months of the date of this decision the following details (hereafter referred to as the site development scheme) shall have been submitted for the written approval of the local planning authority and the scheme shall include a timetable for its implementation:
 - a scheme for the means of foul and surface water drainage of the site;
 - proposed and existing external lighting on the boundary of and within the site;
 - proposed tree, hedge and shrub planting including details of species, plant sizes and proposed numbers and densities and details of existing tree, hedge and shrub planting to be retained.

The approved scheme shall have been carried out and completed in accordance with the approved timetable. Upon implementation of the approved site development scheme specified in this condition, that scheme shall thereafter be maintained. Any trees or other plants which within a period of 5 years from planting, die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of a similar size and species.

-END-