



Appeal Decision

Hearing and site visit held on 1 November 2022

by Martin Allen BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14th December 2022

Appeal Ref: APP/G2245/W/21/3275302

Merry Lees, Billet Hill, Ash TN15 7HG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr Joseph Maloney against the decision of Sevenoaks District Council.
 - The application Ref 20/01956/CONVAR, dated 9 July 2020, was refused by notice dated 19 November 2020.
 - The application sought planning permission for the Change of use of land to residential use, for one gypsy traveller family. Site to contain one static caravan, one touring caravan and parking for two associated vehicles without complying with a condition attached to planning permission Ref 17/00796/FUL, dated 21 July 2017.
 - The condition in dispute is No 3 which states that:
3) *The use hereby permitted shall be for a limited period of three years from the date of this decision. At the end of this temporary permission or when the land ceases to be occupied by those named in Condition 2, the use hereby permitted shall cease, all caravans, structures, materials and equipment brought on to the land in connection with the use shall be removed.*
 - The reason given for the condition is:
In the interests of visual amenity in accordance with Policy EN1 of the Sevenoaks Allocations and Development Management Plan and in order to protect and conserve the openness of the Green Belt in accordance with the NPPF.
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Decision

1. The appeal is allowed and planning permission is granted for the Change of use of land to residential use, for one gypsy traveller family. Site to contain one static caravan, one touring caravan and parking for two associated vehicles at Merry Lees, Billet Hill, Ash, TN15 7HG in accordance with the application 20/01956/CONVAR dated 9 July 2020, without compliance with condition number 3 previously imposed on planning permission Ref 17/00796/FUL dated 21 July 2017 and subject to the conditions in the attached Schedule.

Preliminary Matters

2. Within the Council's Delegated Report, it is stated that it cannot be concluded whether the applicant meets the definition of a gypsy traveller, as set out within the planning policy for traveller sites (the PPTS). However, following discussion at the hearing, the Council agreed that the intended occupier of the site, the appellant's son, met the PPTS definition. However, following the *Smith* judgment, the definition in the PPTS has been held to be discriminatory. Nonetheless, in accepting that the intended occupier met the definition, the

Council also accepted that he was a person of nomadic habit of life. I have no reason to disagree with this and I have considered the appeal on this basis.

Main Issues

3. The application sought the removal of a condition attached to a previous planning permission which limited the permission to a temporary period. Any removal of this condition would result in the grant of a new, permanent planning permission. In this context, the main issues are:
 - Whether the proposal would be inappropriate development in the Green Belt, and the effect on the openness of the Green Belt, and
 - Whether any harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations, so as to amount to the very special circumstances required to justify the proposal.

Reasons

Inappropriate development and effect on openness

4. The appeal site is located within the Metropolitan Green Belt. The PPTS sets out at paragraph 16 that:

"Inappropriate development is harmful to the Green Belt and should not be approved, except in very special circumstances. Traveller sites (temporary or permanent) in the Green Belt are inappropriate development."

Thus, the appeal scheme is inappropriate development in the Green Belt. Both the Council and the appellant agreed with this position at the hearing.

5. In terms of the effect on openness, the scheme would result in the stationing of both a static and touring caravan within the site, as well as an area of parking. This would inevitably lead to a loss of openness in spatial terms. However, owing to the small scale of the development, together with its limited physical extent, this would be minimal. In addition to the spatial consideration of openness, there is also a visual element. In this case, the site is well screened from all directions. The only public view possible would be very limited glimpses from the adjacent road, Billet Hill, and these would be fleeting. Consequently, in my view, the loss of openness in this case would be very limited.

Other considerations

The need for sites

6. The Council's Gypsy and Traveller Accommodation Assessment (the GTAA), dated 2017, established that there was a need for 51 new pitches up to 2035. At the hearing I was apprised that an update to this was undertaken in 2022 which established a need of 43 pitches up to 2040, specifically there is a need for 5 pitches in the period up to 2027 and this has already been met by the grant of permissions to date. While I note that the Council assert that the short-term need until 2027 has been met, this is only a small part of the need assessed for the period of the GTAA.

Personal circumstances

7. I was informed that the appeal site is currently occupied by the appellant's son, his wife and child. I am aware of comments made by interested parties that the

appeal site has never been occupied, however I was told that the appellant's son has always lived at the site, other than when travelling for work. In the absence of any substantive evidence convincing me otherwise, I have no reason to find that this is not the case.

8. The appellant's son suffers from a severe and lifelong medical condition. As a result, if he becomes unwell swift medical intervention is required, which can possibly involve emergency treatment at a hospital. Being able to continue to occupy this site would allow this individual to be registered with a doctors practice and local hospital, which I agree makes the management of his condition more reliable, not least due to having a stable address to which medication can be delivered.
9. My attention was not drawn to any available, alternative sites that the occupier could move to should they be required to vacate the appeal site.

Best Interests of the Children

10. The site is occupied by the appellant's son, his wife and their child. I was also informed that the couple are expecting another child in a few months' time. As a consequence, the best interests of the child living at the site, as well as the expected child, are a primary consideration in the determination of this appeal and I have kept these best interests at the forefront of my mind.
11. The occupancy of a stable, settled base would bring benefits to the children, most notably through access to consistent healthcare, albeit I was not informed of any specific health needs of the children. At this time, no children attend school, nonetheless a settled base is in their best interests in terms of security and allowing access to a stable education at the appropriate time.

Other Matters

12. I am aware that the site was considered for inclusion as an allocation within the emerging local plan but was ultimately discounted. However, this has little bearing on my consideration of the merits of the appeal that is before me.
13. The Council raises no objection to the scheme in respect of effect on the character and appearance of the area, effect on living conditions of neighbouring occupiers, or on highway safety grounds. Based on what I have seen, I find no reason to disagree.

Planning Balance

14. The National Planning Policy Framework (the Framework) requires that substantial weight is 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, is clearly outweighed by other considerations.
15. The PPTS states 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."
16. The scheme is inappropriate development in the Green Belt, which is by definition harmful. This harm is accorded substantial weight.

17. There are however benefits which are required to be balanced against this harm. There is an identified need for new pitches in the area, and no identified alternative, available sites for the occupiers. This carries moderate weight in favour of the appeal scheme.
18. Additionally, I am particularly mindful of the personal circumstances of the family that occupies the site, most notably the specific health circumstances of one of the occupants. In addition to this, I am also conscious of the best interests of the children that do, and will, occupy the site. In my view, collectively, these matters carry considerable and decisive weight, sufficient to outweigh the harm to the Green Belt.
19. During the hearing, there was some discussion in respect of the emerging development plan, which the Council is currently preparing. It is expected that this will be adopted in 2024. This document will be required to assess and provide for the needs of Gypsy Travellers within the district. As such, I consider there to be a reasonable likelihood that within the foreseeable future, circumstances will change and that the provision of more sites, in more suitable locations, will come forward. In such circumstances, I find that it would be appropriate to grant a temporary planning permission, for a period of three years.
20. Should a temporary permission result in the eventual loss of their home, this would represent an interference with the human rights of the occupants of the appeal site. However, I do not consider that this interference would be disproportionate, having regard to the legitimate aim of protecting the Green Belt.

Conditions

21. The guidance in the Planning Practice Guidance (the PPG) makes clear that decision notices for the grant of planning permission under section 73 should also restate the conditions imposed on earlier permissions that continue to have effect. I shall impose all those that I consider remain relevant.
22. I have found that the personal circumstances of the site occupiers are a justification for granting planning permission. In such situations, a personal condition is necessary. At the hearing, in discussion of any personal condition, it was requested that the names of the appellant and his wife, who are the parents of one of the site occupiers, be included in any such condition. I understand that the appellant occasionally visits the site and stays in a touring caravan during such visits. It was on this basis that the inclusion was requested. However, in this instance, I do not consider that it would be appropriate to include these additional names. Principally, this is due to the description of development stating that the pitch at this site is for the occupation of one family. In my view, the current occupiers form that family. To allow additional names would conflict with this description, notwithstanding that the appellant and his wife are related to the occupiers.
23. The Council has 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. 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 could result in unlawful discrimination, with members of the family being unable to live on this site. 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.

24. As set out above, I have included a condition limiting the permission to a temporary period of three years. I am aware that a previous temporary permission has been granted on this site and the PPG advises that it will rarely be justifiable to grant a second temporary permission. However, it is caveated that an exception to this is in cases where a change of circumstances provides a clear rationale. I find that to be the situation in this case. The previous temporary permission was granted on the basis of differing personal circumstances to those that have been outlined to me. As such, I find that a further temporary permission is justified.
25. I have amended the condition in respect of defining the caravans that are permitted, in the interests of precision and to reflect the development applied for. I have retained, and amended where necessary, conditions in respect of waste disposal, stipulating the approved plans, preventing commercial activities and restricting where within the site development is to take place. These conditions are in the interests of protecting the environment and the Green Belt.

Conclusion

26. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should succeed, and that temporary planning permission should be granted.

Martin Allen

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The occupation of the site hereby permitted shall be carried out only by Mr Martin Maloney and Mrs Mary-Anne Maloney, and their residential dependents.
- 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) 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 caravans, buildings, structures, materials and equipment brought onto, or erected on the land, or works undertaken to it in connection with the use shall be removed, and the land restored to its condition before the development took place.
- 4) Prior to the siting of the mobile home on the site, details of a Sewage and Refuse Strategy must be submitted to and agreed in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.
- 5) 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.
- 6) The development hereby permitted shall be carried out in accordance with the following approved plans: 1:1250 scale Location Plan; 1:500 scale Block/Site Plan
- 7) No part of the land shall be used for any commercial purposes or for external storage or for the display of goods or products.
- 8) The stationing of the caravans, and the parking of vehicles, shall only take place on the existing hardstanding at the southern end of the site.

APPEARANCES

FOR THE APPELLANT:

Joseph Jones

Appellant's agent

Joseph Maloney

Appellant

FOR THE SEVEN OAKS DISTRICT COUNCIL:

Jim Sperry BA(Hons) DipTP MRTPI

Principal Planning Officer
(Development Management)

Helen French BSc(Hons) MA MRTPI

Principal Planning Officer (Policy)

Emma Coffin BA(Hons)

Planning Officer (Policy)

DOCUMENTS SUBMITTED AT THE HEARING

1. Health information in respect of appellant's son
2. Information in support of PPTS status of appellant
3. Caravan Count information, January 2022