



Appeal Decision

Site visit made on 22 November 2022

by David Murray BA (Hons) DMS MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 February 2023

Appeal Ref: APP/K2230/W/20/3271514

White Post Farm, White Post Lane, Cobham, Gravesend, Kent, DA13 9AX.

- 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 W Smith against the decision of Gravesend Borough Council.
 - The application Ref. 20200554, dated 15 June 2020, was refused by notice dated 11 August 2020.
 - The development proposed is the change of use of land to form a Gypsy and Traveller site comprising two pitches for static caravans and two associated pitches for touring caravans amenity day rooms and hardstanding.
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Decision

1. The appeal is dismissed.

Main Issues

2. The appellant appears not to be professionally represented for this appeal although the original planning application was submitted by an agent. Moreover, much of the appellant's appeal statement deals with the Council's processing of the planning application or dealings with a Parish Council which are not directly relevant to this appeal.
3. The appellant does not contest that the proposal conflicts with the development plan; constitutes inappropriate development in the Green Belt and would harm its openness and cause other harm but submits that there are other considerations which outweigh this, similar to the case allowed by an inspector in appeal APP/K2230/W/19/3223958 as applying to another site in the area (now referred to as the Heron Hill Lane decision). As this decision was made over two years ago, as was the Council's submission on this appeal, I asked the Council to provide updated evidence. Having regard to all of these representations, the main issues are:
 - The appellant and family's status as a Gypsy or Traveller;
 - The effect on the openness of the Green Belt and the landscape character of the area;
 - The accessibility of the site in sustainability terms;
 - The effect on the Thames Estuary and Marshes Special Protection Area (SPA);
 - Personal circumstances including the best interest of any child.

Reasons

Background

4. The appeal site is located in an area of countryside which the Council describes as about 0.5miles (0.8km) to the west of the village of Sole Street and the local area forms part of the Meopham Downs Landscape Character Area and the Metropolitan Green Belt. The site has access to White Post Lane, a narrow rural lane. At the time of my visit there were two mobile homes and a touring caravan on the land (and a stable building). The application is therefore retrospective.
5. I note that the Council indicates that the site has planning permission for the stationing of a caravan for security purposes in connection with the equestrian use of the land for the sole benefit of Mr William Smith and his immediate family. I also note that the Council advises that the site is subject to an injunction preventing the use of the land by anyone for the siting of caravans or mobile homes and use as Gypsy/Traveller site.

Policy context

6. The development plan includes the Council's Local Plan Core Strategy adopted in 2014. I understand that the Council is preparing a Partial Review of the Local Plan Core Strategy, Site Allocations and Development Management Policies. This will in part consider the needs of gypsies and travellers sites and how this need can be met. However, this emerging plan is at an early stage and is unlikely to be examined and finally adopted before the end of 2024. It therefore carries little weight at the moment.

Gypsy / Traveller status

7. In the case of *Lisa Smith*¹ the Court of Appeal held that the Annex to the Planning Policy for Traveller Sites (PPTS) was discriminatory and unlawful, nevertheless the main body of the PPTS remains as government policy. Therefore this issue of gypsy status remains relevant to any particular case to see if the provisions of the PPTS apply along with any particular policy in the development plan related to Gypsies and Travellers.
8. The appellant Mr Smith says in his Statement of Need and his Appeal Statement that he and his wife identify as having gypsy or traveller ethnicity and, in summary, he travels around the south-east of England for work involving tarmacking and ground works, although he also says that he splits his time around the site to secure the welfare and security of the horses. His wife often stays at home when he is away to look after the horses. His daughter and family would occupy the second mobile home proposed to benefit from mutual support within the family and to have a permanent base from where her children would be able to attend school and access medical and dental facilities.
9. The Council submits that the evidence provided is insufficient to clearly establish gypsy status and in particular makes reference to the appellant's

¹ Smith v SSLUHC & Ors [2022] EWCA Civ 1391

occupation of a house in Northfleet to which the 'doctors letter'² addressed to Mr Smith dated 17 August 2020 was sent.

10. The application is for residential occupation of the site by the appellant as a gypsy or traveller, as opposed to one mainly for residential accommodation for the security and welfare of horses or livestock, and I have no reason to doubt the appellant's and family's claimed ethnicity. However, I have doubt over his nomadic habit of life for economic purposes and find that this aspect has not been properly demonstrated. In these circumstances it would not be appropriate to consider the proposal in respect of the PPTS as relevant to the case. This case therefore differs from the Heron Hill Lane one where that appellant and the other caravan occupiers were able to provide sufficient evidence at that hearing to establish both ethnicity and a nomadic habit of life for economic purposes.

The effect on the openness of the Green Belt

11. The National Planning Policy Framework (the Framework) sets out in paragraph 147 that 'inappropriate development' is by definition harmful to the Green Belt and should not be approved except in very special circumstances. The construction of new buildings and most changes of use are regarded as inappropriate development and this would include the proposed residential caravans site with amenity buildings and static caravans.
12. In terms of the openness of the Green Belt, this has been held to have both spatial and visual dimensions. In visual terms I noted at the site visit that the mobile homes would be sited alongside a belt of mature woodland which extends along the western and south-western boundaries of the site. The two day rooms would be close to a line of mature conifers which separate the appeal site from other paddocks to the east. Consequently the appeal proposals would be well screened in views from along White Post Lane other than the view along the existing driveway into the site.
13. In spatial terms, while the proposal would involve two small dayroom buildings the rest of the development would be moveable units, however the presence of the mobile homes and touring caravans and associated general residential paraphernalia would have a three dimensional bulk. This would be at odds with the fundamental aim of Green Belt policy to prevent urban sprawl and keep the land permanently open.
14. Overall I find that the proposed two pitch residential caravan site would have a moderate adverse effect on the openness of the Green Belt and it would conflict with the policy in section 13 of the Framework and Core Strategy Policy CS02 particularly as set out in paragraph 4.2.27.

Effect in the landscape character of the area

15. The council advises that the key characteristics of the Meopham Downs Landscape Character Area is a gently undulating topography with a mixture of arable and pasture land, broad irregular shaped fields with roads lined with hedgerows. The area around the appeal site has these general characteristics with also the belt of woodland to the west of the site and paddocks on the land to the east.

² As submitted in Appendix to the appellant's Statement of Case

16. As set out above in relation to openness, the line of dark green conifers along the eastern edge of the appeal site provides reasonable screening. The conifers are not an attractive indigenous feature in the landscape but they exist. Consequently their screening effect together with the backdrop of the mature woodland belt limit the prominence of the proposed mobile homes, caravans and day rooms, although these residential features would still be seen from White Post Lane through the access to the site.
17. Overall I find that the proposal would have a moderate harmful effect on the character of the local rural landscape and be in conflict with Policy CS12 as it would not conserve or enhance the local landscape as set out in paragraph 5.7.26.

Whether a sustainable location

18. Section 9 of the Framework indicates that the planning system should actively manage patterns of growth to facilitate development in locations which are sustainable and generally limit the need to travel. In this case the appeal site is located off a minor rural lane and is physically well away from the nearest settlement with basic services. I recognise that paragraph 105 of the Framework indicates that sustainable transport solutions will vary between urban and rural areas but it appears to me that this site has not been chosen to limit the need for travel and access day to day facilities other than by vehicle. I find that this conflicts with the guidance in the Framework to promote sustainable transport and with the provisions of the second bullet point of Policy CS19.

Personal circumstances and best interests of children

19. The appellant has set out his individual circumstances and those of his family in a Statement of Need and in his appeal statement.
20. In summary he suffers from various health conditions as diagnosed and confirmed by his doctor in the Springhead Health Practice in Northfleet. The effects of these conditions are not described by the health professional although the appellant says that they will be made worse by the uncertainty of knowing whether he can stay on the land without having to live on it for security purposes only.
21. The appellant also refers to his daughter and young family who occupy the other mobile home. He says they will benefit from having the support and security of her extended family close by when her husband is away travelling alone. Extended family groups for mutual support is a cultural tradition for many Gypsies and Travellers. Having a fixed address will enable her family to have consistent access to medical and health facilities and for her children to grow up to attend a nursery and local school to gain an education through full time attendance in one location.
22. The appellant's health conditions need to be taken account of along with the family needs of his daughter for close linked family support close by. It is clear that the best interests of the children would stem from having a settled base from which they can attend nursery and local school. These are both factors which command significant weight.

The effect on the Thames Estuary and Marshes SPA

23. Although not a reason for refusal of the planning application the Council now advises that it has come to light that the appeal site lies within the 6km of this designated SPA. The Council advises that this habitat site supports various species of wintering waterbirds and migrating birds although there has been a decline in their numbers over recent years. Recreational pressures arising from new development have been found to add to the disturbance of wildlife.
24. The Council says that, reflecting the precautionary principle and the need to consider the 'in-combination' effects, the North Kent Strategic Access Management and Monitoring Strategy sets out a mitigation Strategy to address disturbance impacts relating to wintering and migrating birds. This applies to all new (residential) development, including traveller accommodation units, and puts forwards a tariff currently £275.88 per unit, which would be used for mitigation measures undertaken by Bird Wise.
25. On the limited information provided it appears to me that additional recreational pressures arising locally from a new residential development would be likely to have significant adverse effects on the special habitat, either on its own or in combination with other development. Moreover at this stage I cannot be sure that the proposal will not adversely affect the integrity of the nature conservation sites.

Green Belt and planning balance

26. At the start of the planning balance I have borne in mind the requirements of the Public Sector Equality Duty and placed no single issue above the best interests of any child.
27. On the main issues I have found that the proposed two pitch Gypsy and Traveller site would constitute 'inappropriate development' in the Green Belt and would cause moderate harm to its openness. Substantial weight has to be given to this harm in accordance with paragraph 148 of the Framework. The development would also cause moderate harm to the character and appearance of the local countryside landscape and the site lies away from services and facilities and is not served by a range of transport modes. It is not in a location with reasonable accessibility in sustainability terms.
28. These factors mean that the proposal conflicts with the relevant parts of the development plan and to the national policy on Green Belts, countryside protection and promoting sustainable transport in the Framework.
29. However these aspects have to be balanced with other considerations. Although I have found that the appellant and family identify as being of Gypsy or Traveller ethnicity, they have not demonstrated a mainly itinerate habit of life for economic purposes. Nevertheless, the appellant's personal medical circumstances would greatly benefit from some certainty in his future accommodation. Likewise the clear best interests of the children are for a settled base for social and educational development in the long term. These are both considerations that also carry significant weight.
30. The Council accepts that it is not in a position to identify sufficient pitches to meet the needs of the appellant and his immediate family group. Moreover it appears to me that other sites, for either Gypsies or Travellers or for the

settled community, are not likely to be forthcoming in the plan-led system until at least the end of 2025.

31. In this context, the other considerations which arise in this case do not outweigh the harm to the Green Belt and other harm to justify permission on a permanent basis. However, I find that these personal and family circumstances do clearly outweigh the harm on a temporary basis to enable the appellant and family to secure other accommodation in a more favourable location in planning terms. I was therefore minded to allow the appeal for a limited period of three years.
32. However, the late notification of the SPA issue causes a problem. Although I am the 'competent authority' under the Habitat Regulations I have not been able to carry out an Appropriate Assessment as, at this stage, there is no specific advice from Natural England³ on the effect of the development on the SPA on its own or in combination with other plans or projects. Neither is there any formal legal mechanism before me from the appellant to ensure that a financial contribution will be made given that any permission would only be for a limited period. Moreover, there is not sufficient evidence before me to demonstrate that the contribution will result in appropriate mitigation to remedy any adverse effects or by when, and so I am unable to judge that any formal undertaking will meet the requirements of paragraph 57 of the Framework. Given this lack of information and the uncertainties over the SPA issue the current proposal must fail.
33. As the application is retrospective, this decision may lead to circumstances where the appellant and family are required to vacate the site and they would lose their homes. This would be an interference with their human rights. However, the protection of the Green Belt from entrenchment; pursuit of sustainable development and the protection of special habitats are all fundamental parts of the development plan, national planning policy and other Regulations adopted and issued in the public interest. The interference is therefore necessary and proportionate and would be in accordance with the law

Conclusion

34. For the reasons given above I conclude that the appeal should be dismissed.

David Murray

INSPECTOR

³ The Statutory Nature Conservation Body (SNCB)