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## Appeal Decisions

Site visit made on 8 March 2023

**by David Smith BA(Hons) DMS MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 27 March 2023**

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### **Appeal A - Ref: APP/U2235/W/21/3283054**

#### **Green Tops, Symonds Lane, Yalding, ME18 6HA**

- 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 A Brazil against the decision of Maidstone Borough Council.
  - The application Ref 21/500240/FULL, dated 13 January 2021, was refused by notice dated 8 April 2021.
- The development proposed is change of use of land and the erection of a single storey dwelling for occupation exclusively by a gypsy/traveller family.
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### **Appeal B - Ref: APP/U2235/W/21/3283057**

#### **Pear View, Symonds Lane, Yalding, ME18 6HA**

- 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 A Brazil against the decision of Maidstone Borough Council.
  - The application Ref 21/500238/FULL, dated 13 January 2021, was refused by notice dated 8 April 2021.
  - The development proposed is for four single storey dwellings.
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## **Decisions**

1. The appeals are dismissed.

## **Background**

2. The appeals relate to adjoining sites. Personal and temporary planning permission for a caravan site for two mobile homes was given at Pear View by an appeal decision in 2010 (Ref: APP/U2235/A/09/2114476). A further permission for a limited period of three years was granted in 2013 for up to four caravans. The site is currently occupied by a mobile home for which there is no record of any planning permission. At Green Tops permission was given in 2010 for residential use for stationing a mobile home and a touring caravan for three years and on a personal basis. Planning permission was refused in 2018 for use of land for the siting of a mobile home, touring caravan and erection of a day room for one family for residential use. This site is vacant.

## **Main Issues**

3. For both appeals these are whether the proposed dwellings would be in a suitable location having regard to the risk of flooding and the effect on the character and appearance of the surrounding area.

## **Reasons**

4. Planning permission is sought for four dwellings at Pear View and a single dwelling at Green Tops. All of them would be single storey buildings. They are

intended to be occupied by the appellant and his wider traveller family. The appellant accepts that a condition could be imposed limiting occupation to gypsies and travellers as defined by the Planning Policy for Traveller Sites. I will consider the appeals on this basis. Policy DM15 of the Maidstone Borough Local Plan of 2017 deals with gypsy, traveller and travelling showpeople accommodation. As it does not solely relate to caravan sites, its criteria are relevant in determining these appeals.

### *Risk of flooding*

5. The appeal sites are in Flood Zone 3. They are at risk of flooding from the River Teise and an unnamed watercourse. There are flood defences and the only recorded event was in 2013 on Symonds Lane to the front of the sites. Buildings used for dwelling houses are classified as More Vulnerable by the National Planning Policy Framework. Caravans or mobile homes intended for permanent residential use are Highly Vulnerable but that is not what is proposed. The appellant's Flood Risk Assessment (FRA) considers the overall flood risk to be "medium" and with mitigation in place that there would be unlikely to be a significant impact upon local flood risk.
6. However, the FRA also observes that a sequential test may be required. The aim of this is to steer new development to areas with the lowest risk of flooding from any source. According to the Framework development should not be permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding. No assessment has been undertaken as to whether suitable alternative sites exist for a total of five dwellings. The expectation of national policy is that inappropriate development in areas at risk of flooding should be avoided. Policy DM1 of the Local Plan has a similar provision. This is not altered by the proposed occupation of the dwellings by gypsies and travellers.
7. The finished floor levels of the dwellings would be raised above the 1 in 100 years plus 70% climate change modelled flood level. Flood resilient materials and services would be incorporated with under-floor voids and occupants would sign up to the emergency flood warning service. However, in the event of a flood, there would be no upper floor refuge for occupiers and Flood Zone 1 is a 3-minute drive away. This route may not be safe or accessible during an event and so escaping the flood waters would be either difficult or hazardous. In practice, there would therefore be potential risks to future residents.
8. More fundamentally it has not been shown that the proposed dwellings could not be located in an area with a lower risk of flooding. The sequential test has not been passed and in these circumstances the Framework is clear that development should not be permitted. Furthermore, Policy DM15 also provides that gypsy and traveller accommodation should not be located in Flood Zone 3. As a result, the proposed dwellings would not be in a suitable location having regard to the risk of flooding and this is a significant objection.

### *Character and appearance*

9. The sites are within the Laddingford Low Weald Landscape Character Area. The surrounding area is low-lying and fairly flat with fields, blocks of woodland and ditches. Built development is limited although there is a gypsy and traveller site immediately to the west at Pear Paddock. The proposed dwellings would be larger than the maximum size of a caravan specified in the Caravan

Sites and Control of Development Act 1960 but that, in itself, does not mean that they would be unacceptable.

10. Both sites are enclosed by fencing or other means of enclosure and there is also boundary planting, including a line of conifers surrounding part of Green Tops. A public footpath runs to the east and north of the sites about 150m away. From this direction the roofs of the dwellings would be seen but they would comprise minor and unobtrusive elements within the overall panorama of open land and vegetation. The proposed dwelling on Green Tops would also be well set back from Symonds Lane and so its visual impact would be limited. As this dwelling (Appeal A) would not result in significant harm to the landscape and rural character of the area it would accord with Policy DM15.
11. However, the modest dwellings at Pear View in Appeal B would be arranged in a regimented fashion along the length of this long but narrow site. They would appear to have been 'squeezed' onto the land in a manner quite out of keeping with the spacious and organic form of development expected in the countryside. The proposal would therefore give rise to a cramped and alien appearance that would be apparent from Symonds Lane via the site entrance. Consequently, significant harm would occur contrary to Policy DM15.
12. The proposed dwellings at Pear View would therefore harm the character and appearance of the surrounding area and so be at odds with Local Plan Policy SP17 which is concerned with the countryside. However, the proposed dwelling at Green Tops would not. The dwellings in Appeal B would also conflict with the design principles in the countryside set out in Policy DM30 as local distinctiveness would not be maintained.

### **Other Considerations**

13. The dwellings are intended to be occupied by the appellant and his wife and their extended family. Whilst biographical details are sketchy, this includes elderly family members and the appellant's children, sister and brother-in-law. They are currently located at a traveller site in Greenwich which is scheduled to be closed. However, that has been the position since the beginning of 2021 and there is no information about when this is likely to occur. But if it did shut down, then the only evidence is that this would mean that the family had nowhere else to live.
14. The appellant was born and brought up in the travelling community and has subsequently raised his own family in similar circumstances around south London and Kent. He has had a presence in Kent for about fifteen years, the last five of which have been in the Yalding area. He continues to work on a peripatetic basis providing roofing, building and landscaping services and scrap metal dealing throughout southern England. In addition, the appellant and his family breed, buy and sell horses and regularly attend the major fairs. The Council accepts the appellant's gypsy status.
15. As well as maintaining his lifestyle, the appellant wishes to support the wider family and to ensure they have access to medical services and to education for his grandchildren. Reference is made to health issues brought about by the appellant's trades, but no indication is given of the implications. The close relationship between the two sites is important to maintain family ties as its members often work and travel together and rely upon each other to care for

elderly relatives or young children. This is typical of the traveller community and the proposals would therefore facilitate this aspect of their traditions.

16. Given this background, the proposed dwellings would resolve the family's accommodation issues at a stroke. However, the proposals indicate that the intended occupiers do not have an aversion to bricks and mortar as is often the case with the traveller community. The positive weight to be given to the personal circumstances at play is therefore much reduced because of the likely availability of conventional housing that could provide a long-term solution. There is also no compelling evidence that those concerned need to be located in and around Yalding.
17. Since October 2011 permanent planning permission has been granted for 254 gypsy and traveller pitches in the Borough. This exceeds the need of 187 pitches to 2031 identified in the Local Plan. The Council also claims that it can demonstrate a supply of sites in excess of 5 years. Therefore, on the face of it, the position in terms of meeting the needs of gypsies and travellers in Maidstone is a healthy one. In any event, the appeals relate to buildings and so would not increase the number of caravan site pitches.
18. The sites are reasonably well located to access a range of services and facilities in the locality, but this does not weigh positively in favour of the proposals since this is an expectation of all new developments. Similarly, the absence of objections on highway or ecological grounds or conflict with other policy criteria does not support them.

### **Human rights and public sector equality duty**

19. Dismissing the appeals would represent an interference with the potential home of the appellant, his wife and their extended family and with their family life such that Article 8 of the Human Rights Act would be engaged. There is also a positive obligation imposed by Article 8 to facilitate the gypsy way of life. The best interests of the children are a matter of substantial weight.
20. The appellant and his family have a relevant protected characteristic and so, as required by section 149(1) of the Equality Act 2010, the public sector equality duty is applicable. There is therefore a need to have due regard to eliminating discrimination, advancing equality of opportunity and fostering good relations.

### **Overall balance**

21. Due to the location of the sites within Flood Zone 3, the proposed dwellings would not be in a suitable location having regard to the risk of flooding. If permitted without a sequential test having been undertaken, they would undermine the national policy provisions which aim to avoid new development in high flood risk areas wherever possible. They would also fail to accord with relevant development plan policies. Furthermore, the proposed dwellings at Pear View would harm the character and appearance of the surrounding area. Neither proposal would accord with the development plan as a whole.
22. Set against this are the advantages in providing long-term accommodation for the appellant and his family who are part of the traveller community and who include the elderly and children. However, there is no evidence that the closure of their existing site is imminent or why other permanent housing would not be suitable. These considerations temper the significance to be

given to the particular circumstances of the proposed occupiers and do not outweigh the significant harm identified.

23. The human rights interference associated with this conclusion is in accordance with the law and is necessary in a democratic society to protect environmental interests which is a legitimate objective. The public interest cannot be achieved by means that cause less interference with the appellant's rights. Therefore, dismissing the appeals is a proportionate response in all the circumstances and a violation of rights under Article 8 would not occur.
24. In accordance with the public sector equality duty, due regard has been paid to minimising the disadvantages suffered by the appellant as someone within the gypsy and traveller community in so far as they are different to those without a relevant protected characteristic. Whilst ultimately the appeals are to be dismissed, these considerations have been at the forefront of the decision-making process. Because of the significant objections identified the outcome is a proportionate one.

### **Conclusions**

25. The proposals would not accord with the development plan and there are no other material considerations to outweigh that finding. Therefore, for the reasons given, they are unacceptable and the appeals should fail.

*David Smith*

INSPECTOR