



Appeal Decision

Hearing held on 6 December 2022

Site visit made on 6 December 2022

by Mr W Johnson BA(Hons) DipTP DipUDR MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 APRIL 2023

Appeal Ref: APP/U2235/W/20/3258990

Ashtree Place Hampstead Lane, Nettlestead, Maidstone 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 Messrs A Webster and Ms L Storey against the decision of Maidstone Borough Council.
 - The application Ref 19/504988/FULL, dated 3 October 2019, was refused by notice dated 31 March 2020.
 - The development proposed is a material change of use of land for stationing of 3no. caravans for residential occupation by Gypsy and Traveller families, with associated works (hard standing, cesspool and sheds).
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Decision

1. The appeal is allowed and planning permission is granted for a material change of use of land for stationing of 3no. caravans for residential occupation by Gypsy and Traveller families, with associated works (hard standing, cesspool and sheds), at Ashtree Place Hampstead Lane, Maidstone, ME18 5HN in accordance with the terms of the application, Ref 19/504988/FULL, dated 3 October 2019, and the plans submitted with it, subject to the conditions set out in the attached schedule.

Preliminary Matters

2. Since the determination of the application, a recent judgment¹ (the judgment) relevant to the appeal has been issued. Although the Planning Policy for Traveller Sites 2015 (PPTS) itself was not the subject of the litigation, and has not been quashed or declared unlawful, the thrust of the judgment was that the PPTS definition of gypsies and travellers was unlawfully discriminatory. The main parties were both given the opportunity to comment on this judgment at the event. Thus, no party would be prejudiced if this judgment was taken into consideration in the determination of this appeal.
3. At the time of my site visit, I had the benefit of seeing majority of the scheme in place. Although, during my visit it became apparent that the scheme has not been fully implemented, as only 2no. static caravans were present on site, and 2no. touring caravans occupied the pitch to the northeast of the site. Nonetheless, I have dealt with the appeal on the basis of the development described in the banner above and the details proposed within the planning application.

¹ Smith vs Secretary of State for Levelling Up, Housing and Communities and Others [2021] EWHC 1650 (Admin) (31 October 2022)

Main Issues

4. The main parties agree that the scheme is inappropriate development in the Green Belt as set out in paragraph 16 of the PPTS. It is also accepted that the appellant and the other occupiers of the site are gypsies/travellers. Based on the information before me I see no reason to take a different view. Therefore, the PPTS, which sets out the Government's policy for traveller sites applies, as do development plan policies relevant to gypsies and travellers.
5. Taking into account the above, the main issues of this appeal are:
 - the effect on Green Belt openness and purposes;
 - whether the development would be at risk from flooding;
 - whether the harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations so as to amount to the very special circumstances required to justify the development.

Reasons

Background

6. The Gypsy and Traveller site has been in use for a number of years, where 3no. temporary permissions have been granted² in 2005, 2011 and 2016 for 5, 2 and 3 years respectively.

Green Belt openness and purposes

7. The National Planning Policy Framework (the Framework) says that inappropriate development is, by definition, harmful to the Green Belt. Policy E in the PPTS, which was adopted in 2015, states that traveller sites in the Green Belt are inappropriate development, while paragraph 150 in the Framework, which is more recent, says changes of use of land are not inappropriate if they preserve the openness and do not conflict with the purposes of including land in the Green Belt.
8. The Framework also identifies keeping land permanently open as one of the fundamental aims of the Green Belt, while a stated purpose of the Green Belt is to assist in safeguarding the countryside from encroachment. Policy SP17 of the Maidstone Local Plan, 2017 (LP) sets out that within the Green Belt, development will be managed in accordance with national policy.
9. Openness has a visual as well as a spatial dimension. The pitches are some distance from Hampstead Lane and are screened by existing development, trees and hedgerows, particularly at Catchment Cottages and Three Acres. The view of the pitches from the public footpath³ that runs along the south of the site, whilst not prominent, are still visible. However, the pitches are seen in the context of the surrounding built environment particularly Catchment Cottages and to a lesser extent Three Acres, which are situated directly behind the site and to the left respectively, when viewed from the public footpath.
10. There is some encroachment into the countryside through the development, which includes the hardstanding, the placing of the caravans, ancillary

² MA/05/0941, dated 23 September 2005; MA/10/1595, dated 7 April 2011 and 14/506690/FULL, dated 22 January 2016

³ KM186

structures on/or adjacent to it. However, the scale of development is limited and so is the extent of encroachment. Overall, the development leads to some loss of openness and a limited adverse impact on the Green Belt purpose of safeguarding the countryside from encroachment. The Council have provided a judgment⁴ to support their position on this matter.

The effect on flooding

11. The site is in Flood Zone 3a, with a high probability of fluvial flooding. LP Policy DM15 for Gypsy, Traveller and Travelling Showpeople accommodation lists a number of criteria for the granting of planning permission, which includes: the site is not located in an area at risk from flooding (zones 3a and 3b) based on the latest information from the Environment Agency or a specific Flood Risk Assessment which has been agreed by the Environment Agency, amongst other things. Additionally, the Planning Practice Guidance (PPG) identifies the siting of residential caravans as a highly vulnerable development. Given these factors, the PPG states in Table 2⁵ that the development should not be permitted here.
12. In response, the appellants have undertaken a Sequential Test to demonstrate that no sites with a lower probability of flooding are available. Whilst they have found there are no alternative sites 'in this district' the PPG does not expressly state the geographic area of search. Notwithstanding this point, the extent of the search by the appellants has been accepted by the Council. Upon considering the scheme to satisfy the Sequential Test, the appellants have gone on to undertake an Exception Test, which they also consider to be satisfied. However, I recognise that the PPG states such tests should only be applied as set out in its Table 2, and that Table does not say it should be applied to developments of this level of vulnerability in Flood Zone 3a.
13. Thus, the development adds to the number of properties at risk from fluvial flooding and for this reason the scheme would fail to comply with LP Policy DM15. Due to the residential nature of the site and its potential for flooding, including its flood zone category, the scheme is contrary to policy in the PPTS. Whilst the requirements of the Framework and PPG indicate there is no provision for the exception test, these in-principle policies weigh against the scheme.
14. The Environment Agency (EA) did not attend the event or provide any additional comments on the scheme since its original objection⁶, which still carries weight. Nonetheless, the site-specific circumstances of the scheme and the detailed submissions from the appellant on flood risk, are both well substantiated and compelling. The Council do not dispute comments in the Officer Report regarding recent serious flooding at Yalding in 2001 and 2014, where the site did not flood and emergency services used the site entrance to park vehicles used to evacuate people from nearby housing. Additionally, I note the appeals⁷ at The Three Sons site. Whilst these appeals were both dismissed and raised issues on flood risk, I have not been provided with all of the details from these appeals. Furthermore, I am not convinced that details of the approval of a planning application⁸ for 2no. mobile homes by the Council at

⁴ Sefton MBC v Secretary of State for Housing, Communities and Local Government [2021] EWHC 1082 (Admin)

⁵ Planning Practice Guidance Paragraph 067 Reference ID: 7-078-20220825 – Revision date 25 August 2022

⁶ KT/2019/126227/01-L01, dated 29 October 2019

⁷ APP/U2235/W/19/3224066 and APP/U2235/W/19/3225715

⁸ 19/506062/FULL

Three Acres, which is located between The Three Sons site and the appeal site were before the respective Inspectors.

15. Although, the Council claim that there are differences between the scheme at Three Acres and the appeal site, the fact remains that Three Acres is in proximity to the appeal site, located within the same Flood Zone, where planning conditions were imposed to secure appropriate finished floor levels and registration to the EA 'Floodline' warning service to make the scheme acceptable. The appellants have also provided a number of appeal decisions to support this approach. Overall, whilst the site is located within Flood Zone 3a, it benefits from flood defences, as shown on the EA Flood Map Extract dated 3 June 2020, which reduces the risk to occupiers of the site and flood risk would not be increased elsewhere. Although there is conflict with local and national policy it has been demonstrated that, with the imposition of conditions, similar to those imposed on the scheme at Three Acres, the effect on public safety would not be compromised.

Other considerations

Need for and provision of sites

16. There is a generally accepted national need for more traveller sites. The level of need will vary between regions and at district or local authority level. The Framework expects that the housing needs for different groups in the community should be reflected in planning policies.
17. The Council commissioned a Gypsy and Traveller Accommodation Assessment (GTAA) to inform the LP. The GTAA, published in January 2012, identified a need for 187 permanent residential pitches to 2031. This need is set out in LP Policy SS1. Both parties acknowledge that the number of permanent pitches that have been granted since 1 October 2011, exceeds the requirement set out in the LP and GTAA. The Council considers that this results in an overall supply of 7.7 years, which the appellants dispute.
18. The appellants consider there to be a marked difference and a much greater need, due to a failure in the methodology of the GTAA. The Council contends the findings of the GTAA to be robust and that they have a sufficient number of sites within the Borough. The appellants direct my attention to many matters, including inaccuracies in recording the number of pitches with permanent planning permission; a failure to accurately identify households that were doubled up/concealed/overcrowded, and the failure to establish an accurate number of households in bricks and mortar wishing to move to sites.
19. Additionally, there is evidence of a low survey rate within the GTAA and the figures advanced by the appellant highlighting the number of caravans on unauthorised sites, which totalled 148 in July 2018, increasing to 250 in July 2019 are undisputed. On these matters alone, there is a strong likelihood of underestimation surrounding need within the Borough. The recent judgment may also serve as a factor in increasing the need too. Overall, taking into account the above, the need is now likely to be greater than identified in 2012.

Alternative sites

20. The Council was unable to point to any alternative pitches that are currently available, including land outside of the Green Belt. Reference was made by the appellants to a waiting list operating for public pitches, the low turnover rate of

these pitches and no new public pitches coming forward as historically expected. No evidence was provided that other pitches, either within the Borough or beyond, were available to the appellants and their families.

21. On the evidence before me and following discussions at the event, I was unable to establish any meaningful timeframes for the adoption of the Council's Local Plan Review (LPR) or any associated documents, including a revised GTAA to either allocate sites or provide an up-to-date position on the level of need respectively within the Borough.

Personal Circumstances

22. It is common ground between the parties that the appellants comprise Romany Gypsies. Whilst the findings of the judgment have impacted upon the Gypsy and Traveller definition in the PPTS, the appellants met the definition in any event. The site was purchased in 2000 and the appellants have lived on it since at least 2005, which is a significant number of years.
23. Because of these circumstances, the children have been able to attend school on a regular basis. Access to health care has also been possible. This has resulted in advantages for the general well-being and state of mind of the appellants in being settled and being able to provide a stable home, access to basic amenities and a secure living environment for their families.
24. A settled base has allowed children of school and pre-school age to attend local schools and all of the family to access health care more easily. Whilst some of the children have now grown up, it is likely that they have done so on the site. In any event, my attention has been drawn towards 2no. children of school and pre-school age who reside at plot 3. The benefits of a settled base are well documented in terms of education and access to health care.
25. In particular having a settled base would be in the best interests of the children. In stark contrast, the alternative of an itinerant life would be damaging to the education, health and well-being of the families. Continuing to move from place to place and living by the side of the road would be a likely consequence of dismissing the appeal.

Other Matters

26. I have noted that the scheme has received support from a number interested parties, including local residents, I have also noted the objections received from Nettlestead Parish Council, Yalding Parish Council and a local resident. Although, I have already addressed some of these matters, there are other concerns including, but not limited to the following: character and appearance; over intensification of Gypsy and Traveller sites in the surrounding area, where several are empty, amongst other things. However, I note that these other concerns were considered where relevant by the Council at the application stage and did not form part of the reason for refusal, which I have dealt with in the assessment above. Whilst I can understand the concerns of Nettlestead Parish Council, Yalding Parish Council and a local resident, there is no compelling evidence before me that would lead me to come to a different conclusion to the Council on these matters.

Planning Balance

27. The Framework requires that substantial weight is given to any harm to the

Green Belt. Additionally, 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.

28. The scheme represents inappropriate development and would also have a moderate effect on openness and a limited effect on one of the purposes of the Green Belt. The harms by reasons of inappropriate development, loss of openness and effect on a Green Belt purpose together attract substantial weight. I have also identified local and national policy conflict with regard to flood risk, although I have concluded that through the imposition of suitably worded conditions, the effect on public safety, including existing residents of the site, would not be compromised. I have found no other specific material harm from the development.
29. In terms of benefits, the site is sustainable which attracts moderate weight. In terms of other factors in favour, moderate weight should be afforded to the combination of factors related to the need and provision of sites, including the likely greater current need than anticipated by the GTAA. From the evidence and discussions at the event, there is a lack of certainty surrounding future site allocations and whether or not Green Belt land would be required, which also weighs in favour of the development. Even if, other sites potentially come forward outside the Green Belt through the emerging LPR, this would not necessarily be a determinative factor in this instance. Consequently, the lack of alternative sites demonstrated for the particular families is a consideration that should be afforded substantial weight.
30. The personal circumstances of the families are also a consideration which should be afforded substantial weight in the planning balance taking into account the length of time they have occupied the site. Such a base has allowed the families significant benefits for their well-being, health care provision of the families as a whole and for the education of the children of school and pre-school age. The best interests of the children, which is a primary consideration, and the families' right to a home, would be served by a permission.
31. Overall, my conclusions are that the harm to the Green Belt would be clearly outweighed by the site being sustainable, the need and provision factors, an inability to establish a reasonable likelihood of all future site allocations being located outside the Green Belt in the emerging LPR, the overall lack of alternative sites and the personal circumstances. These other considerations, taken together, are sufficient to constitute the very special circumstances necessary to justify a permanent permission.
32. The PPTS makes it clear that 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. In this case unmet need is a factor in favour of the scheme. However, the other considerations in favour go beyond the need issue and personal circumstances.
33. In terms of the development plan, LP Policy SP17 allows for schemes to be managed in accordance with national policy. It is agreed that the scheme is inappropriate development. However, in my view, very special circumstances have been demonstrated. The scheme conflicts with LP Policy DM15 as the site is located within Flood Zone 3a. There is also a conflict with the Framework, PPTS and PPG with regard to siting a residential caravan within Flood Zone 3.

However, whilst the EA is opposed to this scheme, it has been demonstrated that the effect on public safety would be acceptable in respect of flood risk. I have not found any material conflict with other policies of the development plan.

34. In my view the benefits of the scheme clearly outweigh the conflict with the development plan. I conclude therefore that these are material considerations which mean that in this case the scheme can be determined other than in accordance with the development plan. I therefore conclude that the scheme is suitable for the site.

Conditions

35. The Council has suggested conditions which it considers would be appropriate in its submission. I have reviewed these in accordance with the tests set out in the PPG and have amended the wording where necessary in the interests of clarity and simplicity.
36. A condition relating to the time limit for implementation is not required in this instance as the development has commenced. A condition surrounding the approved plans is required for certainty.
37. The scheme is acceptable due to the need, lack of options and personal circumstances. Therefore, it is necessary to impose a personal permission. It is also necessary to restrict occupation to those who are gypsies and travellers. Although, due to the judgment the wording of the suggested condition required alteration.
38. Whilst a new Flood Risk Assessment is not deemed necessary, registration to the EA 'Floodline', tethering of caravans and finished floor levels are all reasonable and necessary to ensure satisfactory living conditions for the occupiers, given the location of the site in Flood Zone 3a.
39. Controlling the number of caravans and mobile homes on the site, the use of the site and vehicles are all reasonable and necessary to define the permission, living conditions of neighbouring occupiers and in the interest of character and appearance. Details of vehicle charging points to be installed is reasonable and necessary to give the occupiers the option for using electric powered vehicles. Requiring details of any further external lighting is reasonable and necessary to ensure the character of the surrounding area and to prevent any significant harm to biodiversity.
40. I have not included a condition for drainage or landscaping as this has been provided/installed through the approval of earlier permissions. In the case of landscaping this has matured over the time that the appellants have occupied the site, which also provides mature screening. Additionally, an area of the site is already set aside and maintained for bio-diversity purposes.

Conclusion

41. For the reasons given above I conclude that the appeal should be allowed.

W Johnson

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Dr Angus Murdoch	Murdoch Planning limited
Mr Ian Walton	SLR Consulting
Ms Lorraine Storey	Appellant
Mr Alfred Webster	Appellent

FOR THE LOCAL PLANNING AUTHORITY:

Mr William Fletcher	Maidstone Borough Council
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SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans:
 - 04 Oct 2019 Block Plan
 - 04 Oct 2019 Site Location
 - 04 Oct 2019 Flood Risk Assessment
 - 04 Oct 2019 Flood Risk Assessment, Appendix
 - 04 Oct 2019 Supporting Statement
- 2) The occupation of the 3no. pitches hereby permitted shall be carried on only by the following, their partners and resident dependants: Lorraine Storey; Charlotte Storey and Alfred Webster.
- 3) 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.
- 4) Within three months of the date of this decision, details of a Flood Emergency Plan, which shall include evidence of registration to the Environment Agency's 'Floodline' warning service, shall be submitted in writing to the Local Planning Authority. The scheme shall thereafter be carried out fully in accordance with the subsequently approved details for the life of the development.
- 5) All mobile homes shall have a finished floor level of 13.76mAOD and when on site any caravan shall be tethered to the ground to prevent it being washed away in the event of a flood.
- 6) No more than six caravans, as defined by the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968, shall be stationed

on the land at any one time, of which no more than three shall be a static caravan or mobile home.

- 7) No commercial activities shall take place on the land, including the storage of materials and no vehicles over 3.5 tonnes shall be kept on site.
- 8) Within three months of the date of this decision details of an electric vehicle charging point shall be submitted to and approved in writing with the charging point installed on the site in accordance with an agreed timetable for implementation and thereafter retained for that purpose.
- 9) There shall be no additional floodlighting installed on the site, unless prior written approval has been obtained from the Local Planning Authority.

End of Conditions