



Appeal Decision

Hearing held and site visit made on 23 May 2023

by Martin Allen BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 June 2023

Appeal Ref: APP/M3645/W/22/3310584

Victoria Fields, Clay Lane, Newchapel RH7 6HX

- 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 George Chapman against the decision of Tandridge District Council.
 - The application Ref TA/2021/2002, dated 15 November 2021, was refused by notice dated 5 September 2022.
 - The development proposed is described as "Proposed use of land as a private gypsy and traveller caravan site consisting of 1 pitch; revised application further to TA/2021/102 - Erection of a chalet bungalow and permission 2012/846 for stable / tack room / hardstanding."
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues raised are:
 - Whether the intended occupiers benefit from status as gypsy travellers,
 - The effect on the openness and purposes of the Green Belt,
 - The effect on the character and appearance of the area,
 - 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 development.

Reasons

Status

3. At the outset of the hearing, I clarified with the Council that their objection on the matter of status was based around what it considered to be a lack of information in order to establish whether the intended occupants of the site benefitted from status as gypsy travellers.
4. Following discussion on this matter, which included the appellant providing details of previous sites of occupation as well as patterns of travel and work, the Council indicated that it accepted the appellant's status. On the basis of the discussions as well as answers given to the questions I asked, I am also satisfied in this regard and find that the appellant benefits from status as a gypsy traveller.

Openness and purposes of the Green Belt

5. The appeal site is located within the Green Belt. The planning policy for traveller sites (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 proposal is inappropriate development in the Green Belt. Both the Council and the appellant agreed with this position at the hearing.

6. In terms of the effect on openness, the scheme would result in the stationing of a mobile home within the site, as well as the construction of an area for parking and turning. It was also confirmed at the hearing that there would be a touring caravan positioned within the site. The introduction of these elements, within what is currently a vacant parcel of land, would inevitably lead to a loss of openness in spatial terms. The extent of the site would not be excessive however and thus the spatial loss of openness would not be substantial.
7. In addition to the spatial consideration, there is also a visual element to openness. The proposed development would be visible from public viewpoints in the surrounding area. Most notably, this would be from the public bridleway from which the site would be accessed. Passers-by travel along this route at a relatively slow rate and thus, views would not be fleeting. There are also public footpaths nearby which afford views towards the appeal site for users. While these views are from a distance and would take in the backdrop of the development against existing vegetation, the introduction of development at this location would be a perceptible addition. The visual loss of openness would persist even if the site were landscaped, as this would also be conspicuous.
8. Accordingly, the scheme would be inappropriate development and result in a loss of openness, in the terms that I have described above. I consider that this loss would be moderate in its extent.
9. Paragraph 138 of the National Planning Policy Framework (the Framework) sets out the purposes of Green Belt, and this includes to assist in the safeguarding of the countryside from encroachment. Considering my findings above, the scheme would indeed encroach into the countryside and thus would conflict with one of the purposes of including land in the Green Belt.

Character and appearance

10. The appeal site comprises a small, narrow area of land that is accessed off Clay Lane, an unsurfaced, rough track that is also a public bridleway. Along the lane, the site is enclosed by substantial vegetation, however there are clear views into the site at the existing point of access. There is also some planting along the northern boundary, but this was mostly low, non-native planting and as a result there were clear views to the countryside further to the north. The southern boundary was formed by post and rail timber fencing, which allowed clear views of the surrounding open land.
11. While Clay Lane is a route that is enclosed by trees and vegetation, and thus has a more hemmed in appearance, the site itself is part of and shares a greater affinity with, the more open, rural landscape that surrounds it.
12. The scheme would result in the introduction of a mobile home, associated parking and turning facilities, as well as at times when the appellant is not travelling, a touring caravan, into this location. This would be at odds with the

existing rural appearance of this location. I accept that there are residential properties located within the wider area, but those in closest proximity to the site are located on the opposite side of Clay Lane and are established dwellings, within spacious and mature plots. These existing dwellings are therefore part of the established character of the area.

13. By comparison, the appeal scheme would be located where there is no existing development with which it would share any visual relationship. It would be an isolated visual feature at this uncluttered and undeveloped part of the landscape. There would be a change from an undeveloped rural landscape, to one which contains a mobile home and touring caravan. There would also be vehicles parked within the site, of which the appellant confirmed is likely to include a commercial vehicle, together with the inevitable domestic paraphernalia that would result from the residential occupation of the site. This would further erode the existing rural character and appearance of the area.
14. I am conscious that the extent of the area covered by the proposed development would be limited to a small portion at the western extremity of the site. Nonetheless, even accepting that new sites in the countryside can be accepted in principle, in this case the change that would result from the development would be stark, harmful and visible to users of the surrounding public rights of way. Notwithstanding the rural location, the scheme would be visible for a not insignificant number of receptors, particularly given the presence of the nearby rights of way.
15. Accordingly, I find that the appeal scheme would result in significant harm, which would arise from the introduction of a mobile home, touring caravan, and other domestic features at this location. Thus, the scheme would conflict with policies CSP9 and CSP18 of the Core Strategy, as well as policy DP7 of the Tandridge Local Plan: Part 2 – Detailed Policies (adopted 2014) (LPP2). Together, and amongst other things, these policies seek to ensure that gypsy and traveller sites do not significantly harm the character of an area, that development respects character and local setting, and that development integrates effectively with its surroundings.

Other considerations

Need for and provision of sites

16. The Council relies on the Gypsy Traveller Accommodation Assessment (GTAA) that was published in 2017, as part of the evidence base for the emerging Tandridge District Local Plan: 2033. As set out in the Council's Statement of Case, this identified a need for 5 pitches up to 2021, with up to a further 15 pitches required up to 2033. Thus, the GTAA identifies a minimum need for 20 new pitches.
17. The Council highlighted that the methodology adopted in the GTAA has been criticised during some local plan examinations and as a result it has adopted an uplift of 30% onto the figures contained within it. At the hearing it was stated that this equates to 20 pitches, based on the need in the GTAA of 15. However, if the need in the GTAA is 20 pitches (as set out above), the uplift would result in a new need of 26 pitches.
18. The Council informed me that 12 pitches have been granted permission since 2019, with a further 5 granted at appeal, resulting in a residual requirement of 3 (or 9 based on the revised calculation above).

19. However, the Council accepted that the recent Smith judgement, where the definition of gypsies and travellers in the PPTS was held to be discriminatory, would mean that the figure of need identified within the GTAA would likely be an underestimate and the actual need is likely to be higher. At this time however, a new GTAA has not been undertaken and it was the Council's view that without this new assessment it would not be possible to put a figure on what a realistic level of need would be. I agree with this, as without a full assessment it would not be possible to accurately predict the existing and future level of need. As such, I find that I can place no reliance on the findings of the current GTAA and thus there is no reliable assessment of need within the district.
20. Accordingly, notwithstanding that some pitches have been permitted, given that there is an existing identified need (albeit based on an unreliable assessment) together with that the Council accepts that the need will increase, I find that there is a need for and undersupply of pitches within the district.

Alternative sites

21. The Council accepted that there were no existing sites that the appellant would be able to move to at this current time. The Council was aware of one local Council run site, comprising 8 or 9 pitches, but was unaware of any vacancies or the number of names that may be on any waiting list for pitches when they become available. I therefore find that there are no available, alternative sites that could be occupied by the appellant.

Failure of policy

22. The Council's development plan contains no site allocation policy for gypsy traveller sites. There is only a criteria-based policy, against which individual sites that come forward are assessed. However, this policy states that a Site Allocations Development Plan Document (DPD) will be prepared to make provision for new sites. This policy was adopted as part of the Core Strategy, in 2008. Since that time, no DPD has been prepared and no allocations identified. I am also mindful that the GTAA is not reflective of the current need in the area, and indeed the level of need remains unknown.
23. Within this context, I find that there has been an ongoing failure of policy to address the accommodation needs of gypsy travellers within the area.

Personal circumstances

24. At the hearing, I was told that the appellant currently has no settled base and occupies sites by primarily doubling up at existing pitches with friends or family, or when not able to do this, pulling up and living at the roadside.
25. The partner and child of the appellant live separately, currently in bricks and mortar accommodation. This has been the situation since around 2013 and I was informed that the partner of the appellant knows of no reason to think that they would be unable to stay at this location in the future. The child currently attends school and has good attendance. Although I appreciate that they would prefer not to live in bricks and mortar accommodation, the partner and child of the appellant therefore benefit from a settled base. I was told that the appellant is unable to live with his partner and child due to an aversion to living in bricks and mortar accommodation.

Planning Balance

26. The Framework requires that substantial weight be 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
27. The PPTS at paragraph 16 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."*
28. The proposed scheme would be inappropriate development in the Green Belt, which is by definition harmful. Thus, the Green Belt harm is accorded substantial weight. I have also found that there would be significant harm to the character and appearance of the area. Collectively, I therefore attach considerable weight to the harms that would result from the proposed scheme.
29. There are however benefits which are required to be balanced against these harms. The identified need for new pitches in the area is currently unknown in its extent. In addition to this, it is clear that there has been a persistent and ongoing failure to adequately cater for the needs of gypsy travellers. These matters attract significant weight.
30. In terms of personal circumstances, I am keenly aware that the appellant currently has no stable base and is reliant on staying at the pitches of friends and family. There would therefore be a personal benefit to him if I were to allow the appeal.
31. I have also had regard to the Best Interests of the Child, and I have treated no other consideration as being inherently more important or, in advance of the subsequent assessment of the individual circumstances, I have given none greater weight. It is intended that the partner of the appellant and their child would reside with him at this site. The proposed development would provide stability for the child, with its associated benefits such as a stable home and a stable base which would facilitate school attendance, as well as access to health facilities and social activities.
32. However, I am also conscious that from the information that I heard at the hearing, the child currently benefits from a stable and secure home. This currently allows for the benefits for the child that I have mentioned above. I am also keenly aware that the appellant, the partner of the appellant and their child do not live together as a family, due to the appellant's aversion to residing in bricks and mortar accommodation. Thus, the appeal scheme would provide the benefits of facilitating family life and the child's cultural identity. Nevertheless, these best interests will not always outweigh other considerations, including those that impact negatively on the environment.
33. In light of the guidance of paragraph 16 of the PPTS, whilst I am mindful of the benefits to the child, I find that on balance the harms that would result from the proposal, which are harm to the Green Belt and to the character and appearance of the area, would outweigh the factors that weigh in favour of the scheme, including the personal circumstances of the appellant and the Best Interests of the Child. Thus, the balance falls against the proposals.

34. I have considered whether it would be appropriate to grant a temporary permission. However, the balance of harms versus benefits would remain and therefore it would not be appropriate in this instance.
35. I am conscious that in dismissing this appeal there would be interference with the appellant's rights under Article 8 of the *European Convention on Human Rights*, as it would deny him and his family the opportunity to establish a home on this site. However, such rights are qualified, and interference may be permissible when the rights of the individual are balanced against those of the community. In this instance such interference would be proportionate given the public aim of safeguarding the Green Belt, as well as protecting the countryside from harm.
36. In exercising my function on behalf of a public authority I am also aware of my duties under the Public Sector Equality Duty (PSED), contained in the Equality Act 2010, which sets out the need to eliminate unlawful discrimination, harassment and victimisation, and to advance equality of opportunity and foster good relations between people who share a protected characteristic and people who do not share it. Since the appeal involves the use of land as a gypsy site and the appellant is a gypsy traveller, he has a protected characteristic for the purposes of the PSED. However, having due regard to this, and the need to eliminate discrimination and promote equality, in this case the harm resulting from inappropriate development in the Green Belt and the effect on the character and appearance of the area, would outweigh this requirement.

Other Matters

37. It was put to me that positive weight should be given to the fact that the appellant has not sought to undertake intentional unauthorised development, in the opposite way as weight can be given to the fact that such intentional unauthorised development has taken place. However, I find no basis for taking into account such a consideration and as such this matter has little bearing on my decision.
38. Reference is made to a previous permission for stables, which it appears has lapsed without being implemented, and that the appellant could re-apply for such a development on this site. However, that is not a matter that is before me. A stable building would be a materially different type of development and one that may or may not be considered to be inappropriate development in the Green Belt. Thus, this matter does not weigh in favour of the proposal.
39. At the hearing, the appellant presented me with a copy of a recent appeal decision¹ where an Inspector allowed an appeal in the district. While the approach of the Inspector when making that decision is noted, the circumstances of that case differ from those before, most notably by the lack of any additional harm over and above that to the Green Belt, with a minor loss of openness. In this case, I have found that the loss of openness would be moderate and have also found harm to the character and appearance of the area. As such, this previous decision does not dissuade me that the approach I have taken, in terms of the balancing of the issues that I have undertaken, is the correct one in this case, based on the evidence presented.

¹ APP/M3645/W/21/3269882

Conclusion

40. I have found that the scheme would be inappropriate development, which would detract from the openness of the Green Belt and conflict with the purposes of including land in the Green Belt. Moreover, it would harm the character and appearance of the area, in conflict with policies CSP9 and CSP18 of the Core Strategy, as well as policy DP7 of the LPP2. The other considerations offered by the appellant, including the best interests of the child, do not clearly outweigh this harm so as to amount to very special circumstances. Accordingly, the scheme conflicts with policy DP10 of the LPP2, as well as the Framework and the PPTS.
41. The proposal would conflict with the development plan as a whole and there are no other considerations which indicate a decision other than in accordance with the development plan.
42. For the reasons given above, and having regard to all matters raised, I conclude that the appeal should be dismissed.

Martin Allen

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Phil Rowe	Planning consultant
George Chapman	Appellant
Amanda Bryant	Partner of appellant

FOR THE COUNCIL:

Cliff Thurlow	Interim Head of Planning
Paul Batchelor	Senior Planning Officer

INTERESTED PARTIES:

Tim Hill	Local Resident
Amelia Michie	Local Resident

DOCUMENTS SUBMITTED AT THE HEARING

1. Recent appeal decision (APP/M3645/W/21/3269882)
2. Plan showing public rights of way near to site