



Appeal Decision

Site visit made on 6 June 2023

by Thomas Shields MA DipURP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 14 July 2023

Appeal Ref: APP/M2270/W/21/3286899

The Hatchin Tan, Grandshore Lane, Frittenden, Cranbrook, Kent, TN17 2BZ

- The appeal is made under section 78 of the Act against a refusal to grant planning permission.
 - The appeal is made by Ms Nancy Lee against the decision of the Tunbridge Wells Borough Council.
 - The application Ref 21/02576/FUL, dated 19 July 2021, was refused by notice dated 24 September 2021.
 - The development proposed is stationing of three mobile homes, three touring caravans and a utility room for a gypsy family.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The Council does not dispute the status of the proposed occupiers¹ as gypsies and I also have no reason to do so. Accordingly, the provisions of PPTS² and their personal circumstances are material considerations I have taken into account in reaching my Decision.
3. Submitted with the appeal is a PEA³, and related to that are revised layout plans. The revised plans incorporate a 15m buffer area within the site separating the proposed developed residential area from the nearby area designated as ancient woodland. The Council have been able to consider and comment on the PEA and revised layout and I also have taken them into account.
4. While reference has been made to earlier appeal decisions in 2006 and 2011 they significantly predate PPTS and the NPPF⁴, first issued in 2012 and revised subsequently. As such, I attach no weight to these earlier decisions and have determined the appeal on its own merits.

Main Issues

5. Having regard to the Council's reasons in its decision notice to refuse planning permission I consider the main issues in the appeal are:
 - (i) the effect on the character and appearance of the area;

¹ Proposed occupiers: Page 25, Planning Statement submitted with planning application 21/02576/FUL

² Planning Policy for Traveller Sites, DCLG, 2015

³ Preliminary Ecological Appraisal, Urban Edge Environmental Consulting, 2021

⁴ The National Planning Policy Framework (2021)

- (ii) the effect on biodiversity;
- (iii) whether occupiers of the site would have adequate access to services and facilities;
- (iv) the need for and supply of pitches for gypsies and travellers; and
- (v) the personal circumstances of proposed occupiers, including the best interests of any children, and with particular regard to the Human Rights Act and the Public Sector Equality Duty.

Reasons

Planning policy background

6. With regard to proposed gypsy and traveller sites footnotes 27 and 38 of the NPPF state that it is PPTS which sets out how travellers' housing needs should be assessed, and that a 5 year supply of deliverable sites for travellers should be assessed separately in line with the policy in PPTS.
7. Policy H4 of the Tunbridge Wells Borough Local Plan (2006) (LP) and Core Policy (CP) 6 of the Council's Core Strategy DPD (2010) are the most relevant Development Plan policies for the provision of gypsy and traveller sites in the Borough. They are broadly consistent with the current provisions of PPTS and the NPPF.
8. Policy H9 of the emerging Local Plan (eLP) similarly seeks to provide sufficient sites to meet identified need and is in part based upon the findings and conclusion of a GTAA⁵. Given the examination stage of the eLP I attach only limited weight to eLP H9.

Main Issue (i) – Effect on character and appearance of the area

9. Planning policy at both local and national level does not preclude the location of gypsy and traveller sites in the countryside. However, each case must be assessed on its individual merits.
10. The appeal site lies on Grandshore Lane, an unlit rural lane in the countryside mostly bound by tall hedgerow and trees either side, or otherwise having open views across adjoining fields.
11. I disagree with the appellant's contention that the local area is characterised by a "*mixture of open countryside in agricultural uses and residential dwellings*". While I acknowledge there are a few isolated dwellings in the area, they are not so prominent or constitute such a level of development that the character of the area can properly be described as "mixed" open countryside/agricultural and residential.
12. During my visit to the appeal site and the surrounding area I saw that the local area is characterised overall as being predominantly rural, comprising agricultural fields and wooded areas and devoid of residential dwellings save for a few exceptions. My observations are also consistent with the defined Sissinghurst Wooded Farmland character area⁶ in which the appeal site is located, described as a "*...rural agricultural landscape of pasture and arable*

⁵ Gypsy and Traveller Accommodation Assessment (2018)

⁶ Tunbridge Wells Borough Landscape Character Assessment SPD (2017): Character Area 7

farmland, mixed woodland and orchards punctured by oast houses and sunken rural lanes, enclosed within undulating hills and with occasional extensive views of the Low Weald”.

13. The proposed siting of 6 caravans and a utility room, together with associated residential use of the land including vehicle parking and movements, and the presence of typical domestic paraphernalia, would in combination result in a highly incongruous urbanising intrusion into the landscape, thereby resulting in significant harm to the rural character and appearance of the area I have described.
14. I accept some further landscaping could help to soften and/or screen the development, but that would not adequately mitigate the harm resulting from its urbanising appearance from the lane, and would not mitigate at all the harm to the character of the area.
15. To conclude on this issue, the development would result in significant harm to the character and appearance of the area. As such, it conflicts with LP Policy H4 which seeks to ensure that gypsy sites are not visually intrusive and do not have more than a minimal impact on the rural character of the locality, and with Policy CP 4 which seeks to conserve and enhance the Borough’s rural landscapes.

Main Issue (ii) - Effect on biodiversity

16. The undisputed findings and conclusions of the PEA submitted with the appeal are broadly that there would be no or negligible impact on biodiversity within the appeal site. Additionally, a protective 15m scrub buffer would prevent loss of biodiversity in bordering woodland areas.
17. Recommendations for ecological enhancement are set out at PEA Table 5.3. These essentially propose additional planting of hedgerow and wildflower meadow including grass species to provide shelter and ecological connectivity for reptiles, amphibians, small mammals and provision of foraging areas. Nesting and roosting boxes in mature trees for birds and bats are also recommended.
18. Given these factors I am satisfied that the proposed PEA recommendations would likely result in a net gain in biodiversity. Furthermore, a planning condition/s could be imposed to secure the implementation of the recommendations within a set timescale and a method for measuring net gain.
19. As such, there would be no conflict with Policy EN1 or Policy CP 4 which taken together, amongst other matters, seek to ensure the conservation and enhancement of biodiversity.

Main Issue (iii) – Whether adequate access to services and facilities

20. While there would undoubtedly be reliance on the car for access to services and facilities this needs to be considered in the PPTS context of gypsy and traveller sites being acceptable in countryside locations, together with NPPF paragraph 105 which advises that opportunities to maximise sustainable transport solutions will vary between urban and rural areas, and this should be taken into account in both plan-making and decision-making. Additionally, the appeal site would provide a settled base, facilitate the gypsy and traveller lifestyle, and

reduce the need for long distance travelling and potential environmental damage caused by unauthorised encampments, all of which can contribute to sustainability overall in wider economic, social and environmental terms. As such, I find the location of the site is appropriate in terms of its proximity to essential services and facilities in accordance with LP Policy H4.

Main Issue (iv) - Need for and supply of pitches for gypsies and travellers

21. There is currently an under supply of pitches to meet the current general level of identified need and this appears to have been the case for many years.
22. Furthermore, given that the data and analysis in the GTAA is already more than 5 years old, and that it predates the Court's⁷ recent findings concerning the PPTS definition of gypsies (in as much that it discriminates against certain gypsies who, although they may have permanently ceased travelling, should also be included as counting towards such need) I am not convinced on the evidence before me that the Council's identification of need is as robust as it could be, and hence whether future pitch need can be met. Taken together, these factors weigh in support of the appeal.

Main Issue (v) - Personal circumstances

23. Dismissal of the appeal would result in current site occupants losing their home. This would constitute an interference with their human rights under Article 8 of the European Convention on Human Rights and under Article 1 of the First Protocol. These rights are enshrined in the Human Rights Act 1998 and concern the right to respect for private and family life and the protection of property respectively. However, they are qualified rights, requiring a judgment as to whether or not such an interference would be necessary and proportionate in the wider public interest.
24. In the context of Article 8, Article 3 of the United Nations Convention on the Rights of the Child obliges me to treat the best interests of the children as my primary consideration, in terms of the need to safeguard and promote their welfare. In balancing and weighing this consideration, along with all others in this case, no other single consideration can inherently be more important.
25. The site would be occupied by the appellant and her extended family. As gypsies, they have a protected characteristic for the purposes of the Public Sector Equality Duty (PSED) as set out in the Equality Act 2010. As such, I must have due regard to the need, among other things, to advance equality of opportunity between the site occupants and those who do not share that protected characteristic.
26. Having regard to the above factors I take into account that there has been a continuing failure by the Council to meet the current level of need for pitch provision, and that there is no evidence before me of any alternative suitable sites currently available which would facilitate the family's way of life.
27. I also acknowledge that dismissal of the appeal might disrupt some of the children's school placements and their continued access to consistent and stable education. A settled base would also generally be in the wider family's best interests in terms of mutual support and continuation of consistent and stable access to healthcare and social provisions. This is particularly so in the

⁷ *Smith v SSLUHC & Ors* [2022] EWCA Civ 1391

case of particular health issues referred to in respect of one of the proposed adult occupiers.

Planning Balance and Conclusion

28. I have previously identified a significant level of harm to the character and appearance of the area to which I attach substantial weight.
29. Against this harm there are factors which weigh in support of the appeal. With regard to health, education and establishing a stable and secure family life, the best interests of the children are a primary consideration. In this regard a permanent base would result in significant benefits for the wellbeing and healthcare of the family as a whole, and particularly so for the children and one of the adults, as discussed earlier. Given that there is an unmet need for pitches in the area and currently no suitable alternative site to which the family could relocate, these factors in combination attract great weight.
30. However, the factors to which I attach great weight in support of allowing the appeal do not outweigh the substantial weight I attach to the harm to the character and appearance of the countryside I have previously described, and do not justify granting planning permission either on a permanent or temporary basis. The proposed development would conflict with the Council's previously referred to planning policies and with the Development Plan as a whole. In terms of the Human Rights Act, dismissing the appeal is a necessary and proportionate interference in the wider public interest.
31. For all these reasons, the appeal is dismissed.

Thomas Shields

INSPECTOR