



Appeal Decision

Site visit made on 18 April 2023

by J Williamson BSc (Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 July 2023

Appeal Ref: APP/G2245/W/22/3297595

Macandy, Romney Street, Knatts Valley TN15 6XR

- 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 McCann against the decision of Sevenoaks District Council.
 - The application Ref 21/03821/FUL, dated 19 November 2021, was refused by notice dated 12 January 2022.
 - The development proposed is described as change of use of land for the siting of 2 mobile homes and 2 touring caravans.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. I note at the outset that the site benefits from planning permission to be used for residential purposes as a Gypsy/Traveller site. The permission is subject to a condition restricting occupancy to no more than one mobile home and one touring caravan at any time. The proposal seeks planning permission to allow 2 pitches to accommodate a total 2 mobile homes and 2 touring caravans, with occupancy restricted to Gypsies and Travellers.
3. The Court of Appeal issued a judgement¹ (hereafter referred to as the *Smith* ruling) regarding the definition of Gypsies and Travellers in the Planning Policy for Traveller Sites, (PPTS), with specific reference to those who have permanently ceased to pursue a nomadic lifestyle. The PPTS definition was found to be unlawfully discriminatory, with its main objective making it harder for elderly and disabled ethnic Gypsies and Travellers to obtain planning permission.
4. The appellant and the Council agree that, should permission be granted, a suitably worded condition could be attached to restrict occupancy to people with the appropriate status. Subject to such a condition taking account of the *Smith* ruling, I concur with this view. I have considered the appeal on this basis. Evidence confirming the appellant's status is not required.
5. Proposed site plan Ref J003910-DD-03, (plan 03), was initially submitted with the planning application. As it does not show how cars would enter and leave the site in a forward gear, an additional plan was submitted, Ref J003910-DD-04, (plan 04), with vehicle tracking shown. The layout shown on the 2 plans differed. However, I have taken account of both plans in reaching my Decision.

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

6. It has come to my attention that following the submission of the appeal the Council has undertaken an assessment of Gypsy and Traveller accommodation needs, the Sevenoaks District Council: Gypsy and Traveller and Travelling Showperson Accommodation Assessment 2022, dated September 2022, produced by arc4, (the GTAA 2022), as evidence to inform its emerging local plan (ELP). The Council submitted a copy of the GTAA 2022 drawing my attention to specific aspects. The appellant was given the opportunity to comment on the information submitted by the Council. I shall return to this matter below.
7. I have not been provided with any details of the ELP, such as the stage of preparation, whether there are any unresolved objections (and if so, to what extent), or the degree of consistency of emerging policies with the National Planning Policy Framework (the Framework). For these reasons, bearing in mind paragraph 48 of the Framework, I am unable to attribute weight to any emerging policies.

Main Issues

8. The 2 main parties agree that the proposal constitutes inappropriate development in the Green Belt, which is harmful by definition and should not be approved except in very special circumstances (VSCs). I concur with these conclusions and have made my Decision on this basis.
9. In light of the above, the main issues are:
 - the effect of the proposal on the openness of the Green Belt,
 - the effect of the proposal on the Kent Downs Area of Outstanding Natural Beauty (AONB),
 - whether the proposal would have an unacceptable impact on highway safety, and
 - whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations that amount to the VSCs required to justify the development.

Reasons

Effect on the openness of the Green Belt

10. The Framework advises that the essential characteristics of Green Belts are their openness and permanence². The openness of the Green Belt has both spatial and visual dimensions.
11. The site is located on the southern side of Romney Street, opposite a mobile homes site, 'Kingsdown Meadow Residential Park'. The site comprises a small crescent-shaped piece of land covering an area of around 570 sqm. It is bounded by timber fence panels, around 1.8 m high, with some trees/hedgerows, mainly along the northern boundary.
12. Notwithstanding the detail shown of the 'As Existing Site Plan', (ESP), I observed during my site visit, the building labelled 'MH' on the ESP is not present, and most of the hedgerow depicted as being adjacent to the southern

² Paragraph 137 of the Framework

boundary fence has been removed. The building labelled 'ST' on the ESP was the only accommodation on the site at the time of my visit, sited close-up to the northern boundary. There were no touring caravans present and one car was parked on the site.

13. It is highly likely that, as the proposal would result in there being 2 mobile homes and 2 touring caravans on the site, compared to the existing one mobile home and one touring caravan, it would lead to a loss of spatial openness. However, the proposal would be small-scale, its extent would be limited, and it would be confined within a site that already has a use for a mobile home and touring caravan. I therefore consider the effect of the proposal on the spatial openness of the Green Belt would be minimal.
14. The site is small and reasonably well-screened, with the possibility of further screening should I have been allowing the appeal. The elements of the proposal that would be visible from outside the site, ie the upper sections of the mobile homes and touring caravans, would be seen against the backdrop and within the context of the neighbouring mobile homes park. As such, I consider the effect of the proposal on the visual openness of the Green Belt would also be minimal.

Effect on the AONB

15. I have a statutory duty to have regard to the purpose of conserving and enhancing the natural beauty of AONBs³. The 'Kent Downs Area of Outstanding Natural Beauty Management Plan 2021-2026', provides a detailed account of the special components, characteristics and qualities of the AONB. Key aspects of relevance to the appeal are the site's location within open countryside in a landscape that includes farmed fields, expansive plateaux, and many woodlands which, as with other areas of the AONB, provide a rich and distinctive biodiversity.
16. Given the site's small size, existing use, enclosed nature, and the limited scale of the development proposed, I consider the proposal would not harm any of the identified special features, characteristics, or qualities of the AONB. As such, the natural beauty of the AONB would be conserved, as required by the CRoW. The proposal therefore accords with policy EN5 of the Sevenoaks District Council Local Plan Allocations and Development Management Plan, 2015, (LPADMP), which requires development to conserve the character of the landscape.

Whether the proposal would have an unacceptable impact on highway safety

17. The site is located within the countryside. Observations of the surrounding area made during my visit lead me to conclude that the site's location is such that future occupiers of the proposed pitches would be dependent on a private motor vehicle as their primary mode of transport to meet day-to-day needs. I have not been provided with any evidence to demonstrate that services and facilities within the surrounding area could be readily accessed by public transport, bicycle or on foot. Indeed, the appellant confirms that future occupiers of the site would be reliant on use of a private motor car.⁴

³ Section 85 of the Countryside Rights of Way Act 2000 (CRoW)

⁴ P9 of the appellant's Supporting Statement, Ref J003910, produced by WS Planning & Architecture, dated 19 November 2021

18. Romney Street is a very narrow road along which cars are unable to pass each other. Vehicle access to the site would be via an existing gate located at the eastern end of the site directly off Romney Street, which has a very restricted visibility, particularly looking west, when leaving the site. The site layout shown on plan 04 demonstrates that cars would be able to enter and leave the site in a forward gear. I consider this to be essential, given the very restricted visibility.
19. Based on the layout shown on plan 04, the proposal would provide one on-site car parking space for each proposed pitch, with each pitch comprising of a mobile home and a touring caravan. Although no details of the layouts of either the proposed mobile homes or touring caravans have been provided, the Council's assessment is based on each of the mobile homes having 2 bedrooms and each of the touring caravans providing one additional bedroom; hence, a total of 3 bedrooms per pitch. Paragraph 2 of the appellant's statement confirms that the mobile home has 2 bedrooms. I have made my Decision on this basis.
20. In accordance with Policy T2 of the LPADMP, the Council has applied the residential parking standards outlined in Appendix 2 of the LPADMP, which is 2 spaces for a 3-bedroom house in a rural area. Therefore, for the 2 pitches proposed the Council contend that a total of 4 spaces is required. The appellant suggests that as the mobile homes would be on a single level, they would be comparable to a 2-bedroom flat, for which the parking standards would require one space for each pitch. Additionally, the appellant takes issue with the Council's approach that assumes that each touring caravan would provide a bedroom. Nonetheless, he suggests that, should the appeal be allowed, a condition could be attached preventing the touring caravans from being used for residential purposes, thereby negating the need for 2 on-site car parking spaces per pitch. I consider such a condition, however, would not meet the relevant conditions tests⁵. It would be unreasonable, bearing in mind that living in caravans is an integral aspect of the nomadic lifestyle of Gypsies and Travellers as it facilitates travel for work. Also, it would not be enforceable.
21. I note that Policy T2 of the LPADMP allows for departure from the parking standards in certain circumstances. Taking account of the following key circumstances, I consider 2 car parking pitches per site would be required. In arriving at this view, I have had regard to the site's rural location and future occupiers being reliant on a private motor vehicle to meet their day-to-day needs. Also, touring caravans could be used for sleeping in whilst on site. Moreover, the touring caravans are likely to be used when travelling for employment purposes that require overnight stays, and a vehicle would be required to tow the caravan on such occasions. In such circumstances members of the family that would remain on site would require a car to access the services and facilities required to meet their day-to-day needs.
22. The appellant contends that a total of 4 car parking spaces could be provided within the site if deemed necessary and suggests such details could be secured by planning condition. I accept that details of this type could procedurally be secured. However, given the very limited amount of space within the site, and taking account of the layouts shown on plans 04 and 03, I am not convinced

⁵ Paragraph 56 of the Framework and paragraph 003 Reference ID: 21a-003-20190723, revision date 23 07 2019, of the Planning Practice Guidance

that 4 car parking spaces could be accommodated whilst ensuring that cars would be able to enter and leave the site in a forward gear.

23. Without the provision of 2 on-site parking spaces per pitch which allow for entering and exiting the site in a forward gear, I consider it highly likely that cars would at times park on Romney Street, or other surrounding narrow roads, and/or at times reverse out of the site onto Romney Street. I consider moving vehicles attempting to pass parked vehicles on Romney Street and/or other surrounding roads, and/or vehicles reversing out of the site, would create unacceptable highway safety concerns.
24. The proposal therefore does not accord with policies EN1 and T2 of the LPADMP, Policy SP6 of the CS or paragraph 112 of the Framework. Collectively, and among other things, these policies require development to provide adequate parking, safe and convenient vehicular and pedestrian access, and create places that are safe, taking account of local circumstances. Also, the proposal would be contrary to paragraph 111 of the Framework, which advises against that development that would have an unacceptable impact on highway safety.

Other Considerations, Planning Balance & Very Special Circumstances

Other Considerations

Need for and provision of sites

25. The PPTS advises that local planning authorities should prepare and maintain an up-to-date understanding of the likely accommodation needs for Gypsies and Travellers in their area over the lifespan of a development plan and to identify a 5-year supply of specific deliverable sites.
26. Policy SP6 of the Sevenoaks District Council Core Strategy, 2011, (CS), states that sites for Gypsy & Travellers will be provided by means of allocations in the Allocations and Development Management Plan, 2015, (ADMP). However, I have not been provided with any evidence which demonstrates that sites have been allocated in the ADMP.
27. The Council Officer Report states that the Council has an unmet need for Gypsy & Traveller sites. Since the submission of the appeal the Council has undertaken the GTAA 2022 which seeks to provide the most up-to-date information regarding the need for and provision of sites.
28. For the proposed plan period of 2022/23 to 2039/40 the GTAA 2022 identifies a shortfall of pitches of 43⁶, which comprises the total of those that meet the PPTS definition (ie 34), and those that do not due to them ceasing to be nomadic (ie 9). In response to the information provided by the Council, the appellant questions the robustness of the GTAA and suggests that it does not take account of the *Smith* ruling. I agree that this is factually the case, as the *Smith* ruling was published on 31 October 2022 and the Council's GTAA is dated September 2022. As noted, the GTAA 2022 refers to having taken account of people that meet the PPTS definition of Gypsies and Travellers and people that do not. However, it is possible that the *Smith* ruling could result in more pitches being required than identified in the GTAA 2022.

⁶ This figure takes account of current vacancies on Council and private sites (p8 of the GTAA 2022)

29. The GTAA states that the Council has identified potential sites for around 50 pitches. Should 50 pitches be forthcoming, this would exceed the identified shortfall of 43 for the proposed plan period. However, the GTAA does not provide details of the sites. Furthermore, it notes that the sites identified still need to be assessed to establish whether they would be suitable.
30. With regard to the 5-year period 2022/23 to 2027/28, the GTAA 2022 identifies a shortfall of 5 pitches. I acknowledge that there has been a net gain of 6 pitches during the 2022/23 to 2027/28 period (the Council has provided evidence of this)⁷, which would satisfy the shortfall for this 5-year period.
31. However, for the reasons outlined, until the GTAA 2022 is assessed as part of the ELP examination, I cannot be certain that the extent of need identified is accurate, that the number of pitches identified will be forthcoming, that the long-term and 5-year shortfalls are accurate, or that the number of potential pitches identified will address the shortfall for the proposed plan period. Nor can I be clear about the extent to which planning permissions granted since the previous GTAA was completed have contributed to, or will contribute to, meeting previously identified need or the needs for the future. Consequently, at this stage I attach limited weight to the GTAA 2022.
32. Although the extent of current need is not clear, I have made my Decision taking account of the conclusion reached in the Council Officer Report that there is an unmet need for pitches in the area. As the proposal would create one additional pitch, regardless of the current extent of shortfall, I attach moderate weight to this factor. The appellant asserts that unmet need is due to a failure of policy. As sites have not been allocated in the ADMP, and a shortfall is acknowledged by the Council, I consider policy has failed to meet the need. However, this factor does not add any additional weight to the matter of unmet need.
33. The Council acknowledges that it is inevitable, due to the make-up of the area, that some future sites will be in the Green Belt. Additionally, the site already has planning permission for use as a site for Gypsy and Traveller accommodation. These factors weigh moderately in favour of the proposal.

Personal circumstances & best interests of children

34. As noted by the Council, although the appellant asserts that there are personal circumstances which should be given weight in the planning balance, no details of the occupants of the proposed development have been provided. As such I attach little weight to matters of personal circumstances, including the best interests of children.

Planning Balance

35. The proposal would constitute inappropriate development in the Green Belt, and although the impact on its openness would be minimal it would nevertheless persist. Also, the proposal would create an unacceptable highway safety concern.
36. I note that the Council concludes that unmet need may outweigh the harm the proposal would cause to the Green Belt by definition and the minimal harm it would cause to its openness. However, paragraph 148 of the Framework

⁷ Planning application Refs 21/03812/FUL, 21/01623/FUL and 22/01536/FUL

advises that when assessing planning applications in the Green Belt, substantial weight shall be given to any harm to the Green Belt. Additionally, VSCs will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations. Consequently, inappropriateness, openness and other harm are inseparable for the purposes of assessment.

37. Although I consider there is an unmet need for Gypsy & Traveller sites and that the extent of the unmet need is unclear, the PPTS advises that unmet need is "unlikely" to clearly outweigh harm to the Green Belt and any other harm.
38. The other considerations outlined above, would not individually or collectively outweigh the harm I have identified re inappropriate development in the Green Belt, harm to its openness, and unacceptable impact on highway safety. Consequently, VSCs do not exist that would justify the proposed development. The proposal therefore does not accord with the development plan as a whole. There are therefore no other considerations, including policies in the Framework, which lead me to conclude other than in accordance with the development plan.
39. The appellant's supporting statement (page 14) requests that a temporary period of 3 years be granted if permanent planning permission is not forthcoming. However, granting permission for a temporary period would not overcome the harm I have found in respect of highway safety. For this reason alone, a temporary permission would not be appropriate.

Other Matters

40. The appellant suggests that when dealing with the previous application at no time did the Council indicate that on-site car parking of 2 spaces per pitch would be required. I have little information before me regarding this matter and I am therefore not able to comment. Regardless, I consider it to be a matter between the appellant and the Council.

Conclusion

41. For the reasons outlined above, I conclude that the appeal is dismissed.

J Williamson

INSPECTOR