



Appeal Decision

Hearing Held on 11 July 2023

Site visit made on 11 July 2023

by Matthew Jones BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 September 2023

Appeal Ref: APP/H2265/W/23/3316969

Alan's Hectare, Cemetery Lane, Hadlow TN11 OLT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73A of the Town and Country Planning Act 1990 for the development of land carried out without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by T & O Coster & Eastwood against the decision of Tonbridge & Malling Borough Council.
 - The application Ref TM/21/01718/FL, dated 16 June 2021, was refused by notice dated 23 August 2022.
 - The application sought planning permission for the change of use of land to a private gypsy and traveller caravan site consisting of 2 no. pitches without complying with a condition attached to planning permission TM/14/02816/FL dated 24 June 2016 (allowed under appeal ref APP/H2265/W/15/3033682)
 - The condition in dispute is No 2 which states that: *'The use hereby permitted shall be for a limited period being the period of five years from the date of this decision, or the period during which the premises are occupied by them, whichever is the shorter'*.
 - The reason given for the condition is: *'The scheme is only acceptable on the personal and temporary basis indicated'*.
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Decision

1. The appeal is allowed and planning permission is granted for the change of use of land to a private gypsy and traveller caravan site consisting of 2 no. pitches at Alan's Hectare, Cemetery Lane, Hadlow TN11 OLT in accordance with the application ref TM/21/01718/FL dated 16 June 2021 without complying with conditions attached to planning permission Ref TM/14/02816/FL dated 24 June 2016 (allowed under appeal ref APP/H2265/W/15/3033682), but subject to the conditions in the attached schedule.

Procedural Matters

2. I have taken the site address from the Council's decision notice.
3. The appeal was accompanied by a site location plan. During the appeal, further drawings were submitted which show the elevations and plans of two proposed day rooms, and the site layout and landscaping. I am mindful that the day rooms already exist as they were first approved as part of the original permission. At the hearing the Council raised no objection to me taking these drawings into account, and I have done so without prejudice to any party.

Background

4. The site comprises two gypsy and traveller pitches, each containing a day room and a caravan, within the countryside on the edge of the settlement of Hadlow.

Access is off Cemetery Lane directly to the north. Each pitch has an adjacent paddock, which together sweep gently down to the south, where they bound a public footpath. To the east is an arable field and to the west the authorised gypsy and traveller site Springfield Place, which has four occupied pitches. The site was originally granted permission in 2016 (the original permission).

5. Condition 2 of the original permission imposes a five-year temporary period for the development, which ended in June 2021. The appellants now seek the development on a permanent basis, and so wish for condition 2 to be removed. This would also necessitate the removal of condition 6, which requires for the restoration of the site to its previous guise after the five-year period. Condition 1 restricts the use only on a personal basis to the appellants, so that condition is also potentially at issue, subject to my assessment and decision.
6. In 2017, a subsequent planning permission was granted at the site for 'Erection of 2no stables each comprising of 2 stables, 1 haystore and 1 tack room' under Ref TM/17/01533/FL. These equestrian buildings have been constructed within the area of paddock directly aside the two pitches.
7. It is common ground between the main parties that the appellants are Romany Gypsies and that as a gypsy and traveller site within the Green Belt, pursuant to the Planning Policy for Traveller Sites (PPTS), the development constitutes inappropriate development within the Green Belt. I proceeded on that basis.

Main Issues

8. Given the foregoing, I consider the main issues to be:

- the effect of the development on the openness of the Green Belt;
- the effect of the development on the character and appearance of the area;
- the question of the need for gypsy/traveller sites;
- the personal circumstances of the site occupiers; and,
- 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 necessary to justify the development in the Green Belt.

Reasons

Openness

9. The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. The openness of the Green Belt has a spatial aspect as well as a visual aspect.
10. In spatial terms, a field has been developed with pitches delineated by fencing and each containing a day room and a caravan. This has caused an intrinsic loss of spatial openness. However, the pitches are generously proportioned, which provides a general sense of looseness and expansiveness, which reduces the perceptible degree of loss of the spatial aspect of openness.
11. Visually, the site is largely well hidden by a mature hedgerow along Cemetery Lane, with the roofs of the day rooms just rising above it. The site is more visible from the public footpath to the south. However, the two stable blocks

have come to provide a strikingly developed foreground which conceals much of the pitches and their associated paraphernalia, which means that the development is providing a limited loss of openness in a visual sense.

12. It follows that the development is inappropriate development in the Green Belt which has caused a limited loss of openness. Nonetheless, the National Planning Policy Framework (the Framework) advises that substantial weight should be given to inappropriate development in the Green Belt and any other harm and thus that is the weight I shall apply in this case.

Character and appearance

13. The stable blocks have also significantly changed the character of public views from the footpath. What was once a verdant and undeveloped field is now partly occupied by a group of prominent equestrian structures. The development, particularly the hardstandings, fences and caravans themselves, recede behind these buildings to the point that they become arguably barely noticeable to the casual observer. One would be forgiven for mistakenly viewing the day rooms, which are similar in design appearance to the stable blocks, as a part of a larger equestrian facility.
14. To the west, at the corner of Maidstone Road and Cemetery Lane, the two-storey public house The Harrow has been replaced by a development of bungalows. This has introduced a lower profile building which is more in tune with the scale and form of the existing day rooms on the appeal site and the structures within Springfield Place. This neighbouring scheme has therefore aided the assimilation of the development into the Cemetery Lane scene. Given such, the urbanising effect of the development is now negligible in my opinion.
15. I therefore conclude that the development has had an acceptable effect on the character and appearance of the area. It accords with the landscape, character, and design objectives of Policies CP6, CP20, CP24 of the Core Strategy (adopted 2007), Policy SQ1 of the Managing Development and the Environment Development Plan Document (adopted 2010) and the Framework.

The question of the need for gypsy/traveller sites

16. The PPTS requires Local Planning Authorities to make their own assessment of the need for traveller sites, to set pitch targets for travellers which address the likely needs, and to identify a supply of specific deliverable sites sufficient to provide a 5-year supply of sites against their locally set targets.
17. The Core Strategy does not allocate sites and so there is no five-year land supply of deliverable sites. The latest GTAA¹ goes beyond the restrictive PPTS definition of gypsies and travellers and identifies an overall unmet cultural need of 41 pitches within the Council area, a figure accepted by both parties at the hearing. This is a substantial level of unmet need which is also significantly more than the extent of unmet need identified by previous GTAAs and faced by the inspector when the original permission was granted in 2016. The Core Strategy is therefore failing now more than ever to meet the needs of the gypsy and traveller community in the Borough and is increasingly inconsistent with the policy requirements of the Framework and the PPTS in this respect.

¹ Gypsy and Traveller and Travelling Showperson Accommodation Assessment 2022 (GTAA)

18. Regarding the broader concept of policy failure, the Council has a decades long record of failing to meet need or address unmet need with site allocations. A new Local Plan was due for adoption in 2019 but was withdrawn in 2021. The plan making process has started again, and I am told that a new Local Plan has yet to reach the Regulation 19 stage. A 2024/2025 deadline for its adoption was suggested at the hearing, and the point made that the Local Plan was withdrawn for a reason unrelated to gypsy and traveller site provision. However, it is difficult for me to place stock in the suggested timescales for its adoption, given the potential for policy to change and for modifications to be required.
19. In any event, without a published draft before me, I simply do not know how the new plan would address the need for sites. I have been directed to draft policy LP38, but this related to the now withdrawn Local Plan, does not attempt to allocate new sites, and it is not certain on the evidence before me if this policy, or an iteration of it, is to be carried forward. In this sense, a credible plan led solution appears further away than it would have seemed in 2016.

Personal circumstances

20. The Council accepted at the hearing that there are no suitable, affordable alternative sites for the appellants to resort to. As such, the logical outcome of the dismissal of this appeal would be enforcement action followed by a roadside existence. Such an existence has become even more challenging following the introduction of the Police, Crime and Sentencing Act 2020, which has made unauthorised camping by a single caravan a criminal offence, with potential penalties including confiscation of the family home and imprisonment.
21. There is a 16-year-old child living on the site. The child is home-schooled but previously attended the primary school in Hadlow. Given that they have spent much of their latter childhood here, the child has a social network within the village, and also has direct access to their horse within the adjacent paddock. The child has clearly benefited immensely from having the appeal site as a settled base. It is in the continued best interests of the child that this extends for the remainder of their childhood, instead of the alternative prospect of the damaging upheaval that would be experienced through an enforced roadside existence. This is a primary consideration in favour of the appeal.
22. Furthermore, in the absence of immediately available or suitable alternative accommodation, dismissal of this appeal would amount to a breach of Article 8 of the European Convention on Human Rights in relation to respect for private and family life, and of Article 1 of the First Protocol in relation to the protection of property, both as incorporated by the Human Rights Act 1998.
23. Given the status of the appellants as ethnic Romany Gypsies, I have also had due regard to the need under the Public Sector Equalities Duty to (a) eliminate discrimination, harassment, victimisation and any other prohibited conduct (b) advance equality of opportunity between persons who share a relevant protected characteristic and do not share it and (c) foster good relations between persons who share a relevant protected characteristic.

Other Considerations

24. The development is inappropriate development that has harmed openness. The Framework states that inappropriate development in the Green Belt should not be approved except in very special circumstances. Very special circumstances

- will not exist unless the harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations.
25. The undisputed need for gypsies and traveller sites nationally, regionally and sub-regionally attracts significant weight. In Tonbridge and Malling, the unmet need for sites, the current absence of a tangible emerging plan led approach to addressing these issues, the immediate unavailability of suitable alternative sites, and the clear, persistent issue of policy failure, each amount to considerations of substantial weight.
 26. Paragraph 27 of the PPTS states that, if a Council cannot demonstrate an up to date 5-year supply of deliverable sites, this should be a significant material consideration in any subsequent planning decision when considering applications for the grant of temporary planning permission. However, this policy does not preclude such weight being potentially given to this issue when assessing schemes for permanent permission. This is the weight I attribute to the total absence of a five-year supply of deliverable sites in this case.
 27. As was the case in 2016, it remains a consideration in favour of the development that approximately 72% of Tonbridge and Malling Borough lies within the Green Belt. This has clearly hindered the appellants' search for an alternative site since 2016, and also logically suggests that a proportion of any future site allocations would have to be on existing Green Belt land.
 28. The site is commendable in other ways. It is at the edge of Hadlow, with good access to the range of services and facilities within the village. The site has reasonable lawned areas for recreation. It uses a pre-existing access and soft roadside boundary treatments and sits well with the adjacent permanent gypsy and traveller site and the nearby bungalows. This means that the site does not give the impression that it is deliberately isolated from the rest of the village community, but rather is an integral part of it. This attracts moderate weight.
 29. Lastly, I attribute substantial weight to the personal circumstances of the appellants, especially the benefits of a settled base for the child living on site.
 30. I have balanced the harm to the Green Belt against these considerations. In doing so I recognise that the PPTS states that, subject to the best interests of the child, personal circumstances and unmet need are unlikely to clearly outweigh the harm to the Green Belt and any other harm so as to establish very special circumstances. But the word unlikely does not mean never, there are other considerations in play in this case, and the balancing exercise is ultimately down to the discretion of the decision maker.
 31. It is my opinion that the other considerations before me are of such magnitude and weight that they combine to form very special circumstances. They clearly outweigh the harm to the Green Belt by reason of inappropriateness and the loss of openness. Indeed, given that the situation in the Borough appears to be worsening, with a double blow of simultaneously increasing unmet need combined with additional delays to any plan led solution, I find that the very special circumstances exist even before the appellants' personal circumstances are taken into account. It follows that a permanent permission is justified.
 32. Consequently, I conclude that the development accords with Policies CP3 and CP20 of the Local Plan, the Framework and the PPTS insofar as they address inappropriate development within the Green Belt. At the appeal the Council

also sought to rely on Policy CP14 of the Core Strategy. This is a more general policy restricting development in the countryside and Green Belt. Although the development conflicts with it, the policy is less relevant than CP20, given that the latter represents the Core Strategy's bespoke response to gypsy and traveller development. I thus afford the conflict with Policy CP14 little weight.

Other Matters

33. An interested party has referred to unauthorised development which may have been added to the site, and which may obstruct wider views of the landscape around the village. However, I have assessed the scheme strictly on the basis of the plans before me.

Planning Balance

34. The development accords with the development plan when read as a whole and there are no other considerations before me which indicate that I should make a decision other than in accordance with the development plan.

Conditions

35. In light of the foregoing, the appeal should be allowed, and a new planning permission granted without the disputed conditions 1, 2 and 6 but retaining those non-disputed conditions from the previous permission insofar as relevant. An accord with plans condition is required in the interest of certainty. As the circumstances of the appellants and their families have not been determinative, a personal condition is not required. However, to secure the site as a gypsy and traveller site in land use terms, it is essential that its occupants are required to meet the PPTS definition of such, albeit expanded to incorporate those who have permanently ceased to travel in line with the Smith judgment²
36. I appreciate that the detailed site infrastructure was agreed in relation to the original permission, and the appellants simply seek for this to remain. However, although an application made under S73 is commonly referred to as a variation, the effect of granting permission creates a new, standalone planning permission, so I must ask for these details to be agreed once more. For the same reasons, conditions will remain to preclude commercial activity, to restrict vehicles on the site to under 3.5 tonnes. In the same terms, a condition is necessary to restrict the number of pitches and caravans on the site to that which is required. Condition 10 of the original permission required for the removal of a fence that has indeed been removed, so the condition is no longer needed. However, conditions are still required, in the interest of the character and appearance of the area and the openness of the Green Belt, to remove Permitted Development Rights relating to means of enclosure and to ensure that the open areas of the site remain as such.

Conclusion

37. For these given reasons, and taking into account all other matters raised, I conclude that the appeal should be allowed.

Matthew Jones
INSPECTOR

² Lisa Smith v SSLUHC & Ors [2022] EWCA Civ 1391

APPEARANCES

FOR THE APPELLANT:

Dr Angus Murdoch	Agent
Rhodri Crandon	Landscape Specialist
Obee Eastwood	Appellant
Jodie Eastwood	Appellant
Lena Thomas	Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Bob McQuillan	Planning Consultant
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DOCUMENTS SUBMITTED AT THE HEARING

- 1) Signed Statement of Common Ground

Schedule of Conditions

- 1) The site shall only be developed in accordance with the details set out in the following approved plans: TDA.2057.01, TDA.2057.03, TDA.2057.02.
- 2) 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.
- 3) No more than two caravans, as defined by the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968, shall be stationed on each pitch at any one time, of which no more than one shall be a static caravan, and no further caravans shall be placed at any time anywhere within the application site.
- 4) No commercial activities shall take place on the land, including the storage of materials.
- 5) No vehicles over 3.5 tonnes in unladen weight shall be stationed, stored or otherwise parked on the site.
- 6) The use hereby permitted shall cease and all caravans, structures, equipment and materials brought onto the land for the purposes of such use shall be removed within 28 days of the date of failure to meet any one of the requirements set out in i) to iv) below: i) within 3 months of the date of this decision details of: a. the means of foul and surface water drainage of the site, and including all necessary measures to mitigate any flood risk posed to or by the proposed development; b. facilities for the storage and collection of refuse and waste; c. details of external lighting; d. a timetable for implementing the proposed landscaping and arrangements for replacement of any subsequent trees or plants which are removed or become seriously diseased or damaged, and; e. full design details of the proposed access into the site, including materials and sightlines; shall have been submitted for the written approval of the local planning authority and the said details shall include a timetable for their implementation; ii) within 11 months of the date of this decision the details to be submitted in i) shall have been approved by the local planning authority or, if the local planning authority refuse to approve the details, or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State; iii) if an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted details shall have been approved by the Secretary of State; iv) the approved details shall have been carried out and completed in accordance with the approved timetable arising as appropriate from i) to iii) above.
- 7) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015, or any re-enactment thereof, no fences, walls, gates or other means of enclosure shall be erected within any part of the application site other than in accordance with the details shown on the approved drawings.

- 8) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015, no buildings or other structures shall be erected within any part of the application site other than in accordance with the details shown on the approved drawings, and the remaining area of the site shall be kept clear of all obstructions at all times.