



Appeal Decision

Hearing held on 16 April 2024

Site visit made on 16 April 2024

by A Owen MA BA(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 May 2024

Appeal Ref: APP/G2245/W/23/3333120

Land North West of Eagles Farm, Crowhurst Lane, West Kingsdown, Kent TN15 6JE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr M Lewis against the decision of Sevenoaks District Council.
 - The application Ref is 22/03491/FUL.
 - The development proposed is material change of use of land for the creation of 1 Gypsy/Traveller pitch comprising the siting of 1 mobile home, and 1 touring caravan, alongside associated parking and hardstanding, and post and rail fencing and gates.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The third reason for refusal related to the gypsy status of the appellant and his family. The Council now accept that they are gypsies that meet the definition in the Planning Policy for Traveller Sites (PPTS) and therefore have withdrawn this reason for refusal. I have no reason to disagree.

Main Issues

3. The main issues are:
 - whether the proposal would be inappropriate development in the Green Belt having regard to local and national policy;
 - the effect on the openness of the Green Belt;
 - the effect on the character and appearance of the area; and
 - would the harms to the Green Belt, and any other harm, be clearly outweighed by other considerations so as to amount to the very special circumstances required to justify the development.

Reasons

Green Belt

4. I have been provided with no local policies that directly relate to development in the Green Belt. However, paragraph 16 of the PPTS clearly states that traveller sites in the Green Belt are inappropriate development. In addition,

paragraph 155 of the National Planning Policy Framework (The Framework) says that material changes of use of land are not inappropriate if they preserve its openness and do not conflict with the purposes of including land within it. The main parties agree that the development would not safeguard the countryside from encroachment, which is one of the purposes of the Green Belt listed in paragraph 143, and that it would not preserve openness, which I address in more detail below. It is not disputed therefore that the development is inappropriate in the Green Belt. The Framework advises that substantial weight should be given to that harm.

Openness

5. The site is located on the west side of Crowhurst Lane a short distance to the northeast of the settlement of West Kingsdown, and currently comprises a paddock separated from the appellant's wider landholding by a post and rail fence. There is a line of trees along the highway verge which allows only limited views into the site from Crowhurst Lane, however the site is clearly visible through the vehicle access point. There is a public footpath which runs along the southern boundary of the site between Crowhurst Lane and Fawkhams Road to the west. There are some bushes alongside the parts of the path, but not along its entirety. At the eastern end, closest to Crowhurst Lane, there is a low wooden fence above which the site is plainly visible. It is also visible from a considerable stretch of the footpath to the west of the site, across open paddocks and low post and wire fencing.
6. The development would comprise the introduction of a mobile home, a touring caravan, an extensive parking area and its occupation by cars and likely residential paraphernalia, into an area that is currently wholly undeveloped. This would harm openness in a spatial sense. Moreover, due to the prominence of the site from a number of directions and at short and long distances, the development would harm openness in a visual sense too.
7. It is acknowledged that supplementary landscaping could be provided to help screen the development, and I recognise the advice in the PPTS that sites should not be completely screened and isolated from the wider community. Nonetheless, landscaping could not mitigate the spatial impact on openness nor views through the site access from the road. As such the development would severely harm the openness of the Green Belt to which I give substantial weight.

Character and appearance

8. The area is not subject of any formal landscape protection such as a National Landscape¹. However, the paddocks to the west of the site are primarily open with a few very small storage shelters, such as for straw, and occasional bushes or trees. There is a small wood to the south of the footpath. All these features combine to create an attractive rural landscape.
9. The east side of Crowhurst Lane is very different. There are a few scattered dwellings including Crowhurst Farm Cottage opposite the site. There is also an industrial building and a small traveller site of four pitches here. The traveller site is substantially screened by tall hedging alongside the road, Crowhurst Farm Cottage is set back behind a tall solid wooden fence, and the industrial

¹ Formerly Area of Outstanding Natural Beauty

unit is located down a concrete access road flanked by a brick wall. The combination of the fencing, walls, hard-surfacing and buildings creates a formalised, semi urban character.

10. The public footpath which runs past the appeal site continues on across Crowhurst Lane, along the access road to the industrial unit, through its parking area and then under the M20. When approaching the site from the east along this path, the contrast between the verdant, rural character of the site in front and the urban surroundings of the path is striking. When approaching the site from the west, the vegetation along the west side of Crowhurst Lane screens most views of the built form opposite, with only a very limited and short distance view of the fence in front of Crowhurst Farm Cottage.
11. As such, although the built form on the east side of the road has an effect on the character of its context, the site has a far stronger relationship to its immediate countryside surrounds with the road forming a clear dividing line. The development would therefore represent the introduction of built form on the rural side of the road and the urbanising effect of that would strongly and harmfully contrast with that rural landscape.
12. It is noted that the area of hard-surfacing could be reduced to make way for more soft landscaping as part of a landscaping scheme to be secured by a planning condition. Nonetheless a substantial area of hard-surfacing would still be required for vehicle parking and manoeuvring.
13. The development would therefore conflict with policies SP 1 and LO 8 of the Core Strategy (2011) and EN1 and EN5 of the Allocations and Development Management Plan 2015 (ADMP) which, combined, seek to ensure the character of the countryside is conserved. It would also conflict with Core Strategy policy SP 6 which specifically seeks to ensure gypsy and traveller development has no significant adverse landscape impact.
14. The Inspector into an appeal² at the adjacent site found that the level of harm caused to the character and appearance of the area from that development of four pitches, including four dayrooms, would be significant. Though smaller in scale, the current scheme is immediately adjacent to the footpath so would have a comparable effect on the landscape.
15. It is also acknowledged that it is feasible that paraphernalia, such as horseboxes could be placed on the site without needing planning permission and that these could have a similar landscape impact. However it is unlikely such development would be of a comparable scale to the current proposal.

Other considerations

16. Paragraph 152 of the Framework says that inappropriate development is harmful to the Green Belt and should not be approved except in very special circumstances. Paragraph 153 states that 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. I address these considerations below.

² Ref APP/G2245/W/17/3170535

Need & Supply

17. The most recent Gypsy and Traveller Accommodation Assessment 2022 (GTAA) identifies a need for 43 pitches to 2040 which includes those families who met the definition of a gypsy or traveller as set out in the PPTS at that time plus those who had ceased to travel permanently, which the current PPTS now includes within its definition.
18. However the appellant queries the accuracy of the GTAA. They suggest the response rate to the survey (60%) on which the GTAA is based was poor so the results are unreliable; that the number of pitches on some sites was miscounted³; that all unauthorised sites should be added to the need; that vacant sites on private pitches will be unavailable to non-family members so should not be seen as part of the supply; that the study makes no assessment of the existing degree of doubling up; and some sites, notably that at Knatts Valley on which there is a pending planning application to regularise 11 pitches, were erroneously omitted altogether. The Council's GTAA consultant emphasised that the figures given were based on the information they collected in their research, but stressed they were a minimum. He also opined that there is an emerging trend of authorised pitches being occupied by families who are not gypsies or travellers, which would reduce the number of pitches available to those who are gypsies and travellers.
19. I accept that the GTAA, in identifying need, includes 32 vacant pitches on authorised sites that may not be available to all in the traveller community; that 10 unauthorised pitches should be added to the need; and that a survey with a greater response may have revealed a greater need and the degree of doubling up.
20. I also note that planning permissions have been granted for 10 additional pitches since 2022 which exceeds the identified need in the GTAA of 5 pitches over the 2022 to 2027 period. Nonetheless, as it seems very likely that the overall need is greater than that identified in the GTAA, it is also possible that the immediate need is greater than the 10 pitches granted. Also, the 2017 GTAA identified a need for 51 sites and in the period between the two GTAA's 44 pitches were granted planning permission, which illustrates the need at that point had also not been met. As such the lack of provision to meet the unmet need is a matter that carries significant weight in favour of the proposal.
21. It is not disputed by the parties that the Council cannot currently demonstrate a 5 year supply of gypsy and traveller accommodation. Policy SP 6 of the 2011 Core Strategy states that sites would be identified by the ADMP. This was adopted in 2015 with no such allocations, and there is no other adopted plan or policy allocating sites. Whilst this is contrary to the guidance in paragraph 10 of the PPTS, it is not a matter that carries significant weight in this case due to the site's position in the Green Belt as set out in paragraph 27 of the PPTS.
22. The lack of any policy allocating supply for many years now, shows a historic and persistent lack of supply in the District. I note the Council are in the process of developing a new Local Plan which will allocate three sites to provide 22 pitches. However, notwithstanding the fact that 22 pitches would still not be sufficient to meet the GTAA requirement, that Plan is at an early stage, will not be examined until next year at the earliest, and so has little bearing on this

³ For example it was suggested that there is an additional occupied pitch at the Macandy site

appeal. The persistent failure of policy, and the uncertainty of future allocations to meet the need is another matter which affords significant weight.

23. I was advised that the sites put forward in the emerging local plan are all in the Green Belt and indeed, as over 90% of the district is Green Belt, it is highly likely that all gypsy and traveller sites whether allocated or windfall will be in the Green Belt. This is also a significant consideration.

Available alternative accommodation

24. The appellant and his family, which comprises his wife and three children, are currently doubling up on his father-in-law's pitch at a site in Basildon. Indeed over the past few years the family have moved repeatedly; unlawfully doubling up on the pitches of relatives; staying in the gardens of houses of relatives, or living at the roadside. Throughout this time they have looked at other permanent sites, mainly in the local area which is where the appellant grew up and where his extended family live. But other sites have been unavailable, unaffordable or unsuitable. For example they do not have land associated with them on which to graze his horses; the trading of which forms part of his income. For this reason, he has not applied to go on Council waiting lists notwithstanding the fact that the waiting lists are very long. In the absence of evidence to the contrary I agree that, in this respect, there is presently no acceptable alternative accommodation available to the appellant. This carries significant weight.

Other personal circumstances

25. At present his children attend school in Basildon, and have done so since January. Prior to then, they were homeschooled as the family were living at the appellant's uncle's property in Dartford. The fact that the children are currently attending school, when in the past they have not, is a considerable benefit in them remaining where they currently are.

Green Belt Balance

26. The site is inappropriate development in the Green Belt. It would also harm the openness of the Green Belt and conflict with its purposes. All these factors carry substantial weight. I also give considerable weight to the harm to the character and appearance of the area and the conflict with policy SP 6 insofar as the proposal would have a significant adverse impact on the landscape.
27. Against that; the unmet need, the persistent failure of policy to address this and the lack of any acceptable alternative sites for the appellant all attract significant weight. Added to that is the fact that any sites in the District are highly likely to be in the Green Belt. The Council's failure to allocate sites is also a consideration.
28. I have had regard to Article 8 of the European Convention on Human Rights as incorporated into the Human Rights Act 1998. Article 8 affords the right to respect for private and family life, including the traditions and culture associated with the gypsy way of life. It is a qualified right, and interference may be justified where that is lawful and in the public interest.
29. Dismissing this appeal would likely interfere with the appellant and his family's rights under Article 8 in that they have no other lawful accommodation available to them. However, interference with those rights in this instance

would be in accordance with the PPTS which advises that personal circumstances and unmet need is unlikely to clearly outweigh harm to the Green Belt and other harms so as to amount to the very special circumstances required to justify the development.

30. That balance is subject to the best interests of children. There is no consideration more important than the best interests of children. I recognise that unlawfully doubling up on their current pitch is not the settled base that the appeal site would be. However, the fact that the children are in school at present, when it is apparent that they have not always been previously, leads me to consider that it would not be in any of their best interests for them to be removed from their current place of education and be relocated to the appeal site. I give this consideration substantial weight.
31. Gypsies share the protected characteristic of race for the purposes of the Public Sector Equality Duty under s149 of the Equality Act 2010 which sets out the requirement to have due regard to the need to eliminate discrimination and advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not.
32. Overall I find that the other considerations taken together and having regard to the interference with human rights, the requirement to advance equality, and with the best interests of the children at the forefront of my considerations, do not clearly outweigh the harms to the Green Belt and the other harms. They do not therefore amount to the very special circumstances required to justify the development.
33. The appellant suggests that if it would not be acceptable to grant permission for the use of the site as applied for, a personal or a temporary permission should be considered. A personal permission would not be justified as I have already determined that their personal circumstances do not outweigh the harms. A temporary permission would reduce the impact on the character of the area and the Green Belt as the harms would be for a limited period, and probably more limited a period than that of a personal permission. However, in this case, the harms would still attract substantial weight such that the other considerations would not clearly outweigh them. Indeed, the benefit of the site providing a permanent settled base would also be lessened by a temporary permission.
34. I have been furnished with a number of other appeal decisions which found that the harms to the Green Belt were outweighed by other considerations including unmet need, lack of supply and lack of alternatives. However it is clear that it is a matter of planning judgement in each case, and in many of the cases quoted the harms to the Green Belt, or other harms, were not found to be as severe as I have in this case.

Conclusion

35. I conclude that the proposal would fail to accord with the development plan as a whole. There are no material considerations that indicate a decision should be taken otherwise than in accordance with it. As such, the appeal is dismissed.

A Owen

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr Michael Lewis	Appellant
Mr Alan Masters	of Counsel
Mr Brian Woods	WS Planning & Architecture
Mr Lewis	Father of the appellant

FOR THE LOCAL PLANNING AUTHORITY

Mrs Nichola Furlonger	Principal Planning Officer
Dr Michael Bullock	Arc4

INTERESTED PARTIES

Mr James Neill	of Counsel for Mr Mace (neighbouring resident)
Mrs Josie Watchorn	West Kingsdown Parish Council