



The Planning Inspectorate

Appeal Decision

Hearing held on 27 September 2022

Site visit made on 27 September 2022

by **Timothy C King BA (Hons) MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 29 August 2023

Appeal Ref: APP/V2255/W/19/3240859

Windmill Farm, Yaugher Lane, Hartlip, Kent ME9 7XE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with a condition subject to which a previous planning permission was granted.
 - The appeal is made by Shane Ince and Jade Williams against the decision of Swale Borough Council.
 - The application Ref 18/503627/FULL, dated 8 July 2018, was refused by notice dated 9 May 2019.
 - The development proposed is the renewal of temporary planning permission Ref 14/503384/FULL "Change of use of land to a residential caravan site, for one gypsy traveller family".
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Decision

1. The appeal is allowed and planning permission is granted for the change of use of land to a residential caravan site, for one gypsy traveller family at Windmill Farm, Yaugher Lane, Hartlip, Kent ME9 7XE, in accordance with the terms of the application Ref 18/503627/FULL, dated 8 July 2017, subject to the conditions in the attached Schedule.

Background

2. This small site, adjacent to Oak Barn Cottages, lies just north of a bridge over the M2 motorway. It sits just off a splayed driveway, and was effectively part of, but now is in different ownership to, a larger site which runs some distance back from Yaugher Lane. This adjoining land, narrow in shape, is also in use as a gypsy and travellers site, and enjoys planning permission for the siting of two mobile homes and associated utility blocks. This site had also been subject to a time limitation condition, but this restriction was lifted in 2018 following a successful appeal.
3. The piece of land, the subject of the current appeal, has been occupied by a gypsy and traveller family since 2015 and, in July of that year, a temporary planning permission was granted for its use by way of the siting of a single mobile home. The permission expired in July 2018, and an application for its renewal was then refused by the Council. This decision letter relates to an appeal lodged against the Council's decision to refuse planning permission.
4. The site is connected to the electricity and water mains and also benefits from a septic tank.

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Main Issues

5. These are whether the proposal represents an acceptable form of development having regard to the following matters:
 - national policy, and the objectives of the development plan in respect of gypsy and traveller accommodation; and
 - whether the occupiers of the site have satisfactory access to services and facilities.

Reasons

Policy matters

6. National policy is contained in the government's Planning Policy for Traveller Sites, 2015 (PPTS) which states that applications should be assessed and determined in accordance with the presumption in favour of sustainable development. In addition, Councils should very strictly limit new traveller site developments in the open countryside that is away from existing settlements.
7. Policy H of the PPTS says that Councils should, amongst other things, consider the level of need for additional gypsy and traveller accommodation and the availability of alternative accommodation.
8. The Swale Borough Local Plan (LP), adopted in 2017, seeks the provision of a minimum of 61 gypsy and traveller pitches over the plan period. The LP does not allocate any pitches but instead relies on a windfall-based approach using the criteria in LP policy DM 10. This is explained in the explanatory text to LP policy ST3 'Swale Settlement Strategy' where paragraph 4.3.32 says that the Council does not need to make specific allocations for new pitches as most of the requirement for pitches during the plan period have already been met by planning permissions granted, with the remainder required being small.
9. However, it is accepted by the Council that this approach was based on the need evidence from the Council's Gypsy and Traveller Accommodation Assessment (GTAA), undertaken in 2013, and used at the time of the LP's examination in public. An updated GTAA was published in 2018, and was based on fieldwork carried out earlier that year. This confirmed an immediate need for at least 30 pitches in Swale within the first five years.
10. At the Hearing, the Council's Supplementary Statement (SS), dated June 2022, for the current appeal, which is concerned with the need and supply of gypsy and traveller sites, was examined in detail and its figures updated. In setting out the number of relevant planning permissions granted between March 2018 and March 2022, the SS calculated that the Council could not demonstrate a five year supply of such sites, with the figures showing only a supply of 3.5 years. A further update from its compilation, extending up to the date of the Hearing, showed this had now changed to suggest a supply of 4.3 years.
11. A previous appeal within Swale borough, regarding a gypsy and traveller site at St Thomas Yard, Holywell Lane, Upchurch (*APP/V2225/W/19/3220060*), also determined by a Hearing held in March 2022, had similarly revealed, at that time, a 3.5 years supply of sites. Given the updated analysis, I accept the revised findings.

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12. An absence of a five year supply and unmet need forms the tenet of the appellants' case.
13. LP Policy DM10 indicates that for land in the open countryside, outside the built-up area boundaries, the Council will grant planning permission for gypsy & traveller sites where, amongst other things, it is demonstrated that there are exceptional mitigating and/or personal circumstances where it has been demonstrated that a particular site is required to meet their needs and where there is no overriding harm to the locality, or the proposal is for an extension to, or stationing of, additional caravans at an existing site. A further requirement is that the development should be of a scale appropriate to meet the accommodation need identified and not introduce a scale of development that singularly or cumulatively dominates the nearest settlement or causes significant harm to the character of an area or its landscape.
14. In July 2021, in response to the current appeal, the Council's initial representations mentioned that 24 permanent pitches had been granted planning permission between 2018 and 2021 and made the point that should the current rate of annual permissions continue, some 160 pitches will have been approved by 2037/38 (the end of the plan period). On this basis the Council indicates that the supply of sites is still running above what might notionally be needed via the Council's windfall approach.
15. Reference is made as to the Brotherhood Woodyard site within the borough, mentioned by both main parties, where controversy exists as to whether or not it is suitable for gypsies/travellers and, consequently, whether it should contribute to the supply. This could potentially provide 40 additional pitches. In this connection the Council cites previous appeal decision letters, all from 2018, and relating to different sites within the borough, where the respective Inspectors have commented on this matter; one saying that there is not now significant doubt as to the deliverability of the pitches on the Brotherhood Woodyard site. Nonetheless, the Council's SS refers to 'considerable debate' as to whether the site should be included. Several years after the said appeal decisions, the Council's comments are still not unequivocal on this matter.
16. Further, in the above regard the appellants make the point that the Brotherhood Woodyard site is owned by Irish gypsies. Notwithstanding that the appellants are Romani, which amounts to a clear distinction, it was put in evidence that the site is actually used to accommodate migrants.
17. The SS also indicates that, excluding the Brotherhood Woodyard site, over 37% of pitches needed for the entire GTAA period have been granted planning permission in 20% of the time. Accordingly, the figures have been amended since July 2021 and the Council now indicates that, should the rate of approval continue, approximately 115 pitches would have been granted by 2037/38 as against a need of 51.
18. As mentioned, the 2018 GTAA update calculated an immediate need of 30 pitches up to the end of 2023. However, although the many statistics provided by the Council suggest that 'need' will be subsequently met and significantly exceeded, the Council's expectation between July 2021 and September 2022 dropped from 160 pitches being approved by 2037/38 to a lower figure of 115. With a reliance based wholly on windfall sites there are no clear guarantees as to land becoming available. The appellants strongly take issue with the level of

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need assessed by the 2018 updated GTAA, and consider that the methods employed to arrive at this did would not have produced an accurate figure.

19. Given the absence of a five year land supply and an indication from the Council's witness at the Hearing that need may also be met by the intensification of existing sites, I find the assertion in paragraph 4.3.32 of the Local Plan that suitable windfall sites can comfortably provide for need any up to the end of the plan period is, I would suggest from the evidence adduced, somewhat optimistic.
20. I understand that a new GTAA is in progress but, for the time being, the uncertainty as to actual need, the absence of a five year supply and the continuing reliance on windfall sites are matters to which I ascribe considerable weight.

Location

21. The site lies outside any settlement boundaries and, by way of the Council's spatial policy, it is located within the open countryside. In contrast with the appellants concentrating on the local need factor the Council's case is based around the consideration that this represents an unsuitable and unsustainable location for residential use. It is considered remote from services and facilities, and the Council describes the site as being located in a remote countryside location with no footpaths or lighting.
22. LP policy ST3 says that, at locations in the open countryside, development will not be permitted, unless supported by national planning policy and being able to demonstrate that it would contribute to protecting, amongst other things, landscape setting and the vitality of rural communities. In this instance given the very small scale nature of the use, and its proximity to the adjoining small gypsy site, the character of the countryside has not been impacted upon to any significant degree. Indeed, the Council has not raised objections in this respect.
23. In this context I am satisfied that the development accords with the advice in paragraph 14 of the PPTS.
24. The site is located some 4km from Rainham town centre and also the settlement of Newington (described by the Council as a local rural service centre). It is also some 1.9km from Hartlip village school. Given these distances there will inevitably be a large reliance on the private motor vehicle, but doubtless this is also the case for the scattering of rural dwellings in the wider locality. However, due to the small scale of the development the incidence in this particular case is clearly limited and I am also mindful that occupation first took place in 2015. Accordingly, the use is well established and, further, it is adjacent to the two neighbouring mobile homes approved in 2018.

Other considerations

Personal circumstances

25. The appellants are Romani gypsies. The family comprises two adults (the appellants) and three small children, two of which attend local schools. Evidence was produced to show that one child attends 'Meadowfield', a school for special educational needs.

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26. A settled base would clearly be in the best interests of the children, securing access to medical facilities and education which are difficult to achieve by the roadside without a fixed address. The best interests of the children, that is the need to safeguard and promote their welfare, are a primary consideration, particularly as their education would be likely to be interrupted if the family were forced to move from the site. Further, the accessibility to health care that a settled base secures is a benefit to the family as a whole.
27. Given the absence of available gypsy sites in the borough it is hardly surprising that no viable alternative accommodation has been suggested that might be suitable. Indeed, I have received no details as to the existence of any such accommodation. In this connection it was held in the judgement of *South Cambridgeshire DC v SSCLG & Brown* [2008] EWCA Civ 1010 that in seeking to determine the availability of alternative sites for residential Gypsy use, there is no requirement in planning policy, or case law, for an applicant to prove that no other sites are available or that particular needs could not be met from another site.
28. The lack of alternative sites is therefore a consideration that weighs in favour of the appellants. Accommodation by way of a settled base, rather than a roadside existence, can only be beneficial, and I consider that the development provides suitable accommodation consistent with this.
29. Should the family be made homeless Article 8 of the Human Rights Act would be engaged. Clearly, in this regard, and the consequent upheaval, the best interests of the child must be afforded substantial weight.

Other representations

30. At the application stage the proposal gave rise to 97 letters of support. Although most of these were from persons outside the borough, the general point made by the supporters was that there is a shortage of gypsy and traveller sites within Swale, and also nationally. Hartlip Parish Council objected to the development, on the basis that the site is not within a sustainable location, and this objection was reiterated during the appeal process.

Planning Balance

31. The proposal would make a small contribution to meeting the likely local need for gypsy and traveller accommodation. The appellants have also demonstrated that their families' personal circumstances are such that a settled base would be in the best interests of the children present and beneficial to the family as a whole. The appeal site is their home and there is no alternative accommodation available. These are matters to which I afford significant weight.
32. Although paragraph 25 of the PPTS says that Councils should very strictly limit new traveller sites in open countryside that is away from existing settlements I am mindful of the establishment of the neighbouring site which enjoys planning permission. Further paragraph 24 of the PPTS, advises that, apart from taking into account the existing local level of provision and the need for sites, the availability of alternative sites, or lack of such, along with personal circumstances, are also relevant considerations.
33. The Council indicates that the family could be accommodated in a more sustainable location but, given the circumstances and the apparent absence of

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alternative accommodation, this assertion is somewhat sweeping and unsubstantiated. Indeed, it leads to the question as to what would actually be achieved by refusing planning permission in this particular instance, especially as the site has been occupied since 2015.

34. Taken together, both sites are modest and the mobile homes sit discreetly within, particularly the appeal site which lies screened to the side of the driveway.
35. The Council does not raise objections as to the use having harmed local character, and I note that the reason for imposing the time limitation condition back in 2015 was so that the planning position may be reviewed at the expiry of the three year period. Save for the location, there are no other grounds for objection raised and I consider it would be inequitable to dismiss this appeal and refuse planning permission for the continuation of use given the approved neighbouring site. This is particularly the case given the use's very limited scope due to the small size of the site. Taking both sites together, and their constraints due to the narrow width constraint I am satisfied that there is little, if any, realistic room for expansion and any further intensification of use.
36. In the successful appeal from 2018 relating to the neighbouring site, although, the Inspector acknowledged that it was remote to local services and facilities, she concluded that the appellant's personal circumstances and the need for additional pitches within Swale borough, along with the absence of alternative pitches, outweighed the spatial issue.
37. In terms of LP policy DM10 I am satisfied that the development is of a scale appropriate to meet the accommodation need identified, and its location would not, either singularly or cumulatively, cause significant harm to the character of the area or its landscape. This is consistent with the advice in PPTS paragraphs 14 and 25.
38. I find that the development is in accordance with the national PPTS and, in the circumstances, there is no material conflict with Policies DM 10 or ST3. Neither is it in conflict with the relevant objectives of the National Planning Policy Framework.

Conclusion and Conditions

39. For the above reasons I conclude that the appeal should be allowed and planning permission granted.
40. In terms of conditions I have had regard to those agreed by both main parties and also advice within the planning practice guidance. Given the site's history, and the circumstances I have described, I am satisfied that the planning permission should not be personal to the appellants. Indeed, the Council's witness at the Hearing did not suggest that such a condition be imposed. However, I shall impose a condition limiting occupation to gypsies and travellers.
41. In addition to this, in order to safeguard the character and appearance of the area, the number and type of caravans should be specified. For the same reason any external lighting proposed should be submitted for approval, and no commercial activities or parking of vehicles over 3.5 tonnes should take place on the land.

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42. The site is already screened with vegetation and a landscaping condition is not necessary. However, a condition is imposed to ensure that space remains set aside for car parking purposes.

43. All these conditions are reasonable and necessary given the circumstances.

Timothy C King

INSPECTOR

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SCHEDULE OF CONDITIONS

- 1) 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 as defined in Planning Policy for Traveller Sites , August 2015 (or any subsequent definition that supersedes that document).
- 2) No more than two caravans (as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968, as amended) shall be stationed on the site at any one time., of which only one caravan shall be a static caravan.
- 3) No vehicles over 3.5 tonnes shall be stationed, parked or stored on this site.
- 4) No commercial activities shall take place on the land, including the storage of materials.
- 5) No floodlighting, security lighting or other external lighting shall be installed or operated at the site, other than in accordance with details that have first been submitted to and agreed in writing by the local planning authority.
- 6) A minimum of two car parking spaces shall be kept available within the site for such use at all times.
- 7) The development hereby permitted shall be carried out in accordance with the drawing ref BP-01.

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APPEARANCES

For the Appellant

Joseph G Jones Agent for the Appellant

Shane Ince and Jade Williams Appellants

Joseph P Jones Gypsy Council

For the Council

Andrew Byrne Area Planning Officer, Swale Borough Council

Aaron Wilkinson Planning Policy Officer

Documents produced at the Hearing

1. Council's notification letters of appeal and the Hearing event.
2. Statement of Common Ground