



Appeal Decision

Inquiry Held on 3 and 4 July 2018

Site visit made on 3 July 2018

by S J Papworth DipArch(Glos) RIBA

an Inspector appointed by the Secretary of State

Decision date: 12th September 2018

Appeal Ref: APP/H2265/W/17/3191362

Land west of Wrotham Heath Place, London Road, Wrotham Heath, Sevenoaks TN15 7RS

- 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 Ms Caroline Smith against the decision of Tonbridge & Malling Borough Council.
 - The application Ref TM/17/02534/FL, dated 8 September 2017, was refused by notice dated 4 December 2017.
 - The development proposed is stationing of three touring caravans for residential use for Gypsy family, provision of hardstanding, cesspits and electricity meter (part retrospective).
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Decision

1. I allow the appeal and grant planning permission for the stationing of three touring caravans for residential use for Gypsy family, provision of hardstanding, cesspits and electricity meter at Land west of Wrotham Heath Place, London Road, Wrotham Heath, Sevenoaks TN15 7RS in accordance with the terms of the application, Ref TM/17/02534/FL, dated 8 September 2017, subject to the conditions 1) to 8) on the attached schedule.

Procedural Matters

2. At the time of the Inquiry, national policy was contained in the National Planning Policy Framework of March 2012. There was also a Draft Text for Consultation dated March 2018 regarding a proposed revised publication, although the consultation period had expired. The final revised publication was expected to be issued before this Decision could be written and issued. It was agreed at the Inquiry that rather than make submissions on the content of the draft, the Inquiry would remain open with written submissions being prepared on the final publication version.
3. That publication took place on 24 July 2018, and the submissions were duly received. There was no need for the Inquiry to resume and it was closed in writing on 3 September 2018.
4. With regard to the definitions of inappropriate development, the revised Framework contains at paragraph 145g) an additional exception that had not featured in the previous version. New paragraph 146e) provides for material changes of use which are not restricted to those mentioned. In addition, the planning policy statement of 31 August 2015 on Green Belt Protection and

Intentional Unauthorised Development has not been incorporated in the revised Framework, and along with most other Written Ministerial Statements, is no longer policy.

Main Issues

5. The main issues are therefore;
 - Whether the proposal is for inappropriate development in the Green Belt.
 - The effect of the proposal on the character and appearance of the area.
 - The effect of the proposal on protected trees and species.
 - The effect of the proposal on the living conditions of nearby residential occupiers.
 - Further findings on Policy CP20.
 - The weight to be attached to the other considerations put forward by the appellant in support of the proposal.
 - Whether the harm to the Green Belt by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations, so as to provide the very special circumstances necessary to justify the development.

Reasons

Green Belt

6. Paragraph 133 of the Framework states that the Government attaches great importance to Green Belts; the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence. Policy E of Planning Policy for Traveller Sites sets out policy for such sites in the Green Belt.
7. Policy CP3 of the Tonbridge & Malling Borough Core Strategy 2007 states that National Green Belt policy will be applied to named areas of land, and that should now be taken to be the 2018 Framework. Policy CP20 is specific to gypsies and travellers, with provision to be made through a specific land allocation Development Plan Document or permitted in accordance with criteria, and with a general statement that there will be a presumption against the development of such accommodation in the Green Belt unless there are very special circumstances.
8. There is emerging Policy LP37 in the Tonbridge & Malling Local Plan which list sites that are to be safeguarded for the provision of accommodation for travellers that meet the definition in Planning Policy for Traveller Sites, of which one, Orchard Place is agreed to be within the Green Belt, and redevelopment or expansion of those listed sites will only be permitted if all of 7 criteria are met. The Policy ends with the statement that development of sites will not be permitted in the Green Belt unless very special circumstances can be demonstrated and there is compliance with other policies in the Local Plan. Limited weight attaches to this emerging policy as it has not yet been examined.

9. The site is presently an open area of land with a margin of trees and other vegetation, more dense towards the narrowing part of the site adjacent to the hotel, which land adjoins to the north-west. To the west the site has a frontage to the busy A20 London Road which provides an approach to both the M26 and the M20 motorways as they diverge. South of the site is the access track which also serves dwellings at and around Wrotham Heath Place, a one-time single house with servants quarters and land around, these being to the east of the site. South of the access and those dwellings is woodland that extends to the A20 junction with the A25.
10. There is some dispute over the nature of the land prior to the clearance that has taken place, the appellant describing the area within the now-protected trees as being scrub of laurel and rhododendrons. It is of note that the 1:2500 Ordnance Survey map to which reference has been had in order to ascertain the route of the adjoining footpath, shows a difference in notation between the appeal site and the woodland to the south, the former being shown in white as with the land around the dwellings at Wrotham Heath Place.
11. In addition there are 2 features of domestic occupation still extant on the site; an 'ice house' and a 'gazebo' consisting of an hexagonal base and stone columns of which 5 out of the 6 remain standing, on an unnaturally raised mound. The clear inference from these features and the likely existence of self-set ornamental shrubs rather than woodland in the central avenue of the site is that the land was part of the garden of Wrotham Heath Place, presenting a prospect from the house and domestic facilities for the storage of ice. It is immaterial to this finding whether the 'gazebo' had a roof or just a ring entablature, or whether it was used for sitting or as a classically derived 'eye-catcher' in the view. It is accepted from the Land Registry extracts that this land was separated from the Place, which was itself subdivided into dwellings.
12. This finding leads to the conclusion that the site should be regarded as garden as a last lawful use, and hence previously developed land. The definition in the Glossary to the Framework provides for 'the curtilage of developed land' and 'land which is or was occupied by a permanent structure'. In this case the remains of the permanent structures have not blended into the landscape in the process of time so as to have lost that status.
13. The appellant argues that this leads to consideration of the revised paragraph 145g) of the Framework, and specifically the new second limb where the test is not to cause substantial harm to the openness of the Green Belt. However, that complete paragraph concerns the construction of buildings, and the appeal proposal is for the stationing of caravans, and even then, touring vans rather than mobiles homes.
14. The other relevant change is in paragraph 146e), where a material change of use of land need not be inappropriate development provided it preserves openness and does not conflict with the purposes of the Green Belt.
15. The appeal proposal would, as a matter of fact, reduce openness, on what is able to be open garden land, but the degree of that reduction should be tempered by the fact of the proposal being for the readily moveable items of 3 touring caravans, and not all of which would be on the site when travelling takes place. The possibility of re-using an existing building as a day-room further limits the likelihood of harm to openness.

16. The findings over the status of the land have a greater impact on the matter of the purposes of Green Belt set out in paragraph 134 of the Framework. Of those 5 purposes, only the safeguarding of the countryside from encroachment is of concern here, and the lawful use of the land as garden, notwithstanding its detachment from the one-time dwelling, leads to the conclusion that no encroachment would occur.
17. To conclude however, there would be a reduction in openness even allowing for the relocation of the caravans and activity within the site and for the re-use of a building, and that should be considered therefore as not preserving openness so that the exception in paragraph 146e) does not apply. The proposal is inappropriate development in the Green Belt and as stated in paragraph 144 of the Framework, substantial weight should be given to any harm to the Green Belt.

Character and Appearance

18. Core Strategy Policy CP20 includes as a criterion for permitting new sites the need for residential or rural amenity not to be prejudiced and Policy CP24 seeks good design and for development not to be detrimental to the functioning and character of the countryside. The Managing Development and the Environment Development Plan Document Policy SQ1 requires all new development to, among other things, protect, conserve, and where possible enhance the character and local distinctiveness of the area.
19. The reason for refusal refers to an exposed position, but no viewpoints have been put forward, other than a reference to the proximity of a public footpath. This right-of-way was seen passing the north-east edge of the site at a lower level, from where only a limited view would be had of any activity or items on the site. That view could be further controlled through the location of the touring caravans as a result of a Site Development Scheme secured by condition, their present position being more exposed to view than is necessary and the size and configuration of the site, together with their mobility, allows ready re-location.
20. The use of that footpath and hence the likely numbers of receptors is in real doubt since notwithstanding signposts at the site boundary and at the nearby hotel, the link between was found to be indistinguishable and incapable of being walked. The limited evidence is of any users not following the designated route, and the Council were unable to point to any formal diversion. As a result, were the caravans and much of the activity to be placed more to the north and west, there would be limited adverse effects discernible from public places. A Site Development Scheme could provide enhancement along the boundary to avoid harm if the footpath's correct line were to be re-asserted in the future.
21. Given the earlier conclusions on the status of the land, it is concluded that the use as a traveller site of the type proposed would not cause harm to the character and appearance of the area and the relevant parts of the Development Plan policies would be accorded with.

Protected Trees and Species

22. A further result of the findings on the status of the land is the likelihood of the long-standing trees, as opposed to self-set ornamental species, being around

the margins of the avenue containing the garden structures. There is no compelling evidence of the site having been of the woodland character and appearance seen to the south of the access drive.

23. The Council's landscape witness agreed that whilst the hardstanding has been placed too close to the trunks of the trees, no lasting harm has been caused in the short time involved, and that the risk of any such harm can be successfully mitigated by condition. The alternative would be enforcement action that has not commenced, in order to avoid the long-term harm referred to in the reason for refusal.
24. Local residents asserted that there had been bats on the site, and it is the case that were there proof of use for roosting or foraging, this would be required to be addressed. However, the Council did not raise this concern and did not request any further studies or reports. The finding of the first main issue on the status of the land and the continued protection of the trees that surrounded the likely self-set species indicate that habitat can be maintained in any event. The control of lighting so as not to adversely affect bats would be a reasonable aim in the Green Belt in any event.
25. To conclude, conditions could ensure that long term harm would not be caused, so that the health of the trees would be assured. Hence, Policy CP1 on protecting the natural environment and Policy NE4 on maintaining tree cover would be satisfied.

Living Conditions

26. It is not part of the Council's case that residential amenity would be harmed, as sought to be safeguarded in Policy CP20, although this was raised by local residents during the Council's consideration of the application. This concern was again stated in written representation to the Appeal and was voiced at the Inquiry. A visit was carried out to the site of the nearby dwellings at Wrotham Heath Place.
27. The entrance track does not pass any dwelling on entering or leaving the site, and there are intervening garages and an outbuilding between the site and the dwellings. In addition, many of the dwellings have boundary treatment or face the other way. The site does not dominate the nearest settled community, a requirement of Policy C of Planning Policy for Traveller Sites.
28. There has been some change to the view along the track for users passing the site, but this could be addressed satisfactorily by condition and a Site Development Scheme. It is concluded that there is no harm to residential amenity and that the requirement of the relevant part of Policy CP20 is met.

Further Findings on Policy CP20

29. The forgoing reasoning has addressed some but not all criteria of this policy, and for completeness it is recorded that there is an identified need that cannot be reasonable met elsewhere; that the site respects the scale of, and does not dominate, the nearest settled community; the site can be adequately accessed; and it is reasonably close to facilities. Together with the previous findings of this Decision, it is concluded that the proposal accords with the criteria of Policy CP20, although pending resolution of the matter of very special circumstances, it cannot be said that the whole policy is accorded with.

Other Considerations

30. As a result, in addition to the harm by reason of this being inappropriate development in the Green Belt, there is a limited reduction in openness, but no adverse effect on the purpose of the Green Belt in this location, although substantial weight should be given to any harm to the Green Belt. The Framework states that inappropriate development should not be approved except in very special circumstances which will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations. No other harm has been identified and criteria (a) to (e) of Policy CP20 are complied with, while criterion (f) does not apply. The following matters were put forward at the Inquiry;
31. *Unmet Need* It was agreed at the Inquiry that the Council is unable to demonstrate a 5 year supply of traveller sites as sought in paragraph 10 of Planning Policy for Traveller Sites, and the evidence is that the site would provide affordable housing for the appellant. There is emerging policy that seeks to address this matter, but Green Belt land may well be required, and the outcome of that process is some way off. This is a consideration of significant weight.
32. *Personal Need* Whilst the provisions of the Written Ministerial Statement on Green Belt Protection and Intentional Unauthorised Development no longer need to be addressed, it is appropriate to consider why the appellant left the site in Ashford. That site had a value since there was no personal restriction, but the use did have an end-date, so that its value would decrease as that 2019 date was neared. The decision to realise that value and seek an alternative does not appear an unreasonable one. The need remains for the appellant to find an affordable site and the Council are unable to offer such a site. The stated needs of the appellant for the use of only touring caravans is a consideration of significant weight and there is certainly no option of returning to the previous site, that option would appear to be roadside living.
33. *Health* The medical evidence has not been disputed and stands unchallenged other than the Council's view as to the weight that should be afforded it. The need was instrumental to a High Court Judge's decision to permit use of the land pending the outcome of this Appeal. Whilst the appellant's needs and those of her partner may be similar to those of many travellers, significant weight does attach to the ability to access health-care from the site and this would be lost were the appellant to resort to roadside living.
34. *The Best Interest of Children* There are no children living on the site and the full force of the provisions of paragraph 24 of Planning Policy for Traveller Sites on the best interests of the child cannot be said to apply. There are grandchildren and the stated wish of the appellant is for them to be able to visit and stay occasionally, perhaps even permanently but there is little corroborative evidence on this matter. Nevertheless, traveller families are close-knit and it would be expected that the travelling lifestyle would require child-care by grandparents and the like. Whilst this does not reach the status of being a paramount consideration, significant weight attaches to this matter since grandparents not having a secure home would impinge on the interests of the grandchildren.
35. *Planning Gain* The appellant points to the difficulties likely in being able to exert control over the appearance of the site were the Appeal to be dismissed.

The provisions of a Site Development Scheme secured by condition would overcome those difficulties. Moderate weight attaches to this matter.

Planning Balance and Human Rights

36. As set out in paragraph 24 of Planning Policy for Traveller Sites, subject to the best interests of the child, personal circumstances and unmet need are unlikely to clearly outweigh harm to the Green Belt and any other harm so as to establish very special circumstances. However, 'unlikely' should not be read to mean that these considerations will never clearly outweigh the harm, and any decision must take account of the actual weight afforded both the harm and the other considerations. A determination of weight is for the Decision taker.
37. The conclusions on the main issues are that there is limited harm through the effect on openness, but sufficient to bring about a failure to accord with paragraph 146e) and a finding that the proposal is for inappropriate development in the Green Belt, but no other harm has been identified, with major areas of policy being complied with. The balance lies in there being other considerations that clearly outweigh the harm to the Green Belt and that consequently very special circumstances exist in order to permit the proposal, but only on the basis of a personal permission in view of the weight attached to the personal considerations put forward.
38. As a result of these conclusions, the grant of personal permission would not adversely affect the Human Rights of the appellant and her partner.
39. Such a grant could however affect the rights of nearby residents, and in particular those provided for in Article 8 as incorporated by the Human Rights Act 1998, to respect for private and family life, and in Article 1 of the First Protocol to the peaceful enjoyment of possessions. These are however qualified rights and no harm has been found to the living conditions of those nearest occupiers. It is Government policy to provide for the lifestyle of gypsies and travellers, and in the balance it is determined that the limited degree of interference that would be caused to local residents would be insufficient to give rise to a violation of their rights.

Conditions

40. The Council had put forward a set of conditions and these were discussed and amended at the Inquiry. For the reasons set out in this Decision, a condition limiting the use to [REDACTED] is warranted, and on that basis there is no need to consider a temporary permission, and no need for a gypsy and traveller occupancy condition as it is agreed that they satisfy the definition in the Annex 1: Glossary to Planning Policy for Traveller Sites. However further proof of need and the best interest of the child would be required to extend that to include any grandchildren as permanent residents. The numbers of caravans applied for should be fixed by condition and it is clear that no mobile homes are applied for and thus should be excluded by condition.
41. As the use has commenced, it is necessary to set out the situation in default of a need to submit further details and carry out the resulting approved work. The suggested Condition 7) is expanded to include a Site Development Scheme as referred to in various parts of the Reasons to this Decision. The removal of hardstanding would be achieved in agreeing this Scheme.

42. That condition should also include the submission of a remediation scheme to return the land to an agreed condition when the named persons cease to occupy the land, and a condition should specify that requirement.
43. There is an Article 4 Direction on the land covering means of enclosure and temporary buildings, and the appellant argued that the suggested condition removing certain other permitted development rights is not required in view of the findings as to the status of the land. That may well be the case, but in this location there should be some degree of control, whilst not signalling that no such works would be acceptable. The Site Development Scheme could specify areas to be left open, and the possibility of making use of the existing garage as a Dayroom appears reasonable in avoiding further adverse effects on openness.
44. The standard conditions on commercial activities and controlling the size of vehicles are required, although the dog breeding that the appellant carries out could be specifically allowed. That activity, even if amounting to little more than a hobby to supply friends and acquaintances, is controlled by a licensing regime in any event.

Conclusions

45. The proposal is inappropriate development due to the effect, albeit limited, on the openness of the Green Belt, but there is no other harm. Other considerations have been found to clearly outweigh the harm such that very special circumstances exist, but only sufficient to allow a personal permission to be granted. Conditions attached to the permission would allow control that would not otherwise be so readily available. It is therefore concluded that the appeal should be allowed and a personal permission should be granted.

S J Papworth

INSPECTOR

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

K Toogood	Solicitor-Advocate
he called;	
E Keefe	Development Control Manager Tonbridge & Malling Borough Council
E Guthrie	Landscape Officer Tonbridge & Malling Borough Council

FOR THE APPELLANT:

A Masters	of Counsel
he called;	
B Woods BA(TP) MRTPI	Managing Director WS Planning and Architecture
D Dunn	Appellant's partner

INTERESTED PERSONS:

Cllr A Kemp	Chair Area 2 Planning Committee
D Marks	On behalf of local residents
Local Residents	took part at the site inspection

DOCUMENTS

Document	1	Lee Valley Regional Park Authority High Court case, omitted from Core Documents, submitted by Council
Document	2	Appeal Decision ' <i>East Acres, Branbridges Road, East Peckham</i> ' (Ref: APP/H2265/W/16/3164093 dated 15 January 2018) submitted by Council
Document	3	Suggested conditions submitted by Council
Document	4	' <i>Submission that ARCH figures are wrong</i> ' submitted by appellant
Document	5	Endorsement of Officer's delegated decision signed by members of Area 2 Planning Committee submitted by Cllr A Kemp
Document	6	Statement of D Marks on behalf of local residents
Document	7	Submissions on 2018 National Planning Policy Framework from E Keefe and Council Final Submissions
Document	8	Submissions on 2018 National Planning Policy Framework from B Woods and Appellant's Final Submissions
Document	9	e-mail from Planning Inspectorate dated 3 September 2018 formally closing the Inquiry

SCHEDULE OF CONDITIONS

- 1) The use hereby permitted shall be carried on only by [REDACTED]
- 2) When the site ceases to be occupied by those named in Condition 1) above, the use hereby permitted shall cease and all caravans and associated buildings or structures brought on to the land, or works undertaken to it in connection with the use, shall be removed and the land restored to its condition before the development took place, as agreed pursuant to the requirements of Condition 4)
- 3) No more than three caravans, as defined by the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968, shall be stationed on the site at any one time, of which none shall be static caravans, and no further caravans shall be placed at any time anywhere within the site.
- 4) The use hereby permitted shall cease and all caravans and associated buildings or structures brought onto the land for the purposes of such use shall be removed and the land restored to its condition before the development took place 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 a Site Development Scheme showing details of:
 - a) the means of foul and surface water drainage of the site;
 - b) facilities for the storage and collection of refuse and waste;
 - c) proposals for the use of the existing garage as a day room or utility room;
 - d) details of external lighting;
 - e) details of a scheme of landscaping within the site, to include details of the removal of areas of existing hard-standings and areas to be kept open and free of hardstanding, buildings and other structures or domestic paraphernalia in the future, together with proposals for any such hardstanding, buildings, kennels and other structures or domestic paraphernalia, and;
 - f) a plan showing the condition to which the land would be restored either in the default of this condition or as required by Condition 2)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 6 months of the date of this decision the details to be submitted in i) above 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 valid 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
- 5) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015, no buildings or other structures or domestic paraphernalia shall be erected within any part of the site or otherwise placed on the land other than in accordance with the details shown on the approved drawings or agreed pursuant to a condition attached to this permission. The remaining areas of the site shall be kept clear of all obstructions at all times.
- 6) No commercial activities shall take place on the land, including the storage of materials. Nothing in this condition shall prevent the keeping of dogs for breeding.
- 7) No vehicles over 3.5 tonnes in unladen weight shall be stationed, stored or otherwise parked on the site at any time.
- 8) Other than as provided for pursuant to Condition 4), no external lighting shall be put in place or used on the site.