



Appeal Decision

Hearing Held on 6 November 2018

Site visit made on 6 November 2018

by Paul Dignan MSc PhD

an Inspector appointed by the Secretary of State

Decision date: 27th November 2018

Appeal Ref: APP/G1630/W/17/3192162

**Brookside Stables, Cold Pool Lane, Badgeworth, Cheltenham,
Gloucestershire, GL51 4UP.**

- 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 Mrs Sally Anne Smith against the decision of Tewkesbury Borough Council.
 - The application Ref. 16/01285/FUL, dated 11 November 2016, was refused by notice dated 4 July 2017.
 - The development proposed is Change of use of land to allow for permanent use as a residential gypsy site for 7 No. mobile homes and 5 No. touring caravans and associated works.
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Decision

1. The appeal is allowed and planning permission is granted for a limited period of 4 years for Change of use of land to use as a residential gypsy site for 7 No. mobile homes and 5 No. touring caravans and associated works at Brookside Stables, Cold Pool Lane, Badgeworth, Cheltenham, Gloucestershire, GL51 4UP in accordance with the terms of the application, Ref. 16/01285/FUL, dated 11 November 2016, subject to the conditions set out in the Schedule attached to this decision.

Reasons

2. The appeal site is in the open countryside between the village of Badgeworth and Up Hatherley, a suburb of Cheltenham. It is in the Gloucester and Cheltenham Green Belt. Much of the site has been in residential use by the appellant and her family since about 2002, initially unauthorised. Planning permission was granted on appeal in 2008 for 4 gypsy/traveller pitches for a temporary period of 5 years. Subsequent temporary permissions allowed the use of the site as a 6-pitch gypsy/traveller site until November 2016. In its current form the site comprises 6 pitches with a shared dayroom and toilet block. The application seeks permanent planning permission for 7 pitches on a larger area than previously permitted, to accommodate 7 mobile homes and 5 touring caravans with spacing to meet site licence regulations.
3. The development plan for the Borough includes the recently adopted (December 2017) Cheltenham, Gloucester and Tewkesbury Joint Core Strategy (JCS) and the saved policies of the Tewkesbury Borough Local Plan (LP) adopted in March 2006, but the LP policies cited in the Council's reasons for refusal have now been replaced by equivalent policies within the JCS. The

LP will eventually be replaced by the emerging Tewkesbury Borough Plan (2011-2031) (TBP) which will sit below the JCS, but this is not so advanced as to be accorded significant weight, although it is helpful in indicating the current preferred approach to meeting future need for gypsy and traveller sites.

4. Relevant JCS policies include Policy SD5, which aims to ensure that the Green Belt continues to serve its key functions, Policy SD6 which seeks to protect landscape character, and Policy SD13 which takes a criteria-based approach to the assessment of new gypsy and traveller sites. The JCS does not make any site-specific provision for gypsies and travellers. Although the JCS was adopted before the recent update of national planning policy, set out in the National Planning Policy Framework (NPPF) published in July 2018, it remains consistent so far as this appeal is concerned. National policy for traveller sites is set out in Planning Policy for Traveller Sites (PPTS) which should be read in conjunction with the NPPF. There is no dispute that the appellant and her extended family members who share the site are gypsies and travellers for the purposes of PPTS.
5. The proposed use is inappropriate development in the Green Belt, which is harmful by definition. Hence the main issue is whether the harm by reason of inappropriateness, and any other harm, in this case in terms of Green Belt openness, the purposes of including land in the Green Belt, the effect on rural character and appearance, and site location relative to services and facilities, is clearly outweighed by other considerations. If so, would this amount to the very special circumstances required to justify the development.
6. When the appellant acquired the site in about 2002 it appears that the land had been subject to considerable fly-tipping, and subsequently planning permission was granted for stables and some hardstanding in roughly the location of the existing dayroom, so some allowance can be made for the previously untidy condition and that some built development was considered acceptable, albeit in the context of a generally appropriate use of Green Belt land. However, the change of use of the land as proposed would cause a significant loss of openness by comparison with the current lawful use as agricultural or equestrian land. It would also encroach onto the countryside, contrary to the purposes of the Green Belt.
7. Green Belt openness can have a visual dimension. In terms of visual impact, the site has strong roadside hedgerows and is thus relatively well screened in its immediate vicinity, but it can be seen from the higher ground on Cold Pool Lane to the north, from where at present the site appears discordant and visually intrusive, largely due to the number of touring caravans present. The appellant's land includes a small paddock to the north of the proposed residential area which can accommodate planting and hedgerow enhancement, and there is a scheme of landscaping proposed which would in time substantially mitigate the visual impact of the development. Gypsy and traveller sites are a common sight in the countryside and are not intrinsically discordant or out of character. In this case I consider that the moderate scale of the site, the improved and more spacious layout proposed and the existing and proposed planting would enable the proposed development to integrate satisfactorily with the surrounding landscape which includes other sporadic roadside development of similar scale along Cold Pool Lane. I conclude accordingly that the proposal would not conflict with JCS Policy SD6 and its

- linked criterion in Policy SD13, and the harm to Green Belt openness would not have a significant visual dimension.
8. JCS Policy SD13 also expects proposals to avoid unacceptable impacts on the amenity of neighbouring properties, have satisfactory highway access, no significant flooding, drainage or ground stability concerns, be away from hazardous land or installations, and be well laid out. All of these requirements are met, but the suitability of the location in terms of access to amenities, services and facilities, the remaining criterion, is disputed.
 9. The site is some 450m from Badgeworth, a small settlement which has no community facilities, and some 850m from Up Hatherley, which has shops and a primary school. Although the road is mostly unlit and without pavements, and therefore not suited to walking, the distance to Up Hatherley is not excessive and certainly within easy cycling distance, and a wide range of facilities, including employment opportunities, is available in Cheltenham. In PPTS terms the site can be considered as one of those which is physically away from existing settlements, but it is also in an area that is not remote, being essentially in the Cheltenham hinterland, and one that has good access to the major road network for those who need to travel widely to look for work. The site is not well served by public transport, and access to services and facilities would, in most cases, be dependent on private cars. However, these would only involve short journeys for the most part, and the NPPF recognises that sustainable transport solutions will vary between urban and rural areas.
 10. On balance I consider that the site's location would not be contrary to the guidance in PPTS paragraph 25. Although away from an existing settlement, it is not in a location that would lead to unsustainable patterns of travel or cause significant difficulties in accessing services or social integration, nor would it dominate the nearest settled community or place undue pressure on the local infrastructure. In terms of its location, I find the appeal proposal to be in accord with criterion iv of JCS Policy SD13 and with the relevant national policy. In coming to this view I have noted the concerns of other Inspectors regarding the location of other proposed developments, 2 on the edge of Badgeworth, but the appeal site is much closer to the urban edge and well related to the wider road network, an important consideration for gypsy and traveller sites. Being a well-established site, there is also ample evidence that its location has not been a barrier to the promotion of peaceful and integrated co-existence between the site and the local community.

Other considerations

The need for, and provision of, traveller sites and the availability of alternative sites

11. PPTS aims to ensure fair and equal treatment for travellers in a way that facilitates the traditional and nomadic way of life of travellers while respecting the interests of the settled community. Amongst other things, it expects local planning authorities to increase the number of traveller sites in appropriate locations to address under provision and maintain an appropriate level of supply. PPTS requires local planning authorities to make their own assessment of need for the purposes of planning, to set pitch targets for travellers which address the likely needs, and to identify a supply of specific

- deliverable sites sufficient to provide 5 years' worth of sites against their locally set targets.
12. The Council's most up-to-date information on the need for sites is the *Gloucestershire (Cheltenham, Cotswold, Forest of Dean, Gloucester, Stroud and Tewkesbury) Gypsy and Traveller Accommodation Assessment (GTAA)*, published in March 2017. The GTAA, including its methodology, was considered by the Inspector examining the JCS and found to be robust, having considered the criticisms of the methodology advanced in this appeal. Aside from one matter which I return to below, I do not consider it appropriate to revisit those in the context of a planning appeal less than a year after adoption. On the basis of the GTAA the JCS identified the need for gypsy and traveller sites within the Borough for those who meet or are likely to meet the current definition for PPTS purposes to be 5 pitches for the 5-year period June 2018 to May 2023, and 10 over the full plan period 2016 to 2031.
 13. The GTAA identified a significant number of gypsy and traveller households about whom it did not have sufficient information to establish whether they met the PPTS definition ('unknown' households), so the GTAA used an assumption that 10% of those would be likely to meet the definition. The 10% figure was apparently based on experience nationally by the company who prepared the GTAA, Opinion Research Services (ORS). The appellant has referred me to the response of ORS to questions raised by the examining Inspector assessing the emerging Havering Local Plan. The Havering GTAA (2018) was also prepared by ORS and also applied the 10% figure to 'unknown' households. However, in the September 2018 response to the Inspector's query about the justification for that figure ORS offered the view that it now considered that the proportion of such households that meet the PPTS definition nationally is approximately 25%, apparently on the basis of the higher number of interviews it had by then conducted.
 14. By my calculation, applying a factor of 25% rather than the 10% to the 'unknown' households identified in the Borough by the GTAA process results in a requirement of an additional 7 pitches over the plan period, increasing the overall requirement in the 5 year period to 2023 to approximately 8. Since the start of the plan period permanent planning permission has been granted for 20 pitches, including 14 since April 2017. Hence even if the higher 'unknown household figure is used the Borough would still be able to identify a supply of specific deliverable sites sufficient to provide 5 years' worth of sites against their locally set targets.
 15. The demonstrable 5-year supply of specific deliverable sites against the locally set targets meets the expectations of PPTS. Despite this there are at present no suitable and available alternative pitches within the Borough for the 7 households living on the appeal site. That there are no available sites for people who have lived in a local authority area for some years without a permanent pitch, and hence will have been included in any up-to-date needs assessment, is particularly common where the supply relies upon private sites, as appears to be the case here. Hence meeting the basic requirements of PPTS in terms of a numerical 5-year supply does not necessarily mean that there are sites available for those in need. The lack of anywhere else for the current occupants to move in the locality, along with the undersupply of

traveller sites regionally and nationally, are matters which must be accorded substantial weight.

Personal considerations

16. The site occupants are essentially a single extended family. A number of occupants have significant health problems which can only be properly managed from a settled site, and in some instances they rely heavily on others on the site for care and support. Extended family living together for mutual support is characteristic of the gypsy way of life, and the proposal would therefore be consistent with the Government's aim of facilitating the traditional and nomadic way of life of travellers.
17. There are currently 10 children living on the site, all either in school locally or under school age. Some have health problems which require regular check-ups or specialist treatment which is available to them in Cheltenham. Having a settled base has enabled the occupants with health issues to manage their conditions, and ensured that the children have a settled and consistent education, as well as having access to health and welfare resources, significantly enhancing their life prospects by comparison with a roadside existence. There can be no doubt that continuing to live within the extended family environment with all of the other advantages of a settled base is in the children's best interests. It is also noteworthy that having lived on the site for many years the extended family has built up relations and connections with the local community.
18. Poor access for travellers to health and education is one of the problems that PPTS seeks to address through the provision of settled bases that reduce the need for long-distance travelling, enable access to appropriate health services and that allow children to attend school on a regular basis. In view of the lack of identifiable alternatives, it is very likely that dismissing the appeal would lead to all of the households on the site having to resort to a roadside existence. This would have extremely negative consequences for the children, for some of the adults it would make it difficult to manage health conditions and access regular health services, and, in all likelihood and it would engender disharmony between the traveller and settled community. Further, the family based group would find it difficult to find a settled base elsewhere that would accommodate all of them, so dismissal of the appeal would fail to support a key characteristic of the gypsy way of life.
19. The personal circumstances of the site occupants, their personal and group need for a settled site, the benefits of already established relations with the settled community from this particular site, the best interests of the many children on the site, and the likely serious adverse consequences of resorting to the roadside are matters which carry substantial weight in favour of the appeal.

The emerging Tewkesbury Borough Plan

20. The GTAA indicates that Tewkesbury Borough has an overall need for 78 gypsy/traveller pitches for the JCS plan period to 2031, made up of those who meet the PPTS definition, those who don't ('non-travelling households') and the 'unknown households'. The intention is to make culturally specific provision for all as part of the overall housing mix. Accordingly there is currently a requirement for a further 58 pitches. As part of the process Policy

GTTS1 of the TBP proposes to make site allocations. The TBP Preferred Options consultation published in October 2018 includes the appeal site as one of only 4 identified sites for consideration, noting that no further site options were deemed to be available. The Parish Council has indicated that it will object to the allocation of the appeal site, but its inclusion in the limited number of sites means that there is a reasonable prospect of it coming forward as an allocated site in the future. This provides substantial weight in favour of a temporary permission having regard to the substantial disruption of having to vacate a long-standing site that has been considered worthy of a temporary permission while it remains under consideration.

Overall Balance and conclusions

21. At the onset of considering the issues in the planning balance I have borne in mind the duty placed on me within the Public Sector Equality Duty. I have also considered the best interests of the children as a primary consideration. Paragraph 22 of the PPTS notes that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise. In this case the definitional harm due to inappropriateness in the Green Belt, loss of openness and encroachment on the countryside contrary to a Green Belt purpose carry very substantial weight against a grant of permanent permission.
22. On the other side of the balance there are a number of factors that weigh in favour of planning permission. There is no doubt that the occupiers have a personal need for a site and living as an extended family group is consistent with the aim of facilitating the traditional and nomadic way of life of travellers. Some weight in favour of the appeal arises from the undersupply of traveller sites regionally and nationally, and further weight must be accorded to the current lack of suitable alternative sites in the Borough to meet the immediate needs of the site occupants. There is evidence of integration and the site provides the occupiers with good access to education and health care. Notwithstanding its location in the countryside it is in a relatively sustainable location in many ways, and having a settled base is in the best interests of the children, having regard in particular to the highly unsatisfactory alternative of possibly having to resort to roadside living.
23. Overall however, I consider that the material considerations in favour of the development do not clearly outweigh the Green Belt harm so as to give rise to the very special circumstances necessary to justify inappropriate development in the Green Belt. Notwithstanding compliance with the criteria based JSC SD13 and with Policy SD6, in the absence of very special circumstances there is conflict with JCS Policy SD5, and accordingly with the development plan read as a whole.
24. Turning to the case for a temporary permission, any Green Belt harm would be time-limited and the position regarding the availability of alternative sites is likely to improve through the current local plan preparation process. This will enable the site to be fully assessed against the objectives of the emerging TBP in accordance with the approach to gypsy and traveller sites in the Green Belt advocated by national policy. On balance, and having regard to the timetable for adoption of the TBP I consider that a temporary permission for a period of 4 years is justified in the circumstances, the weight of material considerations being sufficient to clearly outweigh the time-limited

harm and establish the very special circumstances necessary to accord with the development plan.

25. In view of the weight I attach to the occupiers personal circumstances I shall restrict occupation of the site to the current occupiers. Because of the personal restriction and the limited timeframe I consider that a further condition restricting the use to gypsies and travellers is not necessary.
26. Even a grant of temporary permission interferes with the occupiers' human rights, but I consider that a temporary permission is a proportionate interference in all the circumstances.
27. Despite the limited period, there is a need for new landscaping to avoid harm to local character due to the extended area covered by the development and the amended layout, which includes the removal of a laurel hedge. This justifies the imposition of a condition requiring a site layout and landscape management scheme in line with that submitted, but with phasing to maintain existing screening in the northern paddock while planting develops. The time-limited nature of the permission also justifies a requirement for restoration. In the interests of character and appearance and local amenity I shall also condition external lighting, foul and surface water disposal and restrict commercial use and vehicle size. I shall also restrict use of the dayroom to purposes ancillary to the residential occupancy of the caravans in the interests of the living conditions of the site occupiers.

Paul Dignan

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Dr Simon Ruston	Ruston Planning Ltd
Rhodri Crandon	Landscape Architect, Tirlun Design
Sally Anne Smith	Appellant
Maggie Smith BEM	Retired Gypsy Liaison Officer

FOR THE LOCAL PLANNING AUTHORITY:

Helen Stocks	Senior Planning Officer
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INTERESTED PERSONS

Nigel Cottell	Badgeworth Parish Council
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DOCUMENTS

- 1 Signed Statement of Common Ground
- 2 Post-hearing note clarifying Council's 5 year supply and its approach to meeting wider Gypsy and Traveller need.

Appeal Ref: APP/G1630/W/17/3192162 - Schedule of Conditions

- 1) The use hereby permitted shall be carried on only by (1) Sally Ann Smith and Denny Smith, (2) Denny Smith and Cheryl Smith and their resident dependants, (3) Natalie Maguire and Ben Maguire and their resident dependants, (4) Jodie Maloney and Steven Maloney and their resident dependants, (5) Marion Richards and Johnny Richards, (6) Rocky Smith and Marion Smith and their resident dependants, and (7) Luke Smith and his wife and their resident dependants, and shall be for a limited period being the period of four years from the date of this decision.
- 2) When the land cease to be occupied by those named above, or at the end of four years, whichever shall first occur, all caravans, buildings, structures, materials and equipment brought onto, or erected on the land, including the dayroom, 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.
- 3) No more than 12 caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968, shall be stationed on the site at any time, of which no more than 7 shall be a static caravan or mobile home.
- 4) No further development shall take place until there has been submitted to and approved in writing by the local planning authority a scheme showing the layout and landscaping of the site, in line with that shown in Drawing No. TDA.2238.03, dated January 2017, submitted with the Site Layout and Landscape Design Statement. The scheme shall include indications of all existing trees and hedgerows on the land, identify those to be retained, set out measures for their protection throughout the course of development, and include a scheme of further planting with details of phasing and measures for protection or replacement in the event of any loss. The approved details shall be implemented and retained for the duration of the development.
- 5) No further development shall take place until details of any external lighting have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details and retained for the duration of the development.
- 6) No further development shall take place until details of the means of foul and surface water drainage have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details and retained for the duration of the development.
- 7) The day room on the site shall be used solely for purposes ancillary to the residential occupancy of the caravans on the site.
- 8) No vehicle over 3.5 tonnes shall be stationed, parked or stored on the site and no commercial activities shall take place on the land, including the external storage of materials.