The Planning Inspectorate

Appeal Decision

Hearing held on 4 June 2013

by David Smith BA(Hons) DMS MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 23 July 2015

Appeal Ref: APP/T2215/A/12/2189200
Shirehall Farm, Shirehall Road, Hawley, Kent, DA2 7SL

- 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 Mr & Mrs J Beaney against the decision of Dartford Borough Council.
- The application Ref DA/12/00287/COU, dated 1 March 2012, was refused by notice dated 22 June 2012.
- The development proposed is a change of use of land to a private gypsy and traveller caravan site comprising one mobile home and one touring caravan.

Decision

1. The appeal is allowed and planning permission is granted for a change of use of land to a private gypsy and traveller caravan site comprising one mobile home and one touring caravan at Shirehall Farm, Shirehall Road, Hawley, Kent, DA2 7SL in accordance with the terms of the application, Ref DA/12/00287/COU, dated 1 March 2012, subject to the conditions in the attached schedule.

Preliminary Matters

2. After the hearing the appeal was recovered by the Secretary of State for him to determine. The parties were advised of this on 13 September 2013. This direction was revoked in April 2015.

3. In response to a letter from the Planning Inspectorate the Council advised that there has not been any change in circumstances since the close of the hearing and the appellants indicated that they had no further comments to make. I subsequently obtained confirmation of the position regarding the development plan and the emerging Development Management Plan (DMP).

4. In addition, the Council provided new information regarding a Gypsy and Traveller Assessment in November 2013. The appellants have responded to this matter by providing proofs of evidence and appendices in relation to another appeal (Ref: APP/T2215/A/13/2192990). I confirm that I have taken this further evidence into account.

Main Issues

5. Paragraph 14 of the Planning Policy for Traveller Sites (PPTS) confirms that traveller sites in the Green Belt are inappropriate development. The main issues are therefore:

    - The effect of the proposal on the openness and purposes of the Green Belt and on the character and appearance of the surrounding area; and

- Whether the harm to the Green Belt by reason of inappropriate development, and any other harm, is clearly outweighed by other considerations, so as to amount to the very special circumstances necessary to justify the development.

6. It is not disputed that the appellants fall within the definition of gypsies and travellers at Annex 1 of the PPTS. Its provisions should therefore be applied. Moreover, the other considerations in this case should include the general need for and provision of traveller sites in the Borough; the alternatives open to the appellants and any personal circumstances.

Background

7. The appellants are from gypsy families and were both born in Kent. In their younger days they lived in caravans and had a traditional lifestyle moving round from farm to farm picking fruit. However, due to Mr Beaney's health they settled at Shirehall Farm in 2001. Their daughters live at Belvedere and Swanley and the husband of the eldest is severely disabled.

8. Their son James has always been with them initially staying in a tourer behind the house. He got married in 2005 and had a year of travelling with his wife. After the birth of their 2 daughters the difficulties of living in cramped and uncomfortable conditions got too much for Louise and she and the children returned to her parents pitch at Ash Green. However, in late 2011 they started living together in a mobile home at the appeal site.

Reasons

Openness and purposes of the Green Belt and character and appearance

9. The mobile home and tourer would be within the residential curtilage of Shirehall Farm. As a result there would be no encroachment into the countryside and none of the 5 purposes of the Green Belt would be infringed.

10. By virtue of their physical presence the mobile home and tourer would reduce openness but by a limited degree. Having regard to the lawful domestic use of the site, it is accepted that permitted development rights could be exercised that might have a similar impact. This could take the form of the stationing of caravans for ancillary purposes or a domestic outbuilding. The 'fall back' position is nevertheless a theoretical one as there is no indication that either scenario would occur if the appeal failed.

11. Policy C1 of the Dartford Local Plan of 1995 indicates that proposals for development in the countryside will not normally be permitted. They will be considered against a number of factors including the appropriateness of the use to a rural location. Although, according to the PPTS, new traveller sites should be strictly limited in the open countryside paragraphs 12 and 23 countenance sites in rural or semi-rural settings. As such, the proposal should not be ruled out as a matter of principle due to its location outside of any settlement.

12. The mobile home would be set well back into the site and would not be prominent in the wider area. Some glimpses of it would be obtained from the east but the main public views would be from the lane directly in front of it. However, the appellants' Landscape Statement suggests that this could be ameliorated by moving the entrance to the pitch and thereby avoiding a direct 'line of sight'. Moreover, the existing fence could be replaced and a planter

containing shrubs and climbers placed in front of it to further reduce the visual impact. In so doing, the tourer and associated parking would also be shielded.

13. Furthermore, the context of the proposed mobile and tourer is set by Shirehall Farm on one side and a group of workshops with containers at the rear on the other. Beyond this cluster the landscape is largely flat and open but because of the neighbouring buildings the proposal would not stand out in the way that it might have done in a more isolated and exposed location. The gap between the house and the adjoining units would be closed. Nevertheless, the recessed position of the caravans and the measures to improve the appearance of the site mean that the proposal would not detract from the locality in this respect.

14. Therefore the proposal would not be intrusive or incongruous and would not harm the character and appearance of the surrounding area. As any adverse impact on the countryside would be minimised it would accord with Local Plan Policy C2. Openness would be reduced by a limited degree.

Other considerations

General need for and provision of traveller sites in the Borough

15. The Dartford Gypsy, Traveller and Travelling Showpeople Accommodation Assessment (GTAA) was undertaken in May 2013 and this is the base date. Its findings are that the need for pitches between 2013 and 2017 is 13 and that total need to 2027 is for 34 pitches. The appellants maintain that there is considerable doubt about the robustness and reliability of the GTAA particularly in relation to the way it was carried out and the subsequent analysis. According to them it is "rushed and incomplete". However, they accept that it is not necessary for me to reach a definitive figure of unmet need.

16. Leaving that aside, the Council relies on a site at Knoxfield Caravan Park to meet identified need in the next 5 year period. Planning permission was given in July 2013 for the stationing of 16 caravans and Condition 03 limits occupation to gypsies and travellers as defined in the PPTS. According to the Council there are no known constraints to delivery and so Knoxfield represents a specific deliverable site. However, the need in the GTAA is expressed in terms of pitches rather than caravans.

17. There are 9 long-term vacant pitches at Knoxfield. The GTAA refers to the current authorised residential provision as 62 pitches. On the basis of this definition these pitches should be included in the figure for existing provision. There is no direct evidence from the site owner regarding his intentions about their occupation. He will clearly have the 'final say' as to whether to rent any spare pitches to other travellers or whether to exclude certain families from the site. So even if treated as part of the available supply, rather than as existing provision, the empty pitches at Knoxfield may not be available to all travellers.

18. Condition 04 of the 2013 permission provides that no more than 13 caravans shall be statics or mobile homes. At the hearing reference was made to 7 further pitches at Knoxfield and the written report on the application refers to an increase from 9 to 16 caravans on Plots 4, 5 and 6. As such, the additional capacity permitted is below the 13 pitches that are needed by 2017 according to the GTAA. If all 13 permanent caravans at Knoxfield are treated as pitches this would meet the expectations of the GTAA but with no slack.

19. In any event, given that 2 years have passed since the 'start point' of the GTAA, it is reasonable to expect that the level of need has increased. In this respect the GTAA applies a standard compound growth rate. It is therefore now more than 13. There is no evidence that other sites have come forward in the interim. As such, it cannot be said with certainty that there is currently a 5 year supply of sites in Dartford. Furthermore, if the GTAA is used as the basis for this there is, at the present time, a general unmet need for sites albeit a relatively modest one.

20. At the time of the hearing the Council expected that the DMP would be adopted in spring 2015. This was intended to set out pitch requirements, identify suitable sites against this target and include a criteria based policy for other sites. However, this has clearly not occurred. The Council acknowledges that the DMP has been delayed and it is now due to be submitted in December 2015 with adoption likely in summer of 2016. Nevertheless there is a high proportion of Green Belt in Dartford and also an Area of Outstanding Natural Beauty so the identification of new sites is unlikely to be easy.

21. Using the GTAA assessment there is an outstanding need for sites in the Borough. This weighs in favour of the proposal although the level of that need is not high. The DMP is being progressed but based on past experience further slippage cannot be ruled out before it is adopted and even then time will be required to obtain permission for sites and to lay them out. As a consequence it is likely to be some time before general needs will be addressed. This adds further support to the immediate provision of a pitch at Shirehall Farm. These findings are a manifestation of how previous planning policies have operated and therefore I give weight to them rather than past policy failings per se.

Alternatives for the appellants

22. One option is for James Beaney junior and his family to occupy the site at Knoxfield. However, there has been a disagreement between the Beaney and Harber families over many years so that the couple do not wish to live there. Mrs Carol Beaney said that she would be "frightened" if that came to pass because of her concerns about safety. In theory, the extended family group could move together but the appellants need peace and quiet because of their health issues. Although the reaction of the site owner is not known the Council accepted that there would be potential tensions. Indeed, the oral evidence given indicates that this is not a realistic proposition.

23. Planning permission has been given in the past to convert a double garage at the property to living accommodation. Others suggested that Shirehall Farm could be extended to create space for the current occupiers of the mobile home. However, Mrs Louise Beaney has never lived in a house and the need is for a caravan site. Amongst other things the PPTS seeks to facilitate the traditional way of life of travellers. Living in caravans is an intrinsic part of this rather than it simply being a lifestyle choice. Consequently these possibilities do not represent credible solutions to the needs of this young family.

24. Therefore there are no suitable, authorised alternative sites available to the current occupiers of the mobile home. In the event that the appeal failed and they were forced to leave it the likely outcome would be a roadside existence or an unauthorised site elsewhere. This might include reverting to a touring caravan behind the house which proved to be untenable. The absence of alternatives therefore favours the proposal. Although occupied without

planning permission the appeal site is the home of Mr and Mrs Beaney junior and their family. Requiring the mobile home to be vacated would therefore represent an interference with their home and family life.

Personal circumstances

25. The appellants clearly value having James on hand as a carer. In particular, since the time when he and his wife were travelling, Mrs Carol Beaney's own health has deteriorated. I was told that he assists with maintenance tasks, heavy housework and shopping and is also there as a back-up for his father if his mother is taken ill. All of these practical tasks could be performed if he was living somewhere else and because of this it is of limited weight in favour. Nevertheless, his presence saves worry and anxiety and is consistent with the gypsy tradition of looking after their own.

26. The Beaneys have local connections having stayed and worked around the area for many years and there are other family members in the vicinity. The children at the site are doing well at New Ash Green Primary School. Apparently the behavioural issues that occurred when they were separated from their father have been resolved. From the evidence available the best interests of children would be served by staying at the site.

Further considerations

27. The definition of previously-developed land in Annex 2 of the National Planning Policy Framework excludes land in built-up areas such as private residential gardens. However, the appeal site is within a rural area and as the mobile home and tourer would be located within the curtilage of developed land it should be treated as previously-developed land. In turn, the PPTS indicates that weight should be attached to the effective use of such land. There is nothing to suggest that the land was previously untidy or derelict but it is preferable for traveller sites to be located on land of this type rather than on 'greenfield' sites. I therefore give significant weight to the fact that the appeal site is previously-developed land.

28. Policy CS20 of the Core Strategy confirms that in identifying sites to meet an agreed requirement account will be taken of the protection of the openness of the Green Belt. In the absence of other policies it is reasonable to use its criteria in the consideration of individual applications. There is no conflict with the other factors. My findings in relation to openness are set out earlier. However, given that future traveller sites are likely to be located in the Green Belt, the policy does not seek to prevent any impact on openness. In this case the consequences of a single pitch within a domestic curtilage are as about as low as they could be. Therefore whilst taking criterion c) into account there is no conflict with that development plan policy.

29. The PPTS advises that traveller sites should be sustainable economically, socially and environmentally. Many of the factors referred to in paragraph 11 would be met. The Council does not dispute that the appeal site is within 1km of services and facilities and many other gypsy sites are further away. However, Shirehall Road is not conducive to walking so that most journeys would be likely to be undertaken by car contrary to the aim of the Framework of making the fullest possible use of public transport, walking and cycling. As such, the location of the site is neutral in the overall balance.

Other Matters

30. Shirehall Road is narrow and twisting with passing places. It is unlit with no pavements and is prone to flooding. Moving along it at busy times requires care and one local resident described it as "dangerous". However, these problems would not be exacerbated to any meaningful extent by accepting a single traveller site as the volume of additional traffic created would be small.

31. There were in excess of 600 objections to the planning application. Some are concerned about the retrospective nature of the proposal. This is not to be condoned but neither has it had any bearing on my assessment of the merits of the appeal. In particular, it should be noted that the appellants' eldest grand daughter was already at school at the time the mobile home was occupied.

32. Some fear a repeat of Dale Farm but the proposal before me is for one gypsy pitch. More understandably others point to sites in Dartford which have expanded over the years. This tallies with my own experience and is consistent with the gypsy way of life. However, any such proposals would have to be assessed against relevant factors at the time. Furthermore, it seems to me that extending into surrounding farmland would be an entirely different matter to a pitch contained within an existing residential curtilage.

Overall balancing

33. The proposal would be inappropriate development within the Green Belt which Policy CS13 of the Core Strategy seeks to resist. Policy S4 of the Local Plan has similar aims. According to the Framework substantial weight should be given to any harm to the Green Belt. The Written Ministerial Statements also underline that protection of the Green Belt is an explicit policy intent. In addition, there would be a limited reduction in openness. However, there would be no conflict with the purposes of the Green Belt and no harm to the character and appearance of the area subject to certain further works.

34. Although the general level of need for pitches in Dartford is relatively modest it does exist and policies to deal with this in the longer term are still some way from being finalised. Similarly the provision of adequate sites is not imminent. Furthermore, there is a lack of realistic, suitable alternatives for Mr and Mrs Beaney junior and the best interests of their children would be served by staying where they are. Their personal circumstances in supporting the appellants attract limited weight. However, I give significant weight to the fact that the proposed location would be on previously-developed land and that the most directly relevant development plan policy would be met.

35. In the Written Ministerial Statement of July 2013 the Secretary of State makes clear that the single issue of unmet demand for traveller sites is unlikely to outweigh harm to the Green Belt so as to constitute the "very special circumstances" to justify inappropriate development in the Green Belt. This is re-emphasised in the further Statement of January 2014. However, in this case, the factors that weigh in favour of the proposal do not only relate to unmet demand for sites.

36. In the final analysis, the other considerations clearly outweigh the totality of harm that would arise including the conflict with the broad policy aim of protecting the Green Belt. Looking at the case as a whole and having regard, in particular, to the location of the site on previously-developed land and the compliance with the policy relating to gypsies and travellers, I am satisfied that

very special circumstances exist. As such a permanent permission is justified and there is no need to consider a temporary permission as discussed at the hearing or any human rights implications for the appellants.

37. Some representations raised concerns about precedent and regarded the appeal as a 'test case' for traveller sites in the Green Belt. I disagree with those views since the factors that I have assessed in this case are unlikely to be exactly repeated elsewhere. It would be for future decision-makers to perform their own balancing exercises taking account of the evidence before them in those cases should they arise.

Conditions

38. Occupation should be limited to gypsies and travellers given the specific policy basis for accepting the use. As there are no strong personal grounds for the proposal a personal permission is not justified. To limit the visual impact the number of caravans, the siting of the mobile home, the extent of the pitch and the size of vehicles to be kept at the site should be restricted. For similar reasons alterations to the fencing and associated planting should be agreed and implemented but further landscaping as suggested by the appellants is not necessary. Commercial activities should be precluded to protect the wider amenities of the countryside and the Green Belt.

Final conclusion

39. For the reasons given my final conclusion is that permission should be granted subject to conditions and therefore that the appeal should succeed.

David Smith

INSPECTOR

SCHEDULE OF CONDITIONS

1) The site shall not be occupied by any persons other than gypsies and travellers as defined in Annex 1 of the Planning Policy for Traveller Sites (DCLG, 2012).

2) No more than 2 caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 (of which no more than 1 shall be a static caravan or mobile home), shall be stationed on the site at any time.

3) The mobile home shall be sited in accordance with the approved drawing. Any material change to its position shall only take place in accordance with details previously submitted to and approved in writing by the local planning authority.

4) No vehicle over 3.5 tonnes shall be stationed, parked or stored on the site.

5) No commercial activities shall take place on the site including the storage of materials.

6) The use hereby permitted shall cease and all caravans, structures, equipment and materials brought onto the land for the purposes of such use shall be removed within 28 days of the date of failure to meet any one of the requirements set out in i) to iv) below:

   i) Within 3 months of the date of this decision:-

      a) a scheme of works and a timetable for implementation to replace the existing fence to the south of the mobile home; relocate the entrance to the mobile home and for associated planting as illustrated in the Outline Landscape Proposals in the Landscape Statement prepared by Tirlun Design Associates; and

      b) details of the extent of the pitch area of the mobile home and touring caravan to include hardstanding, parking and amenity areas;

      shall have been submitted for the written approval of the local planning authority.

   ii) Within 11 months of the date of this decision the matters specified at i) a) and b) shall have been approved by the local planning authority or, if the local planning authority refuse to approve the scheme, or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.

   iii) If an appeal is made in pursuance of (ii) above, that appeal shall have been finally determined and the matters specified at i) a) and b) shall have been approved by the Secretary of State.

   iv) The approved works referred to in i) a) shall have been carried out and completed in accordance with the timetable for implementation.

APPEARANCES

FOR THE APPELLANTS:

Dr A Murdoch MRTPI	Murdoch Planning
Mr J Beaney senior	
Mrs C Beaney	
Mr J Beaney junior	
Mrs L Beaney	

FOR THE LOCAL PLANNING AUTHORITY:

Mrs B Lidster BA (Hons) PGDip MRTPI	Planning Officer
Mrs T Smith	Planning Policy Officer

LOCAL RESIDENTS:

Mrs M Essex

Mr T Crook

Mr B Bishop

Mr B Payne

DOCUMENTS

1 Representation from Mr Nicholls
2 Policy S4 of the Dartford Local Plan
3 Landscape Statement
4 North Kent Gypsy & Traveller Study 2006
5 Chapter 6 of unfinished draft of South East Plan Examination in Public Report
6 Aerial photo of 2006
7 Secretary of State appeal decision dated 10 April 2013 at River Lane, Leatherhead