



Department for
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Local Government

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Our Ref: APP/G2245/A/13/2206402

Your Ref: j75-08 SIMPSON SEVENOAKS

11 November 2014

Dear Madam,

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78
APPEAL BY MR T SIMPSON
LAND NORTH EAST OF THE JUNCTION OF REDMANS LANE, FIRMINGERS
ROAD, ORPINGTON, KENT BR6 7QH
APPLICATION REF: SE/01388/FUL**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, Bridget M Campbell, BA(Hons) MRTPI, who held a hearing on 5th February 2014 into your client's appeal as follows:

APP/G2245/A/13/2206402 under s78 of the Town and Country Planning Act 1990 against the refusal by Sevenoaks District Council (“the Council”) to grant planning permission for the change of use to a traveller site at land north east of Redmans Lane, Firmingers Road, Orpington, Kent BR6 7QH.

2. On the 12th December 2013 the appeal was recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990, because the appeal involves a proposal for significant development in the Green Belt (GB).

Inspector's recommendation and summary of the decision

3. The Inspector recommended that that the appeal be allowed planning permission be granted for a temporary period of three years, subject to conditions. For the reasons given below, the Secretary of State disagrees with the Inspector's conclusions and recommendation and dismisses the appeal. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

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Matters arising since the closure of the hearing

4. Following the publication of the planning guidance in March 2014, the Planning Inspectorate wrote to all parties for their comments. Your response and the attached appeal decision have been taken into account in coming to a decision on this appeal.
5. On the 13 August 2014, following the High Court Judgment in the case of *Redhill Aerodrome vs. SSCLG and others* [2014] EWHC 2476 (Admin), the Secretary of State wrote to parties to seek their views on the implications, if any, of the Judgment on their case. No response was received from you. The Council responded saying that it was of the view that the judgment had no implications in respect to the outcome of its original decision.
6. However, on 9th October 2014, the Court of Appeal set aside the Judgment and Order of Patterson J dated 18 July 2014. As such, the Secretary of State does not consider it necessary to revert to the parties prior to reaching this decision.

Clarification of and revisions to the application

7. The Secretary of State notes the Inspector's comments at IR4-7. He confirms that he has considered the proposal on the basis of the occupation of the site for those individuals named in IR4, for the description of development set out in IR6 and site layout drawing annotated "Rev A. 5.2.2014".

Policy considerations

8. In deciding these appeals, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise.
9. In this case, the development plan comprises the Sevenoaks District Local Plan and Core Strategy adopted in February 2011 and the Saved Local Plan Policies Compendium – July 2008. The Secretary of State considers that the development plan policies most relevant to the appeal are those set out by the Inspector at IR16.
10. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework (the Framework); Planning Policy for Traveller Sites (PPTS); the Written Ministerial Statements of 1 July 2013 and 17 January 2014 and planning guidance issued on 6 March 2014. The Secretary of State has also had regard to the fact that on 14 September 2014 the Government published a consultation document: "Proposed changes to national planning policy and Planning Policy for Traveller Sites". However, given that the proposals are subject to consultation, he has given little weight to it in the determination of this appeal.

Main issues

11. The Secretary of State considers that the main issues are those identified by the Inspector at IR55. He also notes that there is a large measure of agreement between the parties as set out in IR20-29 and that the disagreement is in the weight to be attributed to each matter (IR19).

Harm to the Green Belt, countryside and AONB

12. The Secretary of State agrees with the Inspector that the proposed development is inappropriate development which is by definition harmful to the GB and that substantial weight must be given to that harm (IR56). He also agrees that the development would result in loss of openness and would conflict with one of the five purposes of including land within the GB namely to assist in safeguarding the countryside from encroachment. He attaches substantial weight to this loss of openness (IR56). The Secretary of State acknowledges the Inspector's conclusion that the site is small and well screened and that the amount of development is fairly limited but he disagrees with the Inspector as to the significance of that harm. He considers that, in the context of the inappropriateness of the appeal development, any additional harm is significant.

Need for the development

13. The Secretary of State acknowledges that the Council has not identified a supply of specific deliverable sites sufficient to provide five years supply of sites against locally set targets as required by the PPTS. He further acknowledges that the Council is addressing this and a Gypsy and Traveller Local Plan which will identify sites is anticipated for adoption in late 2015 (IR26). He agrees with the Inspector that the need for sites and the lack of suitable alternative provision are matters which attract considerable weight in favour of the appeal.

Personal circumstances

14. The Secretary of State has carefully considered the personal needs and circumstances of the both the site's current and proposed occupants as set out by the Inspector at IR35-38. The Secretary of State notes that the appellant, his wife and their two young children were already occupying the site and, at the time of the Hearing, another baby was due. He has given significant weight to the best interests of the children as a primary consideration.

The Balancing exercise

15. The Secretary of State has given very careful consideration to the Inspector's balancing of considerations at IR62-65. Having had regard to the evidence, the Secretary of State has weighed the harm to the Green Belt due to inappropriateness, loss of openness, encroachment into the countryside as well as the impact on the landscape character and visual amenity of the

AONB, against the material considerations in favour of the development. He agrees with the Inspector (IR64) that substantial weight should be given to the inappropriateness of development in the Green Belt and attributes further significant weight to the detriment to visual amenity and appearance caused by the development.

16. The Secretary of State finds that to a limited extent there has been a policy failure in Sevenoaks District Council to achieve the goals set out in the PPTS in relation to the identification of a 5 year supply of deliverable sites. However, taking account of the progress which the Council has recently made in bringing forward its draft Gypsy and Traveller Local Plan, the Secretary of State considers that this matter adds some weight in favour of the appeal. The Secretary of State agrees with the Inspector (IR61) that the unmet need for sites within the District carries significant weight in favour of the development. He also agrees that the absence of alternative available sites for the two families to reside on provides significant weight in favour of the appeal.
17. The Secretary of State has carefully considered the balance of considerations in this case. In doing so he has balanced the needs of the current and proposed occupiers against the need to protect the GB. Although he considers the unmet need for sites to carry significant weight in favour of the proposal, he does not consider this, in itself, is sufficient to outweigh the harm to the GB, which he considers substantial, to comprise the very special circumstances necessary to justify development. He considers that, even when combined with the other factors identified in paragraphs 13-14 above, the very special circumstances necessary to justify the development do not arise.
18. The Secretary of State agrees with the Inspector that the harm to the Green Belt weighs substantially against the proposal. Whilst the Secretary of State considers that there are also a number of considerations weighing in support of the appeal proposal, he does not believe that those considerations, either individually or cumulatively, clearly outweighs the harm he has identified. Accordingly, he also agrees with the Inspector that very special circumstances to justify permanent planning permission for this development in the Green Belt do not exist (IR65).
19. In terms of the appellants' rights under Article 8 of the European Convention on Human Rights, the Secretary of State agrees with the Inspector (IR64) that these rights are engaged. However, he considers that these rights are qualified and that it is his role as planning decision-taker to ensure that any interference with these rights is in accordance with the law and is necessary in a democratic society, applying the principle of proportionality. He agrees with the Inspector (IR61) that dismissing the appeal will likely force both families into a roadside existence and that this would represent an interference with their private and family life. However, the Secretary of State takes the view that in this case the harm to the GB and other harm is such that dismissal of this appeal is a necessary and proportionate response.

Consideration of a temporary permission

20. The Secretary of State has gone on to consider the Inspector's arguments in favour of granting temporary planning permission for a period of three years, made personal to named individuals as set out at IR65. He acknowledges that there is no five year supply of specific deliverable site as required by paragraph 9 of the PPTS and that this is a significant material consideration in considering the granting of temporary planning permission (IR27). However, he considers that three years represents a considerable length of time and he disagrees with the Inspector's conclusion that the overall harm caused by granting a temporary consent for such a period of time would be clearly outweighed by the other considerations advanced in favour of the development. Although the harm to the GB would be time limited, he does not agree that the material considerations weighing in favour of the appeal development are sufficient to clearly outweigh the harm to the GB and the other harm identified so that the very special circumstances necessary to justify the granting of temporary planning permission do not exist.
21. The Secretary of State has weighed these matters carefully but, unlike the Inspector, in this case he considers that, even on a temporary basis, the harm to the Green Belt caused by the inappropriate development and other harms identified would not be clearly outweighed by the material considerations which he has weighed in support of a temporary permission. Therefore he does not agree that very special circumstances exist to justify a grant of temporary planning permission.

Conditions

22. The Secretary of State has considered the proposed conditions at Annex C of the IR. He is satisfied that these conditions are necessary and relevant to the proposed development and meet the policy tests of the planning guidance – Use of Conditions and paragraph 206 of the Framework. However, he does not consider that they would overcome his reasons for refusing the appeal.

Public Sector Equality Duty

23. The Secretary of State notes that the appellant and his brother are Romany gypsies (IR20) and therefore he considers that the appellants are persons who share a protected characteristic for the purposes of the Equality Act 2010.
24. In making his decision, the Secretary of State has had due regard to the requirements of the Public Sector Equality Duty, in particular, the need to eliminate discrimination, advance equality of opportunity and foster good relations between those with protected characteristics and others in accordance with section 149 of the Equality Act 2010. In this regard and in coming to his decision he has considered the following impacts on the protected group (i) the need for a settled base for the brothers and their families and (ii) the lack of a suitable alternative available site.
25. Having balanced these potential equality impacts against the harm caused to the GB and other identified harm to the AONB and the countryside, the

Secretary of State is of the view that his decision to refuse planning permission is proportionate and justified in the circumstances.

Overall Conclusions

26. The Secretary of State concludes that the appeal proposal is inappropriate development in the Green Belt and he attributes substantial weight to this harm. For the reasons given above he finds that the harm to the GB and other harm arising from the development would not be clearly outweighed by other considerations such that the very special circumstances necessary for the granting of planning permission do not exist.

Formal Decision

27. Accordingly, for the reasons given above, the Secretary of State disagrees with the Inspector's recommendation. He hereby dismisses the appeal and refuses planning permission.

Right to challenge the decision

28. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged.

29. A copy of this letter has been sent to Sevenoaks District Council. A notification letter has been sent to all other parties who asked to be informed of the decision.

Yours faithfully

Richard Watson

Authorised by Secretary of State to sign in that behalf

Report to the Secretary of State for Communities and Local Government

by Bridget M Campbell BA(Hons) MRTPI

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

Date: 29 May 2014

TOWN AND COUNTRY PLANNING ACT 1990

SEVENOAKS DISTRICT COUNCIL

APPEAL MADE UNDER S78 OF THE ACT BY MR T SIMPSON

Hearing held on 5 February 2014

Land north east of the junction of Redmans Lane, Firmingers Road, Orpington, Kent BR6 7QH

File Ref: APP/G2245/A/13/2206402

File Ref: APP/G2245/A/13/2206402

Land north east of the junction of Redmans Lane, Firmingers Road, Orpington, Kent BR6 7QH

- 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 T Simpson against the decision of Sevenoaks District Council.
- The application Ref SE/13/01388/FUL, dated 7 May 2013, was refused by notice dated 9 September 2013.
- The development proposed is described as “change of use to traveller site”

Summary of Recommendation: The appeal be allowed, and planning permission granted subject to conditions.

Preliminary matters

1. On 12 December 2013, the Secretary of State, in exercise of his powers under section 79 and paragraph 3 of Schedule 6 of the Town and Country Planning Act 1990 (the Act), directed that he should determine the appeal himself. The reason given is that it involves proposals for significant development in the Green Belt.
2. Documentary evidence submitted in connection with the appeal is listed at Annex B to this report. Only the main points for each party are recorded in this report.
3. Following the close of the hearing the attention of both parties was drawn to National Planning Practice Guidance published on 6 March 2014. Only the Appellant responded, commenting on its applicability to gypsy and traveller casework generally rather than specifically on its relevance to this case¹. A recent appeal decision was also attached but, as new evidence, that has not been taken into account and is for the Secretary of State to consider. In addition, the Council has subsequently confirmed that this development is exempt from any payment required by the Community Infrastructure Levy Charging Schedule adopted in February 2014.²

Clarification of and revisions to the application

4. Despite the description of the use as given in the application, at the hearing it was clarified for the Appellant that the application is not a proposal for a site for travellers in general. Rather it is intended to accommodate the Appellant, Tommy Simpson, and his family comprising his wife, Elizabeth and their 3 children aged 5 years and 3 years with the third expected 6 weeks after the hearing together with his brother Jonny and his wife Rachael.
5. The use has begun in that Tommy and his family have moved onto the site. On conventional traveller sites one might normally expect a static caravan and a touring caravan for each pitch. In this case the two families are not asking for permission for any static caravans or mobile homes but instead three touring caravans in total – two for Tommy’s family and one for Jonny and his wife.

¹ Document 8

² Document 9

6. With that clarification, and having regard to the details included within the application, it was agreed that a description of the development more in line with that given on the Council's decision notice would be appropriate as would its description of the location of the site. The proposal should, however, include a utility shed and the existing electricity and water cabinets as they were included in the application – on the form (section 9), in the design and access statement and on the application drawings. The following would be appropriate:

Change of use to residential involving the stationing of three touring caravans and provision of associated hardstanding, utility shed, electricity and water cabinets, fencing and gate

at

Land north east of the junction of Redmans Lane with Firmingers Road, Orpington Kent BR6 7QH

7. The application drawing entitled "Plan 2 Proposed site layout"³ was superseded at the hearing with another with the same title but annotated "Rev A. 5.2.2014".⁴ This adjusts the layout of the site to show the position of the shed and the single touring caravan currently on the site in their correct positions. The Council raised no objection to the substitution of the drawing. I recommend that the decision is made taking that revised drawing into account.

The site, surroundings and planning background

8. Firmingers Road runs in a northerly direction from its junction with the road running east-west comprising Rock Hill and Redmans Lane. A large property, Fountain Farm/Well Hill Nursery lies on the north eastern side of that junction with the embankment to the M25 motorway defining its eastern boundary. The access drive to that property begins at the road junction and extends to the collection of buildings at the northern end of the site. Much of that property is grassland.⁵
9. The appeal site and an adjoining small paddock formerly formed part of Fountain Farm/Well Hill Nursery but are now in the ownership of the Appellant. His property stretches along the northern side of Redmans Lane between the road junction and the M25. The appeal site sits in the angle of the junction and has an area of some 0.043ha with the paddock adjoining its eastern side and extending to the M25, with an area of about 0.15ha. Land rises to the north, south and west and to the east is the mature vegetated embankment to the M25.
10. The site is mainly surfaced with a mixture of tarmac and gravel. It has existing electricity and water mains cabinets on the southern side and a shed used as a utility and playroom in the south eastern corner. One of the proposed touring caravans is on the site – that which follows the angled boundary across the corner of the junction.⁶
11. The boundary of the site to the road is screened with a mature hedgerow behind which is close boarded fencing. The north western boundary fronts the access

³ Plan B

⁴ Plan D

⁵ Plan A

⁶ Plan D

drive to Fountain Farm/Well Hill Nursery. It has recently been secured by a length of close boarded fencing in front of which a new hawthorn hedge has been planted. There is a pair of double decorative wrought iron gates at the access into the site. The eastern boundary to the paddock is defined by a post and rail fence and an assortment of shrubs whilst along the northern boundary to Fountain Farm is a laurel hedge. A lighting column has been erected close to the north western boundary and rises above the new boundary fence.

12. An enforcement notice issued in 2009 in relation to Fountain Farm affects the site and requires the removal of the hardstanding and the two cabinets housing the services. It was issued before the Appellant acquired the site, remains in force and has not been complied with insofar as it affects the appeal site.⁷ The appeal proposal incorporates those items on the appeal site attacked by the notice.
13. On the opposite corner of Firmingers Road is an extensive property, High Beech Farm, with an assortment of buildings and structures which appear to be in use for equestrian, commercial and residential purposes. An access track and public right of way leads in a southerly direction opposite the junction.
14. The site sits on the eastern edge of the loose knit hamlet of Well Hill. The nearest local services are to be found in Shoreham some 2.7km to the south east with the periphery of Orpington some 3.3km to the west.
15. The site lies within the Metropolitan Green Belt and within the Kent Downs Area of Outstanding Natural Beauty (AONB). The AONB is characterised by the rolling hills of the Kent Downs where in general there are long views across the valleys of agricultural land interspersed with woodland.

Planning Policy

16. From the Local Development Framework, the Council has drawn attention to saved policy EN1 from the Sevenoaks District Local Plan and Core Strategy policies SP1, SP6 and LO8.⁸ Policy EN1 is a general policy setting out 12 criteria to be applied in the consideration of all planning applications. Policy SP1 addresses the design of new development and conservation. Policy LO8 is concerned with the countryside and rural economy and in relation to this appeal it seeks to conserve and enhance the distinctive character of the Kent Downs AONB and its setting.
17. Policy SP6 addresses the provision of sites for gypsies and travellers and for travelling showpeople. The supporting text indicates that the Allocations and Management DPD will set an overall level of future provision and will identify sites to meet it. The policy sets out six criteria to be used in the identification of sites in the DPD. It goes on to say that proposals for sites on other land outside existing settlement confines will only be permitted where the occupant has a need for accommodation that cannot be met on lawful existing or allocated sites in the region and provided the six criteria are met. Despite the adoption of the Core Strategy in 2011, there is, as yet, no DPD identifying sites.

⁷ Document 2, appendices 2 and 3

⁸ The full text to the policies can be found on the appeal file appended to the questionnaire

18. Planning policy addressing the protection of Green Belt land is set out in the *National Planning Policy Framework* (NPPF). National policy in *Planning policy for traveller sites* (PPTS) is also relevant.

Matters not in dispute

19. There is a large measure of agreement between the main parties in relation to the major material considerations in this appeal. The disagreement comes in attributing the appropriate weight to each matter.

Gypsy Status

20. The intended occupiers are Romany Gypsies. The two brothers travel for work during the summer months laying imprinted concrete, undertaking seasonal work on farms, dealing in horses and visiting the traditional fairs. Their travel is for an economic purpose. They fall within the definition of "gypsies and travellers" for planning purposes as set out in Annex 1 of the PPTS.

Harm to the Green Belt

21. Outside the identified settlement boundaries, 93% of the District is designated Metropolitan Green Belt. The proposed development is inappropriate development in the Green Belt which by definition is harmful to the Green Belt and should not be approved except in very special circumstances. Such circumstances do not exist unless the harm by reason of inappropriateness and any other harm is clearly outweighed by other considerations. Substantial weight is to be given to the harm to the Green Belt.⁹
22. In this case, in addition to harm by definition, there is harm to openness and harm to one of the five purposes of the Green Belt – that is to assist in safeguarding the countryside from encroachment.

Harm to the AONB

23. Some 60% of the District is situated within an AONB. The proposed development would not help to preserve or to enhance the natural beauty of the landscape. The site is relatively well screened.

Other harm

24. Notwithstanding the representations made by interested persons there is no issue with regard to any effect on neighbours, on highway safety, ecological issues, flooding and drainage or in terms of air quality and noise. With regard to the latter, proximity to the M25 is acknowledged but not considered sufficient to be included as a reason for refusal.

Sustainability

25. The site is not within easy walking distance of any shops or services. Nonetheless, it would meet many of the sustainability objectives set out in paragraph 11 of the PPTS. In particular a settled base would facilitate access to health care and education within a reasonable distance and would reduce the need for long distance travel and possible environmental damage caused by

⁹ NPPF paragraphs 87 and 88 and PPTS paragraph 14

unauthorised encampments. Sustainability is not a significant issue in this appeal.

Meeting the need for more gypsy pitches

26. A "Gypsy, Traveller and Travelling Showpeople Accommodation Assessment" was completed in March 2012. The need identified for the period 2012-2026 is 72 pitches with 40 of those required by 2016. Only one additional pitch has received permanent planning permission¹⁰. The Council put out a call for sites in August 2012 and a draft Gypsy and Traveller Plan is anticipated for the end of this year with adoption hoped for in late 2015. Sites are to be allocated in this rather than in the Allocations and Development Management Plan DPD as set out in policy SP6. The Council recognises that there is an ongoing urgent need for more pitches. Public sites in the area are full with low turnovers and a 12 year waiting list.
27. There is no five year supply of specific deliverable sites as required by paragraph 9 of the PPTS. This is a significant material consideration in considering applications for the grant of temporary planning permission¹¹.
28. In the short term, in recognition of the substantial unmet need, and in advance of the identification of new pitches in the anticipated plan, the Council has been granting temporary planning permissions for sites¹². All of those granted are in the Green Belt and two are also within the AONB. Expiry dates range from the end of this year to 2018 reflecting the continuing uncertainty as to when new sites will be allocated within an adopted plan.

Core Strategy policy SP6

29. When assessed against the criteria of this policy the Council takes issue only with criterion (e) despite the requirement in criterion (f) to explore alternatives before considering Green Belt locations. This is because it accepts that there are no alternatives currently available. Criterion (e) requires development to have no significant adverse landscape or biodiversity impact and resists site allocations in AONB unless it can be demonstrated that the objectives of the designation will not be compromised.

The matter in dispute

30. The matter in dispute is whether the harm to the Green Belt and AONB, as identified above, is clearly outweighed by other considerations so as to amount to the very special circumstances needed to justify inappropriate development in the Green Belt.

The case for the Appellant

Harm

31. Other than the definitional harm to the Green Belt to which substantial weight must be given there is very little other actual harm to the Green Belt or to the AONB. The site is very small; it is situated in a dip and on the edge of a small

¹⁰ Table, page 4 of Document 2

¹¹ Para.25 PPTS

¹² Document 3

village; and it is well screened. Only three touring caravans and a shed are required to accommodate the families rather than the larger static or mobile homes normally associated with traveller sites. The character of the area is very mixed and includes both residential and commercial premises with quite a number within the immediate vicinity. Caravans on farms and on residential properties are not uncommon in this area, indeed there are two mobile homes on the property opposite. In addition, the M25 motorway is a significant feature which cuts a swathe through the area.

32. Although an appeal was dismissed in 2010 for a gypsy and traveller site to the south of the appeal site; that was for a much larger site with more development in a more exposed position and the occupiers did not have strong ties with the local area.¹³
33. Having regard to the existing context of the site and to what is proposed, the loss of openness, intrusion into the countryside and effect on the quality of the landscape is minimal.

Need for the development

34. The urgent need for more pitches is undisputed. Added to this are the personal circumstances of the Appellant and his brother.
35. Both families are homeless and have limited means with which to acquire another site. The appeal site was given to them in exchange for work that they did for the owner. Both families have been on the waiting list for a public site for four years.
36. Tommy and his family have moved onto the site. Prior to this they lived on the road side and have stopped with farmers in the area from time to time when doing work for them. Tommy tried stationing his caravan at his mother's house in Crockenhill but had to move on when his mother was threatened with eviction. His eldest child attends Halstead Primary School and is settling well there¹⁴ whilst the younger child has its name down for the nursery at that school. The expected baby is known to have only one kidney but until birth what further specialist treatment will be necessary is not known. Tommy's wife is attending the Darent Valley Hospital. In her condition and with uncertainty about the baby, a fixed base with access to clean water and electricity is essential.
37. Jonny and his wife are currently accommodated on a public site, Barnfield Park at Ash. However the pitch belongs to his brother in law, Lennie, who moved in with his mother and sister so as to free up his pitch. Lennie is to be married shortly and needs his pitch back. Jonny and his wife have nowhere to go and they recently lost the baby that they were expecting.
38. The Human Rights of the intended occupiers of the site are engaged and the best interests of the children must be a primary consideration.¹⁵

¹³ Document 1, appendix 3

¹⁴ Document 6

¹⁵ Article 3.1 of the United Nations Convention on the Rights of the Child

The balance of considerations

39. Whilst the harm to the Green Belt by definition must carry substantial weight there is very little actual harm arising from this proposal. The need for additional pitches in the area is so urgent that temporary planning permissions are being granted by the Council for sites in the Green Belt despite the policy objection. In this case, added to that general need is the acute need of these two young families for a settled base. They have nowhere else to go. These other considerations clearly outweigh the harm to the Green Belt and to the AONB so as to justify a permanent planning permission or, at the very least, a temporary permission until alternative pitched are identified and become available.

The case for the Council

Harm

40. The appeal site should essentially be a green field and open. The hardstanding, caravans and structures have an adverse impact on the rural character of the area. Although the site is relatively well screened, the tops of the caravans at least would be visible all year round especially from the public right of way opposite. The new fencing and gates along the edge of the access drive are particularly harsh features which highlight the presence of the site when seen from the junction. On High Beech Farm opposite, one mobile home is unauthorised and under investigation, the other is to be replaced by a dwellinghouse for which permission has been granted.
41. The development encroaches into the countryside beyond the sporadic built form of the hamlet of Well Hill. There is a loss of openness and harm to the landscape quality of the AONB.

Need for the development

42. The Council does not take any issue with the Appellant about the urgent need for sites and the lack of any alternatives at the present time. It is for this reason that the Council has been granting temporary planning permission for sites that are inappropriate development in the Green Belt and harmful by definition, but which are otherwise acceptable, so as to ensure that gypsies and travellers have some security in their accommodation until such time as sites are allocated in the Gypsy and Traveller Plan. Nonetheless, recently issued Ministerial Statements make clear that unmet need is unlikely to outweigh the harm to the Green Belt and other harm so as to amount to the very special circumstances necessary to justify inappropriate development in the Green Belt.
43. The personal circumstances of the Appellant and his brother are not disputed and should be weighed in the balance.

The balance of considerations

44. The Council balanced the identified harm to the Green Belt and AONB against all other considerations but concluded, although finely balanced, that the harm in this case was not clearly outweighed so as to warrant even a temporary permission. In other cases allowed by the Council for a temporary period in the Green Belt the other harm in addition to harm by definition has been minimal.
45. Refusal of the appeal would be a proportionate response and would not result in a violation of the intended occupiers' Human Rights. The acknowledged primary

consideration of the best interests of the children does not outweigh the harm identified in this case.

The case for interested persons

46. At application stage, 59 letters and an additional 25 anonymous representations were received objecting to the proposal and 7 representations from one person were received in support.¹⁶
47. A letter has been received from Michael Fallon MP writing on behalf of the Well Hill Residents' Association, recording his strong objection to the appeal.¹⁷ In addition, 16 letters of representation, also objecting, have been received in response to the notification of the appeal.¹⁸
48. Oral representations to the hearing, objecting to the development, were made by Councillors from Kent County Council and from Shoreham Parish Council, by persons representing the Well Hill Residents' Association and by a local resident. Three further letters were submitted in support of the Appellant.¹⁹

Representations in opposition

49. Representations have been made on numerous and wide ranging grounds and these are summarised in the officer's report on the application.²⁰ In the main, the concerns, as expressed by the Council, with regard to inappropriate development in the Green Belt and the harmful effect on the countryside and landscape quality of the AONB are of primary concern. Attention is drawn to the appeal decision in 2010 rejecting a similar proposal for a site nearby.²¹ The Appellant's local connection with the area is questioned but this appears to be in the context of the settlement of Well Hill rather than any wider area. Concern is also expressed on grounds of safety at the access.
50. In the oral representations at the hearing it was pointed out that Well Hill forms the gateway to the AONB and occupies an elevated position on the Greensand Ridge; that the development has resulted in the fragmentation of a larger field; that the nearby 2010 appeal decision is comparable to the appeal proposal in physical and visual terms; that a lighting column on the site which rises above the fence results in light intrusion; that there is a lack of public transport in the area and no safe pedestrian access; and that there would be an inevitable increase in traffic.

Representations in support

51. The three letters received from the occupiers of the two nearest neighbouring properties and from another farm in the area confirm the long term connection of the brothers to the general area and their employment from time to time by a variety of local people.

¹⁶ Letters submitted with appeal questionnaire and to be found on the appeal file

¹⁷ Letter in blue folder on appeal file

¹⁸ Document 4

¹⁹ Document 5

²⁰ Document 2, appendix 1

²¹ Document 1, appendix 3

Conditions

52. In the event that planning permission is to be granted, suggested conditions were provided by the Council and discussed at the hearing.²²
53. Condition 1 limits occupation to gypsies and would be necessary if the need for more pitches justified the grant of permission. However, this application is specifically tailored to meet the needs of the Appellant and his brother and is not for a conventional traveller site so that a personal permission (condition 5) is suggested as an alternative – in particular if the personal circumstances of the intended occupiers are weighed in the balance. Condition 2 would restrict the permission to a temporary period in the event that permanent permission was unacceptable and three years was agreed to be an appropriate period to allow for slippage in the timing of sites coming forward and to enable planning permission to be obtained for them.
54. Condition 3 limits the number of caravans on the site. This should be three touring caravans as proposed given the small size of the site and its location in the AONB (other structures would require planning permission). For the same reasons any commercial activity should be prohibited although it was agreed that the Appellant's one commercial vehicle might be accommodated on site. Condition 6 requires the development to be carried out in accordance with the submitted drawings and that is necessary for the avoidance of doubt. To address the concerns about the intrusion of the lighting column and about light pollution, it was agreed that a condition should be added to prevent any external lighting otherwise than in accordance with a scheme previously agreed in writing by the Council.

²² Document 2, appendix 4

CONCLUSIONS

[Numbers in square brackets denote source paragraphs]

The main issue

55. Having regard to the location of the site in the Green Belt and the clear policy presumption against inappropriate development, the main issue in this case is as follows:
- Whether the harm to the Green Belt by reason of inappropriateness and any other harm is clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify the inappropriate development in the Green Belt.

Consideration of the main issue

Harm: Green Belt, countryside and AONB

56. Inappropriate development is, by definition, harmful to the Green Belt. That harm, together with any other harm to the Green Belt, is to be given substantial weight. Loss of openness and conflict with the purpose of the Green Belt to safeguard the countryside from encroachment are acknowledged as issues arising from this development. [21 & 22] However, the site is small, well screened and the amount of development proposed has been minimised by restricting accommodation to touring caravans rather than including the larger static caravans or mobile homes normally to be expected on conventional gypsy and traveller sites. [5, 9 & 11]
57. Being well screened and in a dip in the topography only the tops of the caravans would be visible over the hedgerows from outwith the site. It is correct that the lighting column is a noticeable feature and no doubt causes some light pollution [11 & 50] but that could be required to be removed by a condition which would also enable the Council to exercise control over any external lighting considered essential, for example limiting it to a small amount of low level lighting.
58. The most prominent features in the immediate setting of the site are the new length of fence and the ornate gates. [11] The fence is not, however, a particularly long length and the Appellant has planted a hawthorn hedge along the outside of it. At the moment the visual impact is not great and it will soften and be lessened as the hedge grows. The ornate wrought iron gates do indicate the presence of the site but only within a restricted area of visibility. I noted that there are similar ornate gates within Well Hill not that far away.
59. The other gypsy site which was dismissed on appeal is not comparable. It is nearby but it is in a different setting and is a bigger site; its impact would have been substantially different. [32 & 49]
60. I conclude that even though there is some local visual impact which is capable of amelioration the site is not prominent in its landscape setting and thus the impact on openness and the landscape of the AONB is minimal. There is no "significant adverse impact" as is resisted by policy SP6 nor would the objectives of the AONB designation be compromised. [29] It is not without significance that the setting of the site is in the context of other existing development and the M25. [9] Whilst the presence of existing development does not, of itself, justify more, it does enable this small scale development to be accommodated without

being unduly prominent in the landscape or fundamentally changing its character. Any new development creates some harm to the openness of the countryside and thus to one of the five purposes of the Green Belt – that is to assist in safeguarding the countryside from encroachment. However, for the reasons I have given I find the degree of harm so caused to be minimal.

Need for the development

61. This can be simply put. The Council does not take any issue with the Appellant about the urgent need for sites and the lack of any alternatives at the present time. [26-28 & 42] Whether or not this justifiable need will be satisfied in the longer term will depend upon the outcome of the local plan process to which the Council is committed but it is beyond question that there is a short term need which should be met. This is highly significant and an aspect of this appeal to which I attach considerable weight. In the case of this Appellant there are also particular personal circumstances of note. The alternative to being allowed to stay on the site of being forced back on the road side with young children and a new born baby with particular medical problems seems to me neither a reasonable nor humane alternative. [35-38]

The balance of considerations

62. The need for additional pitches is so acute that notwithstanding government policy and the written ministerial statement that unmet need is unlikely to outweigh the harm to the Green Belt, this local authority, in recognition that the need will not go away, has been granting temporary planning permissions so as to provide some relief whilst a more permanent solution is found. [42] This is a recognition both of the unmet need which the Council accepts should be met and a recognition that outside the identified settlement boundaries 93% of the District is designated Metropolitan Green Belt. [21] The Council has thus recognised that within its area there are exceptional circumstances. In making a judgment on individual cases against that background the Council has had regard to the degree of impact involved as well as the circumstances of the applicants.

63. In this case the Council carried out a similar exercise but concluded that the harm was not clearly outweighed so as to warrant even a temporary permission. Striking the balance is a matter of judgment and the weight to be attached to the issues; the Council conceded that in making its decision the balance was a fine one in this case. [44]

64. The harm to the Green Belt by definition must carry substantial weight. Added to this there would be some, albeit minimal, impact on openness and on the landscape character of the AONB, as well as countryside encroachment. Weighing against this is an urgent need for a substantial number of sites in the short term and currently little choice but to meet that need on Green Belt land. In addition, there are strong personal reasons why the Appellant needs a degree of permanency and stability for his family and for that of his brother. Their Human Rights are engaged in this decision and the rights of the children must be a primary consideration.

65. Weighing all these factors in the balance I conclude that the permanent harm arising from a grant of planning permission is not clearly outweighed by the general and personal need in a situation where work is underway which should address the shortage of sites through the development plan process. However,

were permission to be given for a temporary period pending adoption of the Gypsy and Traveller Plan [26,53], the harm to the Green Belt, AONB and countryside identified would not remain at the end of that temporary period; it would not be permanent harm. In such circumstances I find the harm and any conflict with the provisions of the Development Plan arising [16,17] would be clearly outweighed by the urgent need for more sites, by the personal circumstances of the intended occupiers and in particular by total absence of any available alternative other than roadside living in the short term. In my judgement, very special circumstances necessary to justify the inappropriate development in the Green Belt on a temporary basis do exist in this case and the grant of a temporary planning permission would be the proportionate response.

66. If that assessment is accepted, conditions would be necessary to limit occupation to those intended and to a maximum of three years as those are the factors which would have weighed in the balance of the grant of permission. To protect the character and appearance of the area it would also be necessary to require compliance with the submitted drawings, to restrict caravan numbers, commercial activity and external lighting.

Recommendation

67. I recommend that the appeal be allowed and temporary planning permission be granted for the development with the revised description:

Change of use to residential involving the stationing of three touring caravans and provision of associated hardstanding, utility shed, electricity and water cabinets, fencing and gate

at

*Land north east of the junction of Redmans Lane with Firmingers Road,
Orpington Kent BR6 7QH*

subject to the conditions as attached at Annex C.

Bridget M Campbell

Inspector

ANNEX A: Appearances at the hearing

FOR THE APPELLANT:

Mrs A Heine	Planning Consultant
Mr T Simpson	Appellant
Mrs E Simpson	Partner of the Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Mr S Mitchell	Planning Officer, Development Management
Miss K Johnson	Planning Officer, Planning Policy

INTERESTED PERSONS:

Mr R Gough	Kent County Councillor
Mr J Griffiths	Parish Councillor, Shoreham Parish Council
Mr P Court	P Court Associates, representing the Well Hill Residents' Association
Mrs J Crossfield	Well Hill Residents' Association
Mr P Hobson	Local Resident

Annex B: Documents and Plans

List of hearing documents including post hearing correspondence

- 1 Statement for the Appellant with appendices
- 2 Statement for the Council with appendices
- 3 Additional information on Gypsies and Travellers in Sevenoaks
- 4 Letters of representation
- 5 Three letters of support submitted at the hearing
- 6 Certificate of Achievement from Halstead Primary School
- 7 Extract from Kent Downs AONB Landscape Design Handbook
- 8 Letter to the parties concerning the NPPG and response from the Appellant
- 9 Communication from the Council setting our status of CIL

Plans

- A Application drawing – site location plan with red and blue outlines
- B Superseded Application drawing – proposed site layout
- C Application drawing – fence and gate details
- D Substitute Application drawing – proposed site layout dated 5.2.2014

ANNEX C: Recommended Conditions

- 1) The use hereby permitted shall be carried on only by the following:
Mr Tommy and Mrs Elizabeth Simpson; and
Mr Jonny and Mrs Rachael Simpson
and their resident dependants, and shall be for a limited period being the period of 3 years from the date of this decision, or the period during which the premises are occupied by them, whichever is the shorter.

- 2) When the premises cease to be occupied those named in condition 1 above, or at the end of 3 years, whichever shall first occur, the use hereby permitted shall cease and all caravans, buildings, structures, materials and equipment 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.
- 3) Notwithstanding the definition in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 (as amended); no more than 3 touring caravans shall be stationed on the site at any time and no static caravans or mobile homes shall be brought on to the land.
- 4) No commercial activities or commercial storage shall take place on the land and no more than one commercial vehicle, which shall not exceed 3.5 tonnes, shall be stationed, parked or stored on the land.
- 5) No external lighting shall be displayed on the site otherwise than in accordance with a scheme which shall previously have been submitted to and approved in writing by the local planning authority.
- 6) The development hereby permitted shall be carried out wholly in accordance with the following drawings: 15210/2508 Rev 1 site plan, Plan 2 proposed site layout Rev A 5.2.2014, and 15210/2508 Rev 1 fence and gate sections.



Department for Communities and Local Government

RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT

These notes are provided for guidance only and apply only to challenges under the legislation specified. If you require further advice on making any High Court challenge, or making an application for Judicial review, you should consult a solicitor or other advisor or contact the Crown Office at the Royal Courts of Justice, Queens Bench Division, Strand, London, WC2 2LL (0207 947 6000).

The attached decision is final unless it is successfully challenged in the Courts. The Secretary of State cannot amend or interpret the decision. It may be redetermined by the Secretary of State only if the decision is quashed by the Courts. However, if it is redetermined, it does not necessarily follow that the original decision will be reversed.

SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS;

The decision may be challenged by making an application to the High Court under Section 288 of the Town and Country Planning Act 1990 (the TCP Act).

Challenges under Section 288 of the TCP Act

Decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged under this section. Any person aggrieved by the decision may question the validity of the decision on the grounds that it is not within the powers of the Act or that any of the relevant requirements have not been complied with in relation to the decision. An application under this section must be made within six weeks from the date of the decision.

SECTION 2: AWARDS OF COSTS

There is no statutory provision for challenging the decision on an application for an award of costs. The procedure is to make an application for Judicial Review.

SECTION 3: INSPECTION OF DOCUMENTS

Where an inquiry or hearing has been held any person who is entitled to be notified of the decision has a statutory right to view the documents, photographs and plans listed in the appendix to the report of the Inspector's report of the inquiry or hearing within 6 weeks of the date of the decision. If you are such a person and you wish to view the documents you should get in touch with the office at the address from which the decision was issued, as shown on the letterhead on the decision letter, quoting the reference number and stating the day and time you wish to visit. At least 3 days notice should be given, if possible.