Appeal Decisions

Hearing held on 17 August 2010
Site visit made on 17 August 2010

by Dennis Bradley **BSc(Econ) DipTP MRTPI**

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

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Decision date:
27 January 2011

Appeal Ref: APP/G2245/C/10/2125614, 2125615 & 2125616 (Appeal A)
St Georges Stables, Land NE of Westwood Farm, Rock Hill, Orpington, Surrey BR6 7PP

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeals are made by Mr Myles Cash, Mr Patrick Cash and Mr Mylie Cash against an enforcement notice issued by Sevenoaks District Council.
- The Council's reference is 310/01/363.
- The notice was issued on 1st March 2010.
- The breach of planning control as alleged in the notice is without planning permission, the making of a material change of the use of the land from the keeping of horses to residential caravan site for touring caravans.
- The requirements of the notice are 1) Permanently cease the use of the land as a residential caravan site. 2) Remove all mobile homes and touring caravans from the land. 3) Remove all hardstandings and cesspit from the land. 4) Restore the land to its former condition.
- The period for compliance with the requirements is three months.
- The appeals are proceeding on the grounds set out in section 174(2)(a), (b), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the application for planning permission deemed to have been made under section 177(5) of the Act as amended does not fall to be considered in respect of appeals 2125615 and 2125616.

Appeal Ref: APP/G2245/A/10/2125613 (Appeal B)
St Georges Stables, Rock Hill, Orpington, Surrey BR6 7PP

- 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 Myles Cash against the decision of Sevenoaks District Council.
- The application Ref SE/09/02251, dated 17 November 2009, was refused by notice dated 22 January 2010.
- The development proposed is change of use to residential including the stationing of two mobile homes and four touring caravans for an extended gypsy family (one of the touring caravans to be for residential use). Retention of hardstanding and cesspool.

Decision

Appeal A

1. I direct that that the enforcement notice be:

(a) corrected by (i) the deletion of the words in section 3 of the notice and the substitution of the words "without planning permission, the change of use of the land to a mixed use comprising the keeping of horses and as a residential caravan site" and (ii) the deletion of step 1 of the requirements of the notice and the

substitution of the words "cease the mixed use of the site for the keeping of horses and as a residential caravan site"; and

(b) varied by (i) the deletion of requirement 3 and (ii) the extension of the period for compliance to nine months.

Subject to these corrections and variations I dismiss the appeals, uphold the enforcement notice, and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal B

2. I dismiss the appeal.

The site and its surroundings

3. The appeals concern a rectangular site to the east of the settlement of Well Hill and to the west of the M25, situated within the Kent Downs Area of Outstanding Natural Beauty (AONB) and within the Green Belt. Access to the site from the public highway at Rock Hill is by means of a track which also leads to Westwood Farm. At the western end of the site are several caravans and a former stable building on an extensive area of hardstanding. The remainder of the site is an open paddock. The appellants have undertaken some planting around the hardstanding. The adjoining fields contain a number of small stables.

4. The three appellants are cousins from a family of Irish travellers. Myles lives with his wife and four children. Mylie lives with his wife and three children. Patrick lives with his wife and baby. The site is owned by Myles and Patrick. They earn a living from undertaking tasks such as block paving, painting, maintaining fascias and gutters, laying concrete, fencing and tree work. Myles and Mylie are more settled due to the education needs of their children. Patrick still spends much of his time travelling for work but wants somewhere to return to in the winter months. The appellants state that three of the children attend Chelsfield Primary School, although no information about their educational progress or attendance was provided. It is not suggested that there are any special health issues in this case.

5. Prior to moving to the appeal site the family stayed with relatives on plots at Layham Road in Bromley. The Council has suggested that they could return to this site. However, none of the appellants is named in the personal planning permission granted by one of my colleagues for the use of that site, although they are mentioned in the decision as occupants. Therefore the appellants' use of that land would be a breach of planning control. I accordingly do not accept the Council's view that the appellants have a definate alternative site for their caravans.

6. The proposal in Appeal B was for two mobile homes and four touring caravans and the use of the land on a permanent basis. However, the appellants made clear at the Hearing that they now only seek a temporary permission and the provision of four touring caravans. They also emphasise that an existing stable will be used as a utility room, and that accordingly no additional building would be necessary.

National policy on gypsies and travellers

7. Since the hearing The Secretary of State has announced an intention to revoke ODPM Circular 01/2006, describing it as flawed. No timing of such revocation has yet been announced and he has indicated that an impact assessment is required. The Secretary of State's announcement is clearly a material consideration which must be taken into account, and affects the weight that can be attached to the Circular as a statement of Government Policy, albeit that it remains in place for the time being with as yet no draft replacement. I have contacted the parties to seek their views on the statement. I received a response from the Appellants (doc 8) but none from the Council. The Council accepts that the family satisfies the definition of gypsies and travellers and local authorities should undertake an assessment of the accommodation needs of gypsies and travellers within their areas. Local Authorities should also identify within their Local Development Frameworks (LDFs) sufficient pitches to a level to be determined by regional planning guidance. Paragraphs 45 and 46 of Circular 01/2006 advise that a temporary permission may be justified where there is an unmet need but no available alternative gypsy and traveller site provision in an area, and there is a reasonable expectation that new sites will come forward to meet that need at the end of the period for which planning permission is granted. The Circular makes clear that a temporary permission granted on this basis should not be regarded as setting a precedent for the determination of any future applications for full planning permission for the use of the land.

8. On 6 July 2010, after the close of the inquiry, the Secretary of State revoked all Regional Strategies under s79(6) of the Local Democracy Economic Development and Construction Act 2009. That decision has since been challenged and the outcome is that the revocation decision is quashed. As a consequence, the RS as it stood on 5 July forms an ongoing part of the development plan.

9. A second action has now commenced which seeks a declaration that the Secretary of State's statement and the Chief Planner's letter of 27 May 2010 are unlawful in that they assert that the intention to repeal the statutory basis for RS is a material consideration. A stay against these documents was granted ex parte. However, the Secretary of State applied to the Court to have the stay against these documents lifted. It has since been lifted and the stayed documents can be considered once more. However, in agreeing to release the stay, the Court required DCLG to place a statement on its website. This advises that, pending determination of the challenge, decision makers will in their determination of planning applications and appeals need to consider whether the existence of the challenge and the basis of it, affects the significance and weight which they judge may be given to the Secretary of State's statements and to the letter of the Chief Planner.

10. There is at present no clear figure as to the additional number of gypsy sites required in the District. In January 2009 the South-East Regional Assembly published a report recommending a regional distribution of need which would require Sevenoaks to provide 19 pitches by 2016, but a requirement of 57 pitches was given in the consultation document. However, while the scale of the shortfall is uncertain, it does appear to be generally accepted that at present there is a deficiency. I have accordingly approached my decision on

the appeal on the basis that there is a deficiency in the current level of provision of gypsy and traveller sites. The delay in achieving agreement on the level of need has resulted in a situation in which the Council does not have a firm timetable for the production of a Development Plan Document (DPD) which will make site allocations. The Council also accepted that there is no likelihood of the family securing alternative accommodation on any of the three official sites within the District.

11. While the Circular is described in the press release as "flawed", its deficiencies are not specified, and it is therefore difficult to know the details of what will replace it. I consider that a "wait and see" approach is required, especially as the required impact assessments suggest that its replacement is not imminent. Moreover, there continues to be a need for further gypsy and traveller sites and Circular 01/2006 remains in force. I have accordingly concluded that only limited weight can be given to the press release as a material consideration.

The appeal on ground (b) – Appeal A

12. An appeal on ground (b) deals with the issue of whether the breach of control alleged in the notice has occurred as a matter of fact. The appellants note that the residential use which is described as the breach of planning control in the notice only occupies a small proportion of the appeal site, the greater part of which comprises a paddock. However, in my view the notice could be corrected to refer to the mixed use which is actually taking place without any injustice to the parties, and I propose to make such a correction. The appeal on this ground accordingly succeeds.

The appeal on ground (a) – Appeal A and Appeal B

13. An appeal on ground (a) deals with the question of whether planning permission should be granted for what is alleged in the notice. It is accordingly similar to Appeal B. The starting point for the consideration of this matter must be the development plan, which includes the Sevenoaks District Local Plan. The site is within the Green Belt and the North Downs Special Landscape Area defined in the plan. The Council has drawn my attention to "saved" policies EN1 and EN7 of the Local Plan which deal with Design and other Development Control Criteria and Special Landscape Areas respectively. I note that policy H20 of the Local Plan, which dealt with gypsy and traveller sites is no longer "saved".

14. In my view the principal issues in the appeals are:

    (a) whether the site is capable of providing acceptable living conditions in view of noise levels and air quality levels.

    (b) whether the harm to the Green Belt which would result 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 development.

    (c) whether the proposal would have an unacceptable impact on the AONB.

Living conditions

15. In respect of the first issue, the Council emphasises the proximity of the appeal site to the M25 motorway. It argues that this makes the site a potentially unacceptable location for residential use because of the resulting concerns about noise and air pollution and that technical studies on these issues should be undertaken before planning permission is granted for residential development. I deal with the two matters in turn.

16. Advice on the issue of noise is given in Planning Policy Guidance Note 24 (PPG24). This makes clear that the impact of noise can be a material consideration in the determination of planning applications and suggests that, wherever practicable, noise-sensitive developments such as housing should be separated from major sources such as roads. Where this is not practicable local planning authorities should consider whether it is possible to mitigate the impact of noise through the use of conditions. PPG24 sets out four Noise Exposure Categories to determine the suitability of locations near to transport-related noise sources for residential development by reference to existing noise levels.

17. No noise readings were provided by the Council, but the continuous drone of noise from the motorway was apparent when I visited the site. Nevertheless, in my opinion a number of factors mitigate the impact of the noise. Firstly, the caravans are sited some 90 metres from the edge of the motorway, which is in a deep cutting at this point. Moreover, the hardstanding on which the caravans are sited is at a lower level than the rest of the site, which slopes down from the motorway, because of the works undertaken to create a level area. Some of the earth removed in these works appears to have been used to create a small bund against the motorway.

18. In addition the evidence provided by the appellants indicated that caravans can provide comparable insulation performance to a normal dwelling. At my visit into one of the caravans I found noise levels within it were acceptable. Moreover, my inspection of the area around the site demonstrated that some residential locations further away from the motorway had higher noise levels, possibly resulting from a combination of topographical and climatic factors. Finally the present proposal is for a temporary permission for a specific type of residential use. I consider that a different approach might well be taken for a proposal for permanent dwellings, where factors such as the noise levels around the dwellings might be more significant. In such a case the provision of noise readings would clearly be necessary before a judgement could be made as to the suitability of the site.

19. Turning to the second matter I note that the appeal site is adjacent to, but not within, Air Quality Management Area (AQMA) No. 2 which follows the M25 corridor from Junctions 3 to 5 from Dartford south to the Surrey border. The AQMA was declared in 2002, but the extent of the designation does not appear to have been revised to reflect any subsequent changes in factors such as the composition and volume of traffic along the motorway. I also note that there are no recent measurements of current air quality at or close to the site. Similarly, there does not seem to be conclusive evidence about wind direction, which could have a significant effect on air quality and also on noise.

20. I consider that the question of air quality must clearly be relevant if an application for a permanent permission were submitted. In such a case the Precautionary Principle set out in Planning Policy Statement 23 (PPS23) on Planning and Pollution Control, which the Council seeks to apply, would be relevant. However, as with the noise issue, there is no strong evidence that the occupants of the caravans in their present location suffer from poor air quality. Moreover, given the temporary nature of the permission that is sought, the funding of the necessary studies sought by the Council might be considered an unreasonable request.

21. I have therefore concluded that subject to the imposition of conditions regarding the number and location of the caravans, and the temporary duration of the permission, this issue does not provide a substantial objection to the development.

Green Belt

22. Turning to the second issue, the appellants accept that the proposed use of the site is inappropriate development in the Green Belt as defined in Planning Policy Guidance Note 2 (PPG2), harmful to the primary purpose of keeping the Green Belt open, encroaches into an area of open countryside and has an urbanising effect. They further agree that inappropriate development is, by definition, harmful to the Green Belt and that it is for them to show why permission should be granted. In the appellants' view substantial weight should be given to the accepted unmet need for further gypsy and traveller sites within the District, and to the personal needs of the families. They stress that the dismissal of the appeals would result in the need for the family to return to living on the road. They also emphasise that only a temporary permission is sought.

23. I note that most of the countryside within Sevenoaks is within the Green Belt, and that this provides a significant constraint on the provision of gypsy and traveller sites. Nevertheless, Circular 01/2006 still makes clear that alternatives should be explored before Green Belt locations are considered, and that alteration to Green Belt boundaries to provide such sites should be undertaken through the plan making process rather than through individual applications. I reach a conclusion on the appellant's arguments regarding the Green Belt later in my decision.

The AONB

24. The appellants recognise the additional sensitivity of the landscape which arises from the inclusion of the site within the AONB and accept that the development fails to enhance the natural beauty of the AONB. Nevertheless, the appellants argue that the site is within the M25 corridor and an area of sporadic development, and that accordingly the harm to natural beauty should be afforded less weight than if this were a site within a less developed area of the AONB.

25. In considering this matter I have noted that paragraph 52 of Circular 01/2006 advises that in areas with nationally recognised designations such AONBs planning permission for gypsy and traveller sites should only be granted where it can be demonstrated that the objectives of the designation will not be compromised by the development. I also note that Planning Policy Statement

7 (PPS7) makes clear that AONBs have the highest status of protection in relation to landscape and scenic beauty.

26. In my opinion the development has clearly harmed the appearance of this part of the AONB. Although there are several small stable buildings in the vicinity of the appeal site, the addition of four caravans, along with the change resulting from the extended area of hardstanding, has introduced features which are out of character in this rural location. Moreover, while the caravans are partially screened by hedgerows along the lane and are not on a skyline, they are visible from land at a higher elevation within Well Hill and from the public footpath network which crosses the area. I observed that these footpaths were overgrown in places and apparently little used at the time of my visit to the site. However, this situation could well result from the present disruption to the footpath network, which I understand is likely to be resolved by the completion of existing gaps in the network in the near future. I also do not consider that the provision of additional planting around the caravans would assist, since this would take some years to mature, and in any event could not be reasonably required for a temporary permission.

Conclusions on the three issues

27. As indicated previously I conclude that the issue of living conditions does not provide a significant objection to the development, given the nature of the permission that is sought. However, a decision on the other two matters is less clear cut. It involves the balancing of several factors. I note that only a temporary permission is requested. This would limit the duration of the harm to the Green Belt and to the AONB. I also note the acceptance by the Council that in the present case the alternatives available to the family are clearly limited. It must be possible that the family would have to resort to living on the road if the appeals were to be dismissed. Moreover, there seems to be no clear date for the identification of additional sites within the District through the LDF process.

28. In my view the proposal would result in a significant degree of harm to the natural beauty of the AONB, in addition to the acknowledged impact on the Green Belt of this inappropriate development. I consider that the scale of this visual harm is greater than the appellants suggest. Although the appellants only seek a temporary permission, in my opinion a period of three years would be a substantial one during which considerable harm to the landscape would occur. Moreover, this would be harm which could not be reduced by the imposition of planning conditions. I also note that there are no arguments supporting the proposal on medical grounds, which is often a significant consideration in these cases. In addition Patrick Cash appears to use the site largely as a base from which he travels, and accordingly the impact on him of my decision would clearly be less significant than that experienced by his cousins. Finally, the appellants have provided virtually no information about the educational needs of the three children. It is accordingly difficult to determine what weight to give to that matter.

29. I have concluded that on balance the harm arising from the proposal is not outweighed by the arguments in its favour and that the very special circumstances required to justify inappropriate development in the Green Belt do not exist. The scheme would therefore not accord with national policy on

Green Belts as expressed in PPG 2. The harm that would result to the AONB further confirms my view that the granting of even a temporary permission would not be desirable, at least not for a period of three years.

30. In reaching a view on this matter I have had regard to my colleagues' decisions on other gypsy and traveller appeals in the area. However, such decisions invariably involve balancing a number of factors which vary with each case.

31. I accept that the denial of the use of the site would represent an interference with the rights of the appellants under Article 8 of the European Convention on Human Rights. However, this interference must be weighed against the wider public interest. I consider that the development would have a harmful impact on the Green Belt and the AONB and that these impacts can only be avoided by the dismissal of the appeals. There are no means of achieving this objective which would be less interfering with the rights of the appellants. I am therefore satisfied that the dismissal of the appeal is necessary and proportionate, and would not result in a violation of their human rights.

32. I have also noted that Irish Travellers such as the appellants have been recognised by the Courts as a distinct ethnic minority covered by the Race Relations Act 1976, now replaced by the recent Equalities Act which came into effect on 1 October 2010. I have had due regard to my duties under the Act to eliminate unlawful racial discrimination and to promote unlawful racial discrimination and to promote equality of opportunity and good relations between persons of different racial groups. I accept that if the family were obliged to resort to living on the road as a result of my decision, this would be likely to disrupt access to healthcare and education facilities, and thereby possibly reduce equality of opportunity. However, they would still be able to maintain their traditional way of life by using touring caravans. The appellants also suggest that the cost and distress to others from unauthorised encampments would harm race relations. I accept that this may be the case. Nevertheless, in my view the harm which would result from the continuing occupation of the site indicates that the dismissal of the appeal would not be discriminatory and adversely affect race relations.

33. I therefore conclude that both the ground (a) appeal in Appeal A and Appeal B should be dismissed.

The appeal on ground (f) – Appeal A

34. An appeal on ground (f) deals with the issue of whether the steps required to comply with the requirements of the notice are excessive and lesser steps would overcome the objections. The appellants argue that requirement 3 of the notice, i.e. the removal of the hardstanding and cesspit is excessive, since there was a previous hardstanding used in connection with the stable. They further argue that it is not unreasonable to have a cesspit on the land in association with the lawful use for stabling and horses, and emphasise that requirement 4 would bring the land back to its former condition. In my opinion these arguments are well made, and accordingly I propose to vary the notice by the deletion of requirement 3. The appeal on this ground therefore succeeds.

The appeal on ground (g) – Appeal A

35. An appeal on ground (g) deals with the issue of whether the time given to comply with the notice is too short. The appellants argue that the existing three-month compliance period should be increased to one year given the absence of suitable alternative provision for the families in the district and the resulting difficulties likely to be experienced in securing a site.

36. I have some sympathy with this view, given the clear evidence about the current deficiency in the provision of sites within and around Sevenoaks. Moreover, the retention of the present period would require the family to vacate the appeal site within the winter months, when travelling could be particularly difficult. I am also conscious that such a short period could disrupt the education of the children, since it would take place in the middle of a school year. Given the recognised low level of educational achievement of the children of gypsies and travellers, I consider that any such disruption should be kept to a minimum. A nine-month period would also give a reasonable time for the Secretary of State to address national policy regarding gypsy and traveller sites as he has stated he will do, thereby giving the family some guidance when searching for future sites. I therefore propose to extend the period for compliance to nine months. The appeal on ground (g) accordingly succeeds to that extent.

Dennis Bradley

Inspector

APPEARANCES

FOR THE APPELLANT:

Alison Heine	Agent

FOR THE LOCAL PLANNING AUTHORITY:

Ben Phillips	Planning Officer - Sevenoaks District Council
Sean Mitchell	Planning Officer - Sevenoaks District Council
Malcolm Webb	Environmental Health Officer - Sevenoaks District Council

INTERESTED PERSONS:

Phil Hobson	Shoreham Parish Council
Barbara Ide	Shoreham Parish Council
Keiran Gill	
Nigel Britten	CPRE Protect Kent

DOCUMENTS

1 Attendance list
2 Notification and circulation
3 Letters from interested persons
4 Documents submitted as appendices by the appellants
5 Documents submitted as appendices by the Council
6 Documents provided by the Parish Council
7 Planning Officer's report on proposed stables on the site
8 Appellant's response to post-Hearing correspondence

PHOTOGRAPHS

1 Photographs provided by the Parish Council

PLANS

A Plan of footpaths around Well Hill
B Plan showing extent of AQMA