

SECTION '2' – Applications meriting special consideration

Application No : 16/05061/FULL1

Ward:
**Chelsfield And Pratts
Bottom**

Address : Land Adjacent To Knockholt Railway
Station North Side Sevenoaks Road
Halstead Sevenoaks

OS Grid Ref: E: 548444 N: 162936

Applicant : Mr Edward And John O Driscoll

Objections : YES

Description of Development:

Change of use of land for siting of caravans for residential use for occupation by Gypsy Travellers with a amenity block, septic tank, hard standing, re-proofing of land and boundary fence. PART RETROSPECTIVE

Key designations:

Flood Zone 2
Flood Zone 3
Green Belt

Proposal

Planning permission is sought for the change of use of land for siting of caravans for residential use for occupation by Gypsy Travellers with an amenity block, septic tank, hard standing, re-proofing of land and boundary fence. The works to the hardstanding have been undertaken and the site has significantly been altered in terms of topography. The caravans and associated blocks are now on site.

Location

The application site comprises approx. 1.1ha of Green Belt land, located on the northern side of Knockholt Station on higher ground. The site is also a designated Site of Importance for Nature Conservation (SINC). The site is accessed from Sevenoaks Road via a public right of way (Footpath 262).

Consultations

Nearby owners/occupiers were notified of the application and representations were received which can be summarised as follows:

- The applicant acknowledges there will be an impact on openness and this harm must be given substantial weight.
- The personal circumstances put forward are not sufficient to outweigh the identified harm to the Green belt by inappropriateness

- The site is in a largely rural valley and the increase in the number of vehicles using the access to the site, which is narrow and shared with the public footpath, would have an adverse impact on the character of this part of the footpath.
- The site relates closely to the undeveloped land to the north and east. The development would introduce a residential use with associated structures and hard surfaces which would affect the established rural character
- Concerns regarding access. The public footpath until recently just had an unsurfaced track but it has been widened and resurfaced. It is unsuited for traffic. It is of insufficient width with no passing bays and would introduce a new vehicular access
- No assessment of the impact of the development of the site of importance for nature conservation.
- The new owner has undertaken the dumping of earth down the banks and sidings by the railway the soil is lying over chalk which makes it unstable. The land is not safe for children and they might be tempted to play on these mounds.
- The land is right next to a Waster Transfer station which is located in the forecourt at Knockholt Station . The large lorries are constantly going in and out with enormous heavy loads. Again a danger for children
- Concerns regarding two gypsy sites being close together
- There are alternative places available not which would not harm the green belt
- There is an interesting collection of flora and badgers which are protected

Internal consultees:

Environmental Health - no objection

External consultees:

Sevenoaks District Council (adjoining authority consultation) - objects as the proposed development, by reason of its inappropriate access route from London/Sevenoaks Road, would create a need for vehicles to reverse over the public footpath and onto the highway, causing harm to both highway and pedestrian safety.

Network Rail - no objection subject to the developer complying with the requirements of the safe operation of the railway and the protection of Network Rail's adjoining land

Environment Agency - The site lies within Source Protection Zone 3 however we see no potential contamination land issues due to the previous and proposed use of the land at the site.

Planning Considerations

The application falls to be determined in accordance with the following policies:

The National Planning Policy Framework (NPPF) is to be read in conjunction with the "Planning Policy for Traveller Sites" (PPTS) August 2015 (first issued March 2012)

NPPF

The site lies within the Green Belt where the use as traveller pitches is "inappropriate development". Such development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. (para 87). Para 88 goes on to advise that " When considering any planning application, local planning authorities should ensure that substantial weight is given to any harm to the Green Belt. 'Very special circumstances' will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations."

Planning Policy for Traveller Sites (PPTS)

The PPTS para 22 states that "Planning law requires that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise.

The PPTS "Policy E: Traveller sites in Green Belt" advises that Traveller sites (temporary or permanent) in the Green Belt are inappropriate development. Para 16 restates that inappropriate development is harmful to the Green Belt and should not be approved, except in very special circumstances, and advises that:

"Subject to the best interests of the child, personal circumstances and unmet need are unlikely to clearly outweigh harm to the Green Belt and any other harm so as to establish very special circumstances."

Policy H: Determining planning applications for traveller sites

The PPTS (para 24) which relates to traveller sites generally, sets out following issues, amongst other relevant matters, for local planning authorities when considering planning applications for traveller sites. It reiterates the point made in para 16, with regard to Green Belt sites, that, subject to the best interests of the child, personal circumstances and unmet need are unlikely to clearly outweigh harm to the Green Belt and any other harm so as to establish very special circumstances. The issues set out in para 24 are

- a) the existing level of local provision and need for sites
- b) the availability (or lack) of alternative accommodation for the applicants
- c) other personal circumstances of the applicant
- d) that the locally specific criteria used to guide the allocation of sites in plans or which form the policy where there is no identified need for pitches/plots, should be used to assess applications that may come forward on unallocated sites
- e) that they should determine applications for sites from any travellers and not just those with local connections

Local Planning Policy

The London Plan

Policy 3.8 B Housing Choice advises that in respect of policy preparation and planning decisions boroughs should ensure that the accommodation requirements of gypsies and travellers (including travelling show people) are identified and addressed, with sites identified in line with national policy, in coordination with neighbouring boroughs and districts as appropriate.

Adopted UDP 2006

Policy H6 of the adopted UDP provides criteria for assessing new sites, notably (ii) requires that the site is situated outside areas of constraint. Clause (i) of the policy is no longer consistent with PPTS Policy H e). The UDP policy also refers to supplementary planning guidance which, in light of the DCLG "Designing Gypsy and Traveller Sites Good Practice Guide" (2008), did not come forward.

Policy G1 resists inappropriate development in the Green Belt

Policy NE2 Development and Nature Conservation Sites, resists development that may significantly affect the nature conservation interest or value of a site of importance for nature conservation (SINC)

Emerging Local Plan

Bromley has recently undertaken a soundness consultation (regulation 19) on its Proposed Submission Draft Local Plan (2016). This document, and previous consultations responded to the need identified in Bromley Gypsy and Traveller Accommodation Assessments by proposing to allocate sites, sufficient to meet its current and projected future need.

The Bromley Traveller Accommodation Assessment 2016 identifies a need for 29 - 34 pitches over the period of the plan, consisting of a current need for between 10 - 14 pitches (subject to the extent that the applications on the waiting list constitute "need" and pitch turnover), an additional 6 pitches by 2021 and subsequent need for 13 - 14 pitches for the remainder of the plan period.

The draft Local Plan demonstrates exceptional circumstances to support the allocation of traveller sites within the Green Belt in order to meet Bromley's identified need.

The Proposed Submission Draft Local Plan (2016) also includes Draft Policy 12 Traveller's Accommodation (see appendix 1) which allocates sites and seeks to meet the identified need for provision by first considering the potential within allocated Traveller sites. It also sets the criteria (a - e) for proposals for new Traveller Sites. Specifically it resists site within areas of constraint, requiring compliance with Green Belt and other open space policies. With regard to this

application the SINC designation is also relevant in addition to the Green Belt status of the site.

Planning History

There is extensive history on this site. There is an outstanding enforcement notice on the land relating to the hardstanding dated 28th February 2012. There is also a second enforcement note for the stationing of a caravan for use which is ancillary to a proposed development for kennels to which planning permission was refused (ref 11/03375/Full1) dated 23rd February 2012.

Planning permission was also refused for the erection of a barn in May 2016, reference 15/04703/FUL for the following reasons:

The site is located within the Green Belt where there is a presumption against inappropriate development. No very special circumstances have been demonstrated to warrant an exception to established Green Belt Policy and the proposal is therefore contrary to Policy G1 of the Unitary Development Plan and the NPPF

The proposed barn would be a prominent and incongruous feature in this rural location, harmful to the character, appearance and openness of the area within this Green Belt location, contrary to Policies BE1 and NE12 of the Unitary Development Plan and the NPPF.

No information has been submitted to demonstrate the impact the proposal may have on the highway and the proposal is therefore contrary to Policies T13 and T18 of the Unitary Development Plan.

Conclusions

The main issues relating to the application are whether the proposal is inappropriate development within the Green belt and the effect that it would have on the character of the area having particular regard to the Green Belt designation upon the land, the impact of the proposal upon the SINC, and the impact of the access arrangements on conditions of highway and pedestrian safety.

Green belt appropriateness and harm

Paragraph 79 of the Framework highlights that the government attaches great weight to the importance of the Green Belt and says that the fundamental aim of Green Belt Policy is to prevent urban sprawl by keeping land permanently open and 'the essential characteristic of Green belts are their openness and their permanence'. Paragraph 87 also states that inappropriate development is, by definition, harmful to the Green belt and should not be approved except in very special circumstances. Paragraph 89 of the Framework advises that local planning authorities should regard the construction of new buildings as inappropriate, subject to a number of specified exceptions.

The proposed buildings associated caravans and operational works would be located in a prominent location on the hillside above Knockholt Station. The development would be an incongruous feature in this rural location, harmful to the character, appearance and openness of the area within this Green Belt location, contrary to Policies BE1 and NE12 of the Unitary Development Plan and the NPPF.

The proposals comprise inappropriate development in the Green Belt, contrary to Policy G1 of the UDP, London Plan Policy 7.16 and the NPPF para.87, and the main issues therefore are whether harm by reason of inappropriateness, and any other harm, is clearly outweighed in this case by other considerations so as to amount to the very special circumstances necessary to justify the development Very Special Circumstances

The applicant has submitted very special circumstances as outlined below

"Best interests of the child".

The supporting statement indicates that in the 4- 5 week period between the dispute resulting in their departure from the Edenbridge site (leaving their static caravan) and pulling onto the current site the families were stopping in and around Brighton on various pieces of ground and around London (including being evicted several times from Lakeside and service stations).

The statement to address Gypsy-Traveller status acknowledges that they travel during school holidays, stopping in fields, service stations, transit sites and holiday parks but the supporting statement advises that the lack of a permanent address makes it difficult to register at a school or with a GP. The supporting statement suggests "it is irrefutable that the best interest of any child is to have a home and be able to access the services and facilities that the settled community take for granted". The supporting statement highlights the impact of the situation on the children but acknowledges that stopping on although 3 of the 4 children attended Edenbridge Primary School. The children now attend Halstead Community Primary School and are registered at a Chelsfield Surgery and propose to prepare for Holy Communion and confirmation at a Catholic Church in Orpington.

The supporting statement also highlights a number of other matters it considers relevant to the overall balancing, including

- the mental and physical health of Mr E O'Driscoll involving treatment at Kings College Hospital (Camberwell) and Romford Hospital and
- that Mrs Martina O'Driscoll is pregnant

Unmet need

The supporting statement indicates that whilst Bromley has a 5 year Housing land supply none of this has been made available to travellers and this amounts to a failure of policy under the provisions of the Equality Act 2010. It suggests that the "failure of policy in authorities like Bromley and Sevenoaks to meet need" weighs very strongly in the applicants favour. The statement notes strong connections to Southwark and Sevenoaks, and it is noted that the family also have connections in

Maidstone and the family are on a waiting list for a pitch. The supporting statement claims that Bromley Council sites are full and would not be suitable for this family of Irish Travellers. There is no indication of an intention to join the Councils waiting list for a pitch.

Bromley's Local Plan is at an advanced stage, with Traveller policy and proposed allocations to meet need over the plan period. The weight to be attached to the emerging Local Plan is increasing and for the decision maker to determine.

The supporting statement notes that the families form part of the need arising in Sevenoaks district. They did not form part of Bromley's assessed need

Whilst the PPTS advises that local authorities should determine applications for sites from any travellers and not just those with local connections, as advised above the lack of appropriate sites is such that Bromley has demonstrated "very special circumstances" to seek site allocations within the Green Belt to address Bromley's identified need. There has been ongoing engagement with Sevenoaks district council with whom Bromley has a duty to co-operate as set out below.

Sevenoaks

Sevenoaks undertook a Gypsy, Traveller and Travelling Showpeople Accommodation Assessment (GTTAA) in March 2012 which Sevenoaks describe as the key evidence base document for identifying the need across Sevenoaks District, identifying a need for 40 pitches to be delivered over the period 2012-2016 (when applying the planning definition tests of Gypsies and Travellers) and a subsequent need for a further 32 pitches over the period 2017 to 2026 (a total of 72 over the period 2012-2026). This assessment, which took account of household formation, records a 6 pitch site in Edenbridge (assumed to be the main family site)

Sevenoaks Gypsy and Traveller Plan Site Options May 2014 proposed 72 pitches, including expansion of the current provision at "Land East of Knockholt Station" an already hardsurfaced site directly across the footbridge. The site option indicates "12 - 6 temporary and 6 additional pitches to be made permanent" on a current temporary site containing 6 pitches.

LB Bromley responded to the Sevenoaks 2014 consultation and with specific regard to "Land East of Knockholt Station" (Q12) commented that the number of pitches proposed was acceptable but noting that the site lies within Flood zones 2 and 3 and is therefore contrary to the [Sevenoaks] draft criteria. The LBB response acknowledged the views of the London Gypsy Traveller Units GTU highlighted in response to Qu 8 and the recognition in the Sevenoaks consultation that not all criteria may always be met the intensification of pitches on this site should not be promoted, unless to meet the direct needs of traveller families already residing on the site.

Following the agreement of Planning Advisory Committee Members at the 13 October 2015, Sevenoaks Council's current position is meeting the identification of sites for Gypsies and Travellers will now be absorbed into the work plan for the Local Plan rather than having a separate document. Further Government guidance

is awaited before undertaking a new assessment of the accommodation needs of Gypsies and Travellers.

Conclusion

The supporting statement draws attention to the legal principles in respect of Article 3.1 of the United Nations Convention on the Rights of the Child which advises that the best interests of a child are an integral part of the proportionality assessment under Article 8 ECHR

The supporting statement quotes a Supreme Court judgement (Zoumbas V SoS) regarding the best interests of the child. Notably the judgement advises that the best interests of a child must be a primary concern, although not always the only primary consideration, and that the child's best interest do not, of themselves, have the status of paramount consideration.

Whilst a "settled base" is sought, in the best interests of the child, a refusal of permission / enforcement, with the right to appeal, means that the family, for whom travelling is a part of their culture, will have a period of time to seek an appropriate base.

The Council acknowledges the need to determine applications for sites from any travellers and not just those with local connections [PPTS Policy H(e)] however with regard to this Green Belt site "Subject to the best interests of the child, personal circumstances and unmet need are unlikely to clearly outweigh harm to the Green Belt and any other harm so as to establish very special circumstances." (PPTS Policy E)

Bromley's Local Plan, which seeks to address it's identified need is at an advanced stage. The families concerned, which are recognised in Sevenoaks traveller needs assessment, did not feature in the Bromley needs assessment, having resided elsewhere, and whilst registering elsewhere on waiting lists they are not on the waiting list for a Bromley pitch.

Having considered the best interests of the child, other matters raised by the applicants and the advanced stage of the Bromley Local Plan which includes allocations to meet the identified need and criteria for subsequent applications, there not personal circumstances and unmet need to clearly outweigh harm to the Green Belt and any other harm so as to establish very special circumstances.

Impact on the SINC

The chalk grassland has an important habitat and no mitigation methods been submitted to show the impact the barn would have on the SINC. There is no convincing evidence to show that the benefits of the development would outweigh the interest or value of the site. Furthermore, given it is unclear what the existing use of the land is, in the absence of any information to the contrary, the proposed barn is likely to be harmful to the SINC and contrary to Policies NE2 and NE12.

Highways

The site is accessed from a public right of way, Footpath 262, from Sevenoaks Road. There is no indication that the applicant has a vehicular right of way along the footpath.

The 2011 application for an animal sanctuary was dismissed at appeal. This included a highway ground related to the increased use of the access. Whilst this current proposal has the potential to generate less trips than the animal sanctuary it could still generate a number of trips per day. In terms of pedestrian access to the site, the footpath does not appear to be lit and is therefore unlikely to comply with policy T6.

The Inspector had concerns about conflicts between vehicles and walkers on the footpath, and in the case that vehicles met and one had to reverse. This is still the case and the application is also contrary to policy T18, road safety.

The proposal is therefore also recommended for refusal on this basis.

Summary

In summary Members may consider that this proposal will be out of character with the open and rural character of the area, and will be inappropriate development in the Green Belt. No very special circumstances exist to warrant an exception to Green Belt Policy as set out in the Unitary Development Plan and the NPPF.

RECOMMENDATION: APPLICATION BE REFUSED

The reasons for refusal are:

- 1 The proposal constitutes an undesirable form of urbanised development located in the Green Belt wherein there is a general presumption against inappropriate development, and no very special circumstances have been demonstrated to justify making an exception to Policy G1 of the Unitary Development Plan and the National Planning Policy Framework.**
- 2 The proposal by reason of its inappropriate access route from London/Sevenoaks Road, would create a need for vehicles to reverse over the public footpath and onto the highway, causing harm to both highway and pedestrian safety. The layout of the substandard access is likely to bring vehicles into conflict with pedestrians and other vehicles and would create a need for vehicles to reverse over the public footpath and onto the highway, detrimental to both highway and pedestrian safety. contrary to policy T18 of the UDP.**
- 3 In the absence of any information to the contrary, the proposal is likely to have an adverse impact on the Site of Importance for Nature Conservation (SINC) within which it is located, therefore contrary to Policy NE2 of the Unitary Development Plan**