



Appeal Decision

Hearing held on 6 October 2011

Sites visit made on 5 & 6 October 2011

by Colin A Thompson DipIArch DipTP RegArch RIBA MRTPI IHBC

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

Decision date: 16 November 2011

Appeal Ref: APP/P0240/A/11/2156395

Plots 2, 2A and 3, Woodside Caravan Park, Hatch, Bedfordshire SG19 1PT

- The appeal is under section 78 of the Town and Country Planning Act 1990 (the Act) against a refusal to grant planning permission.
 - The appeal is by Mr J A Smith (aka Lenny Smith) against the decision of Central Bedfordshire Council.
 - The application Ref CB/11/01301/FULL, dated 29/3/2011, was refused by notice dated 24 June 2011.
 - The development proposed is the change of use of land as a small private gypsy site for 3 families comprising 10 caravans and associated ancillary development.
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Summary of Decision

1. The appeal is allowed and permanent planning permission is granted subject to conditions.

Application for costs

2. At the Hearing an application for costs was made by the appellant against the Council. This application is the subject of a separate Decision.

Background Matters

Pre-Event Accompanied Site Visit (ASV)

3. I carried out an ASV the afternoon before the Hearing. There was no discussion of the merits of the case. It was simply so that I could familiarise myself with what was on the site to save Hearing time.

Gypsy and Traveller Considerations

4. In 2006 the Secretary of State (SoS) granted a temporary (5 year), and personal, planning permission for a gypsy caravan site for 3 families on the appeal site (the 2006 permission). The reason given for temporary, rather than permanent, planning permission was to allow the Council time to assess the need for gypsy traveller sites across its area and to determine how best that need should be satisfied. The site's temporary consent does not run out until 6 November 2011 so, irrespective of my decision, until then it is occupied lawfully.
5. It was agreed by the main parties that the site occupiers are ethnic Romani Gypsies. Despite some permanent residential occupation, including that by the appellant and his wife (due to poor health), it was accepted that the present

residents satisfy the definition of gypsies and travellers set out in Circular 01/2006: Planning for Gypsy and Traveller Caravan Sites¹ (the 2006 Circular).

6. It was further agreed that this northern part of Central Bedfordshire requires 20 more gypsy and traveller pitches for the period between 2006 and 2011 with the need for a further 10 pitches to be provided between 2011 and 2016; making a total of 30. Three pitches have recently been granted planning permission.
7. The draft Gypsy and Traveller Development Plan Document (Gypsy and Traveller DPD) identifies only 23 pitches. This leaves 4 pitches still to be provided in order to give a 5 year supply ($23+3=26$ (identified pitches), $30-26=4$ (the unsatisfied need)). Using this non-adopted document, which is the best information before me even though it could well understate actual need, there is clearly not a 5 year supply of identified gypsy and traveller sites in this part of the Council area.

Development Plan Policy

8. The most relevant development plan policy is Saved Policy HO12, Gypsies, of the December 2005 Mid Beds Local Plan First Review.

Progress on the Production of an Adopted Gypsy and Traveller DPD

9. At the start of the Hearing Cllr Mrs Turner, the District Ward Councillor representing Hatch, updated progress on this matter. She explained that the administrative amalgamations to form the new Central Bedfordshire Council and the recent judicial reviews (following the CALA Homes interventions²) which have indicated that Regional Policy still needs to be taken into account, despite the Government's intention to abolish this tier of planning, has left the local planning authority (LPA) caught between two conflicting national planning philosophies.
10. So instead of the draft Gypsy and Traveller DPD, which was based upon just part of the amalgamated new Council area, with need being based on data inconsistent with Regional policy going forward for adoption, it has been decided, by the Council's meeting of its Executive on 14 October 2011, that the draft Gypsy and Traveller DPD would not be submitted for an Examination in Public (EIP) but would still be endorsed for the purposes of development management. A new Gypsy and Traveller DPD for the whole of Central Bedfordshire Council would be prepared.
11. The timetable for the new District wide Gypsy and Traveller DPD is as follows:
 - Scoping, January 2012;
 - Evidence gathering, February 2012-September 2012;
 - Assessment, December 2012-April 2013;
 - Publication May /June 2013;
 - Submission to Secretary of State September 2013;
 - EIP, January 2014
 - Receipt of Inspector's report April 2014, and;
 - Adoption June 2014.

¹ Circular 01/2006: Planning for Gypsy and Traveller Caravan Sites, paragraph 15.

² The Queen on the Application of Cala Homes (South) Ltd v SSCLG and ANR [2011] EWCA Civ 639.

Cllr Mrs Turner made it clear that it was accepted that the new policy was needed quickly and that all reasonable efforts would be made to shorten the above adoption timetable. Further, she indicated that Members of the Council accepted that there was an unsatisfied need and had agreed to look seriously at the possible use of its own land to provide additional gypsy and traveller sites. But there is obviously a long way to go before any up-to-date Gypsy and Traveller DPD can be adopted.

National Policy

12. Although the SoS has indicated that he considers present National Policy to be flawed, and that he intends to replace the 2006 Circular with something which has a *lighter touch*, the present 5 year old document remains the only extant and relevant Government policy. It still carries substantial weight. One of the 2006 Circular's key requirements was to increase significantly the number of gypsy and traveller sites in appropriate locations, with planning permission over a 3-5 years time scale (that is from 2006 to 2009 /2011) in order to address under provision³. There has been no such increase within Central Bedfordshire.
13. A 2011 draft policy statement entitled Planning for Traveller Sites has completed its consultation process. Its policies can be given only limited, or no, weight because it is not known what will be in the final version.

Main Issue

14. There is one main issue in this case. This is the impact of the gypsy caravan site on the character and appearance of the countryside bearing in mind the existing relevant, national and local, planning policies as well as any other pertinent material considerations.

Reasons

Countryside Issues

15. Gypsy and Traveller development in Hatch has a 14 year or so history. Following unlawful occupation of a larger area of land in 1997 there were a number of unsuccessful appeals prior to the SoS granting the 2006 temporary permission for the present reduced site area. The urbanising impact on the countryside was the only reason identified by the LPA in deciding to refuse permanent planning permission for the appeal scheme before me.
16. The 2006 Circular indicates that the outskirts of built-up areas may be appropriate for gypsy and traveller development. Such development, it states, is often found in rural, or semi-rural, settings. Indeed, the 2006 Circular goes on to state *...rural settings, where not subject to special planning constraints, are acceptable in principle⁴....*
17. Hatch is a very small settlement, just some 15 houses. But the appeal site is not the subject of any special controls. It is not for example in: a designated Green Belt; an Area of Outstanding Natural Beauty; nor is it within; a Special Landscape Area.

³ ODPM Circular 01/2006: Planning for Gypsy and Traveller Caravan Sites, paragraph 12(c).

⁴ ODPM Circular 01/2006: Planning for Gypsy and Traveller Caravan Sites, paragraph 54.

18. Notwithstanding the generally permissive approach of the 2006 Circular, long standing national policy seeks to protect the countryside. In particular Planning Policy Statement 7: Sustainable Development in Rural Areas controls strictly new house building in the countryside⁵ (which by analogy and logic should include gypsy caravan sites because they provide gypsy residential accommodation). LP Policy HO12(i) goes further by requiring that new gypsy sites should *...not be detrimental to the character and appearance of the surrounding countryside...* (my emphasis).
19. Previous Inspectors have differed in their opinion on the impact of this gypsy and traveller development on the character and appearance of Hatch and its surrounding rural area. Some have said that such a facility would be acceptable. But the 2006 Inspector, endorsed by the SoS's decision, concluded that a substantially identical scheme to that now proposed would have an *...inevitably significant, urbanising, effect on the character and appearance of the countryside...*
20. Although the visual impact of the appeal development has altered in the intervening 5 years, since the 2006 decision, (the landscaping has grown-up helping to hide the site although this may have been countered, to some extent, by any raising of the levels of the caravan pitches to counter flood risks) there is an obvious conflict between the professional judgements of the previous Inspectors.
21. To my mind it is difficult to see how gypsy /traveller caravan sites with their: caravans; ancillary buildings and sheds; fencing, large gravelled areas and vehicle parking; could not have some kind of urbanising impact on the rural surroundings of countryside sites. Such probabilities are recognised in draft Gypsy and Traveller DPD Policy GT3 for such sites, which just requires that *...any detrimental impact upon the character and appearance of the locality is minimised...* But only limited weight can be given to what is a draft, non statutory, policy. The Council Executive's decision to endorse it, for the purposes of development management, does not assist much in regard to weight that I can give to this policy.
22. As already noted the 2006 Circular accepts the principle of a rural, or semi-rural, sites for gypsy or traveller caravan sites so some urbanising effect is by inference permissible. The 2006 Circular post-dates PPS7 (the latter was published in 2004). But LP Policy HO12, which I read as not allowing any harm to rural character, was adopted in December 2005 which only just pre-dates the 2006 Circular (published on 2 February in that year) and is still part of the development plan. There remains a presumption in favour of the policies of the development plan. Unhelpfully, the ODPM's The Planning System: General Principles⁶ states that, when conflicts between policies arise, decisions should be taken in the light of all material considerations, including local priorities, and needs to be guided by relevant national policy.
23. I find that there is only a small amount of harm to the rural character of the area, bearing in mind the moderating effect of the maturing landscaping. But no matter how good the screening becomes there will inevitably be some damaging impact on the character and appearance of the countryside so that strict compliance with LP Policy HO12(i) cannot be achieved.

⁵ Planning policy Statement 7: Sustainable Development in Rural Areas, paragraph 9 (ii).

⁶ The Planning System: General Principles, paragraph 7.

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24. This unresolved conflict both in past Inspectors' and my findings, together with policy inconsistencies, indicates to me that for any conclusion on the scheme's acceptability or not, in regard to countryside issues cannot be determinative. My decision must therefore rely on other material circumstances to determine the outcome of this appeal.

Other Material Considerations Supporting the Appeal

Non-Countryside Aspects of LP Policy HO12

25. The appeal proposals could: provide additional landscaping measures to further ease visual harm; incorporate a safe access (subject to the need for better surfacing (see conditions below)); and; not damage nature conservation, or the historic environment, interests. It could also ensure (see below) that there would not be any unacceptable pollution to surface water and ground water and no material harm would be caused to the amenities of residential neighbours. Thus the non-countryside conservation aspects of the development plan (Policy HO12(ii)-(vi)) would, or could, be satisfied. To this extent the presumption in favour of the policies of the development plan supports the appeal.

Need and Prematurity

26. There is an accepted shortfall of gypsy traveller sites (see my paragraphs 6+7 above (and Hearing Document 2)). PPS 3: Housing⁷ draws attention to the requirement for LPAs to plan for a mixed community including *...the need to accommodate Gypsies and Travellers...* The same PPS⁸ states that *...where LPAs cannot demonstrate a 5 year supply of deliverable sites ...they should (having regard to the other policies in the PPS) consider favourably planning applications for housing...* Because there is a shortfall in the identified 5 year Gypsy and Traveller land supply this aspect of PPS3 gives further qualified support to the appeal proposals.

27. The caravan site is not large (just 3 pitches) so that its cumulative effect would not be so significant that granting a permanent planning permission now could prejudice any future adopted Gypsy and Traveller DPD by predetermining decisions about the scale, location or phasing, of new development⁹. Instead the appeal proposals would be helpful in providing 3 extra pitches now, without having to wait any longer, reducing the present shortfall. It follows that prematurity would not be an issue in this case.

Ethnicity

28. The appellant and his extended family are ethnic Romani Gypsies. This is a significant matter because, as such, they have a right not just to their homes and family life but also the courts recognise that an integral part of their lifestyle involves living in caravans (see *Chapman*¹⁰). In this judgement the European Court of Human Rights stated that *...the vulnerable position of gypsies as a minority means that some special consideration should be given to their needs and different lifestyle both in the relevant regulatory framework and in reaching decisions in particular cases...there is thus a positive obligation*

⁷ PPS3: Housing, paragraphs 20 and 21.

⁸ PPS3: Housing, paragraph 71.

⁹ The Planning System: General Principles, paragraph 17 (ODPM).

¹⁰ *Chapman v UK* [2001] 33 EHRR 18

imposed on the Contracting States (including the UK) by Article 8 to facilitate the gypsy way of life...

29. An important part of the Romani Gypsy heritage is the way extended family groups live together to give each other support (as happens here). In this case all 3 families are related by marriage and /or birth. These ethnicity factors, which require the extended family to remain together, play in favour of the applicant's case.

Personal Circumstances

30. Gypsies and travellers experience the worst health and education problems of any disadvantaged group in England¹¹. Research has consistently confirmed the link between the lack of good quality sites for this group and poor health and education.
31. Mrs Lydia Smith has very serious health problems. She suffers from heart disease and angina, as well as impaired left ventricular function, bronchiectasis (overstretched bronchial tubes causing coughing and excessive mucus production) and chronic obstructive pulmonary disease. She is on a large number of medications (a list of 19 were supplied by her doctor) and long term oxygen therapy. She attends Bedford Hospital for Respiratory Physiotherapy classes and has had to be seen by the Doctor 15 times in the year from 16 April 2010.
32. Due to the combination of her cardiac and pulmonary problems Mrs Smith finds it very difficult to walk and frequently has to use a wheelchair. She is unable to carry out day to day tasks such as washing, cleaning, shopping and cooking, and is helped by her daughter and daughters-in-law. Dr B E Bourke of the Kings Road Surgery, in Sandy, concludes in a letter to the appellant's solicitor, dated 27 April 2011, that *...uncertainty regarding her accommodation causes Mrs Smith a great deal of distress and I feel refusal of planning permission would have an adverse affect on her already poor health...*
33. A number of the other adult residents suffer from ailments such as anxiety attacks, asthma and depression. Billy Price Junior has cerebral palsy.
34. Regarding the educational needs of children, there are 9 of, or around, school age. Most appear presently to be home educated. When the families are travelling these children study using pre-prepared education packs. The tutors that provided letters of support reported that the children in their care were doing well. But it was stressed that an important part of this success is down to the existence of a permanent base, to which the families return on a regular basis, which enables the tutorial support to be consistent.
35. The site occupiers are registered with local medical practices and the children educated with Central Bedfordshire Education Departmental input and support. Continuity of health care and the children's education can only be afforded by a permanent base which supports the families' travelling lifestyles. In this latter regard it is pertinent that the appellant has tried to find an alternative site with little success and the LPA don't suggest any suitable ones. The need for family pitches is a compelling argument in favour of the grant of planning permission and should be given significant weight.

¹¹ Circular 01/2006: Planning for Gypsy and Traveller Caravan Sites, paragraph 5.

Sustainability

36. Such issues are important but should not only include transport mode and distances from services¹². Despite having to rely on private transport, as do the other occupants of Hatch (because bus services are very limited), Mr J A Smith and his extended family have been based in this part of Bedfordshire for many years. Some sizeable settlements are not far away: Sandy 1.4 miles; Northill 1.3 miles and Caldecote 2 miles. Health and education needs are satisfied and making any permission a personal one, to members of this extended gypsy family, will give the best chance to facilitate their peaceful integration into the local community. This is a sufficiently sustainable site for a gypsy caravan site.

Other Material Considerations which have a Negative; or Neutral, Impact on the Appeal

Effect on the Living Conditions of Nearby Residents

37. Parts of the local community have consistently resisted the setting-up of a gypsy caravan site in Hatch. The Parish Council, Ward Councillor and Residents Action Group fought the earlier, larger, unlawful site and continue to object to the present smaller one becoming permanent. However, as a counter balance to such objections, I was given 10 letters of support from others living nearby and in the surrounding settlements.
38. In this case no business use is proposed. Their nearest neighbours are the Westwoods who live in, and operate their business from, 1 Willowside, Hatch Road; which adjoins the appeal site on its western boundary.
39. The Westwoods breed, train and race, greyhounds. There have been some recent issues with the appeal site's current occupiers and this neighbour, with each side making claims and counter claims at the Hearing. But the greatest problems seem to have occurred when the larger gypsy site was in existence. Mr Westwood senior agreed, at the Hearing, that the appeal lands are now clean and tidy and well run by the appellant Mr Lenny Smith.
40. There is some fear in the community that if this appeal succeeds then other gypsy families will move back onto the larger, original, site. But nothing like this appears to have happened in the 5 year life of the temporary planning permission and I see no compelling reason why that situation should change if I were to allow this appeal. Even if it did the Council have procedures to ensure swift clearance. Such fears are not justified.
41. Apart from the urbanizing effects on the countryside, any damaging impact on the living conditions of residential neighbours would appear to be minimal, certainly not sufficient to require a refusal of permanent planning permission.

Overall Conclusions

42. The circumstances surrounding the scheme, before me, are materially different from those before the SoS in 2006. Significantly the intervening 5 years, which were supposed to allow time for the Council to assess the need for gypsy traveller sites across its district and to determine how best that need should be satisfied, has not resulted in the identification of a 5 year supply of gypsy and traveller sites; indeed the final resolution of this problem is still likely to be

¹² Circular 01/2006: Planning for Gypsy and Traveller Caravan Sites, paragraphs 64+65.

some years away. Nor has the Council increased significantly the number of such sites, in appropriate locations with planning permission, in order to address under-provision, as intended by the 2006 Circular. At this time the needs of the family group can only realistically be met on the appeal site.

43. The development, as it appeared to me at this Hearing and during the site visits, seems visually to represent a not unattractive extension to Hatch; indeed it is reasonably well related to the existing settlement. Despite the tension between current planning policies which prevents complete compliance with LP Policy HO12(i), the scheme satisfies, or would be able to satisfy, the remaining 5 sub-paragraphs of that policy. And any damage to the living conditions of neighbours would be significantly lessened if any permission was made personal to the present site occupiers (to help prevent the kinds of disturbance suffered in the late 1990s when the larger site was unlawfully occupied).
44. Add to all this the more pressing personal circumstances of the appeal site's occupants and the other material considerations of this case represent very compelling reasons why planning permission should be forthcoming. The appeal will therefore be allowed and a permanent planning permission will be granted subject to conditions.
45. Such a decision would not be perverse as some suggested in the light of the impending replacement of the 2006 Circular. It is not known what the new guidance will say and I have a duty to determine appeals expeditiously bearing in mind the considerations, and policies, relevant at the time. I have taken into account the perception of many objectors that the planning system is too permissive towards gypsy and traveller caravan accommodation. It is a matter of fact that extant policies for such accommodation are more permissive, as are policies for needed agricultural dwellings, than for those controlling some other classes of development in the countryside. This is because there is perceived special need for such accommodation in rural areas.

Conditions

46. This permission is for a private gypsy caravan site. Because part of the reasons for allowing the appeal apply specifically to those presently occupying the lands any permission should be made personal to Mr J A Smith and named individuals of his extended family together with their dependants. Numbers of caravans should be controlled, along with a ban on commercial activities, to protect the countryside and the living conditions of residential neighbours. Additional landscaping, and some restriction on external lighting (there is no significant street lighting in Hatch and areas of darkness at night is part of the rural character of the area), is required to protect the rural appearance of the area.
47. Although I saw that the access has good visibility its surface needs to be covered with a durable material. Vehicle sizes, and on site turning areas, should be controlled to protect road safety. Despite the Council signing off a previous flood protection condition, and the Internal Drainage Board's lack of objection (the responsible body for flood protection in this location), it was not possible to check (and the Council says no detailed checks have been made) whether the proposed caravan site slabs have been raised to the correct levels to bring them outside the parameters of a Flood Risk Zone 3 site; indeed I saw that one of the required concrete slabs had not even been constructed. Also there may be a need to prevent surface and ground water from pollution and I

saw that there were some drainage problems, in the site's north-western corner (a blocked ditch), which needs resolution to prevent flooding of the Westwoods' land. A condition is required to ensure these water quality, drainage and flood protection, works are properly executed.

48. I note the third parties' concerns regarding enforcement of planning conditions but this does not mean that they cannot be enforced. Indeed, the frequency of visits made by enforcement officers (reported to the Hearing by Mrs Davies, approximately every 2 weeks or so), would appear to me to be very frequent and should be more than sufficient to exercise the necessary levels of control. But such matters are for the LPA to determine as it sees fit.

Formal Decision

49. The appeal is allowed and planning permission is granted for the change of use of land as a small private gypsy site for 3 families comprising 10 caravans and associated ancillary development on Plots 2, 2A and 3, Woodside Caravan Park, Hatch, Bedfordshire SG19 1PT, in accordance with the terms of the application, Ref CB/11/01301/FULL, dated 29/3/2011, subject to the following conditions:

- 1) This permission does not authorise the use of the land as a caravan site by any persons other than gypsies and travellers, as defined by paragraph 15 of ODPM Circular 01/2006;
- 2) The occupation of the caravan site hereby permitted shall be only by the following residents and their dependants, namely; Abraham Howard, Pamela Howard, Donna Marie Draper, Pamela Cooper, Jo Cooper, Lenny Smith (aka John Alfred Smith), Lydia Smith, Lucy Smith, Joseph Smith, Ellen Louise Smith, James Smith, Lisa Smith, Leonard Smith, Marie Smith, Billy Price and Laura Price. When the land ceases to be occupied by those named above the use hereby permitted shall cease and all caravans, structures, materials and equipment brought on to or erected on the land, or works undertaken to it in connection with the use, shall be removed and the land shall be restored to its condition before the development took place.
- 3) The scheme hereby permitted shall allow no more than 10 caravans (of which no more than 3 shall be static caravans) to be stationed on the site at any one time. Of these no more than 4 caravans (of which no more than 1 shall be a static caravan) shall be parked or stored on plot 2A (the north-westerly one), and no more than 3 caravans (of which no more than 1 shall be a static caravan) shall be parked or stored on plots 2 and 3 (respectively the south-western plot and the north-eastern plot). For the avoidance of doubt it should be noted that Plot 1 is not part of the appeal site and is not part of this permission;
- 4) In regard to the development hereby permitted, no vehicle over 3.5 tonnes shall be stationed, parked or stored on the site;
- 5) In regard to the development hereby permitted, no commercial activities shall take place on the land, including the storage of materials;
- 6) In regard to the development hereby permitted, all on-site parking and turning areas shown on drawing E1425/1/E shall be retained for such purposes;
- 7) The development hereby permitted shall not be carried out except in complete accordance with the details shown on the submitted plans,

drawing N^{os} E1425/1/E and WCP/002/05, unless otherwise approved in writing by the LPA;

For conditions 8-10 inclusive the schemes set out below shall be submitted to, and approved in writing by, the local planning authority (or Secretary of State as appropriate) with the approved schemes being implemented in accordance with the following strict rules:

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

- (i) Within 3 months of the date of this decision schemes for additional landscaping, drainage, water pollution and flood protection works, as well as vehicular access surfacing, shall have been submitted for the written approval of the local planning authority and the schemes shall include a timetable for their implementation;*
 - (ii) If within 11 months of the date of this decision the local planning authority refuse to approve the schemes or fail to give a decision within the prescribed period, an appeal or appeals, shall have been made to, and accepted as validly made by, the Secretary of State;*
 - (iii) If an appeal or appeals is/are made in pursuance of (ii) above, that appeal or those appeals shall have been fully determined and the submitted schemes shall have been approved by the Secretary of State, and;*
 - (iv) The approved schemes shall have been carried out and completed in accordance with the approved timetable;*
- 8) Details of drainage works, to the north-western corner of the site, and those needed to ensure: firstly, adequate protection of ground and surface water from pollution, and; secondly, the execution of sufficient flood protection measures, either as shown on drawing E1425/1/E or other works sufficient to take the floor levels of any caravans high enough so that they would be above the level of a Flood Risk Zone 3 category for the area;
 - 9) Details of a scheme of landscaping which will include strengthening of the existing tree planting to the southern and western site boundaries which shall include indications of all existing trees and hedgerows on the land, and details of any to be retained, together with measures for their protection in the course of development. Any trees that are diseased or die within the first 5 years will be replaced with others of similar size, and species;
 - 10) Details of a scheme to re-surface the site's vehicular access with a durable material for a distance of 8m into the site, measured from the near side edge of the public highway's carriageway boundary. These details shall include arrangements for surface water discharge from the site to be intercepted and disposed of separately so that it does not discharge onto the highway.

Colin A Thompson

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