The Planning Inspectorate

Appeal Decision

Site visit made on 28 January 2014

by Gareth Symons BSc Hons DipTP MRTPI

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

Decision date: 10 February 2014

Appeal Ref: APP/W1715/A/13/2194816
Bay Farm, Grange Road, Burlesdon, Southampton, SO31 8GD

- 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 M Kempster against the decision of Eastleigh Borough Council.
- The application Ref: F/13/71899, dated 14 December 2012, was refused by notice dated 13 February 2013.
- The development proposed is the demolition of the existing dwellinghouse and ancillary building and the erection of a replacement dwelling.

Decision

1. The appeal is dismissed.

Application for Costs

2. An application for costs made by Mr M Kempster against Eastleigh Borough Council is the subject of a separate Decision.

Clarification Issue and Background

3. The application refers to the demolition of an existing dwellinghouse. However, the appellant and his family live in a mobile home on the site. Although this has the characteristics of a small bungalow there is no evidence to suggest that the current dwelling is operational development as opposed to a residential use of the land. This residential use derives from planning permissions granted on appeal (Refs: T/APP/W1715/C/99/1022494 & T/APP/W1715/A/99/1029872) on 7 December 1999. The first appeal referred to was against an enforcement notice issued by the Council alleging a change of use from agriculture to a mixed use of agriculture and residential by the siting of a mobile home for human habitation and a touring caravan. The second appeal was against the refusal of planning permission for the continued use of the land as a Gypsy caravan site for one family (one twin unit mobile home).

4. Both planning permissions were subject to the same conditions. Particularly relevant to this appeal is condition (a) which, in short, restricts the authorised use of the land to a caravan site for Gypsies. The appellant in the earlier appeals and this appeal is the same and he and his family are Gypsies.

5. In view of the above, I shall consider this appeal against the background of a lawful residential use of the land by Gypsies.

Main Issues

6. The main issues are the proposal's effects on the provision of sites for gypsies and travellers and on a protected strategic gap, and whether the appeal scheme should contribute towards various infrastructure improvements.

Reasons

Gypsy and Traveller Sites

7. To address the Council's concern that the development would affect the level of Gypsy site provision the appellant would accept a condition on the new house similar to that imposed on the previous permissions. On this basis the level of accommodation for Gypsies would be unchanged. However, it is well established that many Gypsies have an aversion to living in 'bricks and mortar' as it is not traditional to their nomadic way of life and upbringing. Although the appellant presumably does not have a dislike to living in conventional housing, allowing a house instead of a caravan would make the site much less attractive to live on by many Gypsies. Thus the site would not continue to meet the wider accommodation needs of travellers in the future the same as it does now.

8. The previous Inspector also clearly concluded that instead of a personal permission the use should instead be limited to those persons who are defined as gypsies. He went to say therefore that if the appellants were to leave the site it would continue to contribute to the stock of Gypsy sites in the locality for which there was a general need. Although there does not appear to be a shortage of Gypsy sites in the Borough now, it is no part of Government or local policy to make provision for gypsy and traveller families in permanent dwellings. The Planning Policy for Traveller Sites (PPTS) aims to increase the number of traveller *sites* (my emphasis) in appropriate locations with planning permission and to facilitate the traditional way of life of travellers. This can be taken to include living in caravans on sites.

9. The appellant is older now and the Council recently granted planning permission for an additional three pitches at the rear of the appeal site where the appellant's eldest daughter and her family lives. The support between the families is noted. However, there is nothing particularly unusual or exceptional about these circumstances that would justify the use of a personal condition here rather than a more general Gypsy occupancy condition even if that was appropriate. Circular 11/95 *The Use of Conditions in Planning Permissions* in any event advises that such a condition will scarcely be justified in the case of permission for the erection of a permanent building.

10. The current mobile home may have deteriorated over the years and it may be towards the end of its useful life. As such it might be cheaper to demolish and rebuild. However, over time this is probably a problem common to most forms of mobile home. There is no evidence to suggest that building a new bungalow would be cheaper than a new mobile home or that the appellant could not afford to buy another twin unit for example. Replacing one unit with another residential unit provided that it fell within the definition of being a caravan would also not need planning permission given that the permissions granted were for the use of the land as a caravan site. The appellant's longer term future at the site, his way of life, running his business, keeping horses in the field opposite and the interaction between the families can thus be assured in the absence of a permanent building and given the lawful use of the site.

11. This is not to say that Gypsies should not, or cannot, live in houses but Circular 11/95 confirms that a condition does not become reasonable because it is suggested by an applicant. As it may be operative after the appellant has moved on it must be justified on its planning merits. Those merits do not exist in this case. Accordingly such occupancy conditions would not be justified or reasonable. Thus this proposal has to be considered as an application for a new dwelling in the countryside unfettered in terms of who could occupy it. There is no justification for that at all. Moreover, attempting to impose such conditions against this background would undoubtedly leave the decision vulnerable to the condition being lifted in the future.

12. I therefore also concur with the Council that, although each case should be considered on its individual merits, granting permission in this case would set a dangerous precedent which, at the very least, could be quoted and referred to by other Gypsies in the area. Whilst the other appeal decisions referred to by the Council were not in Eastleigh and they were in the Green Belt, they do show that the principle of what has been applied for in this appeal is not unique or unusual. The Council's resistance to such proposals would be severely weakened if the appeal was allowed. Very easily the cumulative effect would be to diminish the Gypsy accommodation picture even further in direct conflict with how planning policy sees Gypsy site needs being fulfilled.

13. In all the circumstances the appeal proposal would result in a fall in the stock of sites for Gypsies and travellers contrary to national policy and policy 87.H from the Eastleigh Borough Local Plan Review (LP) which both aim to fulfil the land use and accommodation needs of this particular group of persons.

Strategic Gap

14. The appeal site is in the Southampton – Hedge End/Burlesdon/Netley strategic gap which is one of two identified strategic gaps in the borough which perform the specific function of protecting the individual identity of certain settlements and preventing their coalescence. The new bungalow would have a floorspace more than double the size of the mobile home and the day room it would replace. It would probably also be higher and the new roof would have an overall greater expanse. Therefore, despite the trees and the building at the front of the site, the new dwelling would be much more visually prominent and physically occupy a greater space.

15. The previous inspector found that what is now on the site would have an inconsequential effect in diminishing the visual openness of the gap. However, he was considering a residential use of a mobile home and not a much larger and substantial bungalow. Therefore the two cases on this particular issue are materially different. Thus in this respect the other Inspector's findings have very limited weight and they do not prevent me from finding harm to the strategic gap in this appeal.

16. It is recognised that there is other development around including other permanent dwellings. As such the appeal site is not isolated or unrelated to other buildings and land uses. Furthermore, there is no concern about the appearance of the bungalow itself or how it would fit onto the plot. Therefore with regard to the aims of other policies the appeal scheme may be acceptable. Nevertheless these matters do not outweigh the finding that the consolidated development would be contrary to the aim of policy 2.CO from the LP which seeks to protect strategic gaps.

Developer Contributions

17. The need for development to contribute towards infrastructure improvement such as public open space can only be based on the scheme giving rise to some increased use or demand for such a facility. Only then could the absence of any upgrading, or increasing its level of provision, be a reason to require the developer to pay to make the development acceptable in planning terms. In this case, whether the family lived in the existing mobile home or the proposed new bungalow, their impact on the demand for open space or access to sustainable transport would be neutral. The lawful use is the starting point for this assessment and not what might be any reversion to an agricultural use which seems highly unlikely anyway given that the site has planning permission for use as a caravan site which is the appellant's home.

18. I do not find any conflict with the aims of the relevant policies from the LP or the Council's Planning Obligations Supplementary Planning Document.

Other Matters

19. It may be the case that the Council does not have a five year supply of housing as set out in the National Planning Policy Framework ('the Framework'). However, only one house is unlikely to have any significant effect in terms of meeting this alleged undersupply. Furthermore, it would detrimentally affect the availability of Gypsy accommodation in conflict with local and national planning policies. The perceived benefit would not outweigh this harm.

20. I have also considered the policies from the emerging Pre-Submission Eastleigh Borough Local Plan. However, due to its early stage of preparation I agree with the appellant that only limited weight may be given to these policies. In any event, the emerging policies are not pivotal to the appellant's case bearing in mind that I have accepted the site has a permitted residential use.

21. All other matters have been raised, including other aspects of 'the Framework', but none outweigh the earlier findings.

Conclusion

22. Despite the findings in relation to developer contributions, the prevailing issues are Gypsy site provision and the strategic gap. For the reasons given in relation to these it is concluded that the appeal should not succeed.

Gareth Symons

INSPECTOR