



The Planning Inspectorate

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Mrs Laura Moorse
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Your Ref: FUL/MAL/09/00079
Our Ref: APP/X1545/A/10/2120968/NWF
Date: 26 April 2010

Dear Mrs Moorse

Town and Country Planning Act 1990
Appeal by David Clark
Site at The Oaks, Lea Lane, Great Braxted, Witham, CM8 3EP

I enclose a copy of our Inspector's decision on the above appeal.

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Yours sincerely

James Bunten

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Appeal Decision

Hearing held on 7 April 2010

by **David Smith BA(Hons) DMS MRTPI**

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

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Decision date:
26 April 2010

Appeal Ref: APP/X1545/A/10/2120968

The Oaks, Lea Lane, Great Braxted, Witham, Essex, CM8 3EP

- 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 David Clark against the decision of Maldon District Council.
- The application Ref FUL/MAL/09/00079, dated 2 February 2009, was refused by notice dated 11 January 2010.
- The development proposed is a change of use of land to site 2 no. mobile homes as residential gypsy pitches for applicant's family and ancillary engineering works to provide hard-standing and formation of access track thereto.

Decision

1. I allow the appeal, and grant planning permission for a change of use of land to site 2 no. mobile homes as residential gypsy pitches for applicant's family and ancillary engineering works to provide hard-standing and formation of access track thereto at The Oaks, Lea Lane, Great Braxted, Witham, Essex, CM8 3EP in accordance with the terms of the application, Ref FUL/MAL/09/00079, dated 2 February 2009, and the plans submitted with it, subject to the conditions in the attached schedule.

Main issues

2. I consider that the main issues are:
 - Whether the proposal would be a sustainable form of development;
 - The effect of the proposal on highway safety along Lea Lane; and
 - The effect of the proposal on the character and appearance of the area which is within a Special Landscape Area.

Preliminary matters

3. The submitted layout plan includes a reference to a "potential transit plot" to the rear of the proposed pitches. However, this is outside the appeal site and is not mentioned in the description of development. The appellant indicated at the hearing that this is something he might consider in the future but it is not included in the proposal before me.
 4. In answer to my question, the appellant confirmed that he is seeking permission solely for two additional mobile homes. The Council suggested that it might be sensible for allowance to be made for a tourer on each pitch to potentially avoid a further application for planning permission. However, to expand the proposal in this way could be prejudicial to the interests of other
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parties unaware of this change. I shall therefore deal with the appeal on the basis of the description above.

Background

5. The appellant has lived at The Oaks since about 1990. His pitch is close to Lea Lane. It contains two mobile homes occupied by him and his wife and by his eldest daughter Sarah Jane (aged 21). There is also a touring caravan used by his other daughter Sophie Lavinia (aged 14) for sleeping accommodation. Personal planning permission for the stationing of caravans for human habitation on a much larger site was granted to him and other named occupiers at appeal in 1991 (Ref T/APP/C/90/X1545/000009/P6). At that time, the Inspector was satisfied that the appellant was a gypsy.
6. The Council does not dispute that he has gypsy status based on the definition in Circular 01/2006 *Planning for Gypsy and Traveller Caravan Sites*. From the information adduced at the hearing I share that view. Mr Clark is involved in landscape gardening and continues to travel for work, especially to Norfolk in the summer months. Therefore relevant national and local policies regarding gypsy and traveller caravan sites apply in this case.
7. The intention is to provide two further pitches behind the existing one for the appellant's daughters. As explained to me, this would allow them to continue living in Lea Lane and for the family to stay together whilst, at the same time, offering more space and privacy. Vehicular access would be gained from the existing entrance and a narrow gap formed in an evergreen hedge to form an access road along the south-eastern side of the site.
8. In that direction is the other part of the original 1991 site which is now divided into 5 pitches known as 1-5 The Orchards. In addition, planning permission has recently been given on appeal (Ref APP/X1545/A/09/2112221) at 5 The Orchards (immediately adjoining the appeal site) for 3 additional pitches and for 3 transit pitches within an existing but re-configured residential pitch.

Reasons

9. Following a partial review of the Regional Spatial Strategy for the East of England (RSS), Policy H3 was adopted in July 2009. This deals with provision for gypsies and travellers. It indicates that a minimum of 15 additional pitches should be provided in Maldon by 2011. Thereafter it should be on the basis of an annual 3% compound increase.
10. Taking into account recent permissions, including the one at The Orchards, 10 pitches remain to be provided by the end of next year. The Essex Gypsy and Traveller Accommodation Assessment of July 2009 estimates that the additional pitch requirement to 2013 is 9.1. Even if that lower figure is adopted and the recent permissions subtracted a need remains. In the light of the counts and the numbers of applications submitted the Council considers that the general level of need is low. Compared to other authorities in Essex that is true. Whilst the numbers might be quite small the proposal would nevertheless go some way towards meeting the outstanding need.
11. It is now anticipated that the Core Strategy is unlikely to be adopted until January 2012. This is expected to contain a criteria based policy along the

lines of Policy CS10 of the consultation document produced last year. However, although some preliminary work has been undertaken, formal preparation of a site allocations development plan document is unlikely to commence until March 2012. The date of adoption is unknown. The expectation in the RSS of site provision by 2011 will not be met. In the meantime, the public sites in the District are full and there is a waiting list.

12. The Council contends that it is better to plan for gypsy sites through the development plan process rather than to accept 'windfall' provision as and when it arises. That is all well and good but Circular 01/2006 also recognises that many gypsies and travellers wish to find and buy their own sites to develop and manage. Moreover, there is a need for sites now but their allocation is far over the time horizon. The Council could not suggest where else Sarah Jane Clark might find a pitch and that position is unlikely to change for some time to come. The *Progress Report on Gypsy and Traveller Policy* (DCLG, 2009) comments that the current position on site delivery remains unsatisfactory and that local authorities need to increase the pace at which suitable locations are identified. Not every gypsy site coming forward should be accepted but I consider that little weight should be given to the Council's general approach of waiting for planned provision.

Sustainable development

13. Paragraph 65 of Circular 01/2006 indicates that in deciding where to provide for gypsy and traveller sites first consideration should be given to locations in or near settlements with access to local services. This does not preclude them from being located elsewhere. The Council regards all sites outside settlements as inherently unsustainable but according to Circular 01/2006 sites may be found in rural or semi-rural settings such as the appeal site.
14. Because of its location and the absence of public transport, future residents would have little choice but to use a car for day-to-day journeys. That is certainly the experience of the appellant and his wife. However, the appeal site is not remote. The convenience store and twice weekly doctor's surgeries at Wickham Bishops are some 2km away and it is about 6km to the supermarket in the town of Witham. It is also not far to Tiptree where Sophie Lavinia is at school. The Council accepted that there are far more isolated and inaccessible locations in the District. Furthermore, issues of sustainability should not only be considered in terms of transport mode and distance from services.
15. The appellant is one of the longest standing residents of this part of Lea Lane. He is peacefully integrated into the local community as evidenced by the lack of complaint by those living or owning land nearby. I agree with the Inspector in The Orchards appeal that the site is close enough to other properties to form part of the community but sufficiently far way to ensure seclusion.
16. A settled base would also allow access to medical services and education and reduce possible environmental damage from unauthorised encampment. All of these benefits could apply to any proposed gypsy site but they are nevertheless important because gypsies and travellers are believed to experience the worst health and education status of any disadvantaged group. The Clark family do not have any particular health issues and the appellant's

daughters have attended school and this may be partly due to the fact that they have been at The Oaks for a prolonged period.

17. The Inspector found that The Orchards site would "represent a sustainable location for a gypsy site of the size proposed." The circumstances surrounding the appeal site are more or less identical and I was given no evidence to indicate that a different view should prevail especially as the proposal is small in scale. Therefore, looking at matters in the round, I find that the proposal would not be contrary to the aim of Strategic Objective vii) of the Maldon District Replacement Local Plan of 2005 to create a sustainable and accessible environment. Neither would it conflict with Policy T2 which seeks to promote social inclusion and accessibility.

Highway safety

18. The Council originally refused permission on the basis of intensification of an existing sub standard access. This stance was based on the advice of the Highway Authority that the appellant does not own sufficient land to provide the required visibility splay to the north. However, the Authority changed its tune prior to the hearing by accepting that this could be done.
19. I was told that the wide verge to the north-west of the entrance is largely owned by the appellant. It contains a few substantial trees and some further vegetation. The Council's representative indicated that the trees should be retained and that if they were visible in that direction would be satisfactory. A condition is favoured to secure further planting and to avoid obstruction. No technical evidence has been provided so I have made my own appraisal.
20. Lea Lane is described by the appellant as "quiet" although it gets busier in the mornings. During my visits the flow of traffic past the site was infrequent. A little way to the north-west is a sharp bend where the road narrows causing vehicles to slow down. Consequently I did not observe them moving fast.
21. There is a mirror opposite the access to assist with visibility towards the bend and also a notice on one of the trees warning of a concealed entrance. This suggests to me that exiting the site is not without its hazards. Having said that, the access was permitted in 1991 and the appellant has used it since then without any accidents occurring. The proposal would no doubt lead to an increase in the number of movements. The appellant indicated that about 6 trips per day are made at present (3 in and 3 out). In my experience this is not untypical of a single gypsy site and these figures provide a reasonable guide for each of the additional pitches. Although the percentage increase would be high the total number of journeys out of The Oaks would remain low.
22. The trunk of the tree immediately to the right impedes vision when stationed at the edge of the carriageway. However, because of the width of the verge it is possible to see vehicles approaching between the trees before committing to leaving the site. That is not to say that care would not be required. In the summer months, foliage could potentially make matters more difficult compared to the situation that I saw. It would nevertheless be in the interests of those living there to ensure that any greenery was trimmed and they would also be familiar with the manoeuvre required.

23. I therefore consider that in practice and with suitable safeguards as to the future, exiting drivers would be able to adequately see those approaching and that the risk of collisions would be minimal. This is not a situation where vehicles pass the site at high speed and in great numbers. Rather the proposal would give rise to modest additional daily movements and the impact on this minor road would not be significant. In these circumstances, Circular 01/2006 indicates that proposals should not be rejected.
24. I therefore find that highway safety along Lea Lane would not be harmed and that there would be no conflict with Local Plan Policy T2 which indicates that the layout of development will provide for safe access to and from the highway.

Character and appearance

25. Local Plan Policy H1 indicates that new housing will not be allowed outside development boundaries unless it complies with other policies. However, a rigid adherence to the development plan regarding the location of housing would severely inhibit opportunities to increase the number of gypsy sites.
26. Policy S2 of the Local Plan seeks to protect the countryside for its own sake. Circular 01/2006 nonetheless provides that rural settings, where not subject to special planning constraints, are acceptable in principle. The appeal site falls into this category. It therefore seems to me that national guidance accepts that the countryside is bound to be affected in some way if progress is to be made in addressing the under-provision of gypsy sites.
27. The appeal site is within the Chelmer – Blackwater Ridges Special Landscape Area. Local Plan Policy CC7 seeks to prevent development unless its location, siting, design, materials and landscaping conserves or restores the character of the area. As Special Landscape Areas cover about 65% of the District it is suggested that there should be scope to find other less sensitive sites although there is no indication of possible locations. In any event, Circular 01/2006 states that local landscape designations should not be used in themselves to refuse permission for gypsy and traveller sites.
28. The appeal site is within an open rural area with sporadic dwellings and farmhouses nearby. The area surrounding the 1991 site mainly comprises arable and grazing land with a gently undulating landform often enclosed by boundary trees and hedgerows. It is an attractive tract of countryside.
29. As well as the presence of mobile homes, tourers and vehicles at The Oaks there are a series of small yards and structures along the road frontage where, amongst other things, the appellant has his workshop and keeps poultry. The rest of his land contains old vehicles and other items that he has accumulated over the years as well as a line of trees from the old orchard and a large group of evergreens. There is no indication that the character of this land would change if the appeal were to be dismissed. The point is that the proposal should be assessed having regard to the rural 'clutter' that already exists as well as the other gypsy sites close by. The immediate setting for the proposed mobile homes is not one of pristine countryside.
30. From around the site entrance I consider that views of the mobile homes and vehicles would be limited due to the tall hedge along the existing rear boundary of The Oaks. There are gaps in the boundary planting around the north-

western edge of the appellant's land. However, it is intended to plant a new native hedgerow to enclose the proposed pitches from that direction. This would take time to establish but, even in the short term, the manifestations of the residential use would be seen from here at some distance, against the backdrop of strong planting between The Oaks and The Orchards and in the context of the existing paraphernalia described above. From either direction the proposal would be unobtrusive.

31. There would be a degree of urbanisation since an undeveloped area would be replaced by hard surfacing, mobile homes and vehicles. However, the extent of this would be negligible and Circular 01/2006 accepts that there will be a degree of change in rural areas. The public perception of the proposal would be slight. Furthermore, due to the low number of vehicles likely to be generated any disturbance to the rural ambience of the locality would be insignificant. I therefore consider that the proposal would not harm the character and appearance of the countryside.
32. Because of my finding about the actual impact of the proposal the qualities of the Special Landscape Area would be preserved so that it would accord with Policies CC7 and S2. As the proposed use would be compatible with its surroundings it would also comply with Policy BE1. Even if there would be a broad conflict with Policy H1 this is outweighed by the absence of tangible harm and more recent national guidance.

Final Assessment

33. There is a need for gypsy sites in the District. Having regard to Circular 01/2006 I find that the proposal would be a sustainable form of development and that neither highway safety nor the character and appearance of the area would be harmed. It would accord with relevant development plan policies regarding sustainability, transport infrastructure and the countryside. Any conflict with broad housing policies is overridden by national guidance. I therefore conclude that the proposal is acceptable and that it would fulfil the intention expressed in Circular 01/2006 of promoting more private gypsy and traveller site provision in appropriate locations.

Conditions

34. I shall impose a condition limiting occupation of the site to gypsies. Because it is suitable in its own right a personal permission is not necessary. To minimise visual impact the caravans should be restricted to those applied for, the size of vehicles should be limited and commercial activities precluded. Details of any lighting to be installed should also be given. In order to blend the development into its surroundings planting should be carried out along the north-western boundary and the means of enclosure should also be controlled.
35. To clarify the proposal and to reflect the concern of Great Braxted Parish Council I shall also require that details of the extent and type of hardstanding and of refuse disposal and storage be provided. As there is no foul mains drainage and in the light of the comments of Little Braxted Parish Council regarding health issues I shall add a condition regarding sewage disposal. As indicated a condition is also necessary regarding the treatment of the site frontage in order to maximise visibility and improve its appearance.

36. The proposal involves a material change of use of the land and the operational development referred to in the description is the subject of other conditions. As such, there is no need to list the approved drawings having regard to Circular 11/95 *The Use of Conditions in Planning Permissions* and the advice in *Greater Flexibility for Planning Permissions* (DCLG, 2009).

Conclusion

37. For the reasons given above I conclude that the appeal should succeed.

David Smith

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The site shall not be occupied by any persons other than gypsies and travellers, as defined in paragraph 15 of ODPM Circular 01/2006.
- 3) There shall be no more than two permanent residential pitches on the site as shown on the Proposed Site Plan and on each of those pitches there shall be no more than one caravan, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968.
- 4) No commercial activities shall take place on the site, including the storage of materials.
- 5) No more than one commercial vehicle per pitch shall be kept on the site for the use of the occupiers of the caravans hereby permitted and no vehicle shall exceed 3.5 tonnes.
- 6) No caravan shall be brought onto the site until a scheme of landscaping including a hedgerow along the north-western boundary and further planting along the verge to the north-west of the vehicular access has been submitted to and approved in writing by the local planning authority. The approved landscaping shall be carried out within twelve months of the commencement of the use. Any planting which dies, is removed or becomes seriously damaged or diseased within five years of the commencement of the use shall be replaced in the next planting season with others of similar size and species, unless the local planning authority gives written approval to any variation.
- 7) No caravan shall be brought onto the site until details of the extent and type of hard surfacing, the location and design of refuse disposal and storage units and method of sewage disposal have been submitted to and approved in writing by the local planning authority. The works shall be carried out in accordance with the approved details prior to the commencement of the use.
- 8) Details of any external lighting and means of enclosure shall be submitted to and approved in writing by the local planning authority prior to installation. The works shall be carried out in accordance with the approved details.
- 9) No caravan shall be brought onto the site until details of the treatment of the verge to the north-west of the vehicular access have been submitted to and approved in writing by the local planning authority. In addition to the planting required by condition 6) these shall include details of trees to be retained and a visibility splay. No obstruction over 1 metre in height shall be placed within the visibility splay defined by the approved details other than any trees to be retained in accordance with this condition.

APPEARANCES

FOR THE APPELLANT:

Mr D Clark

Mrs L Clark

FOR THE LOCAL PLANNING AUTHORITY:

Mr M Woodger

Team Leader (Development Control), Maldon
District Council

DOCUMENTS

- 1 Appeal decision of 31 March 2010 re The Orchards, Lea Lane, Great Braxted (Ref APP/X1545/A/09/2112221)
- 2 Location plan showing The Oaks and The Orchards annotated by Mr Woodger
- 3 Aerial photo of Lea Lane
- 4 Enforcement notice and appeal decision of 28 March 1991 re land off Lea Lane (Ref T/APP/C/90/X1545/000009/P6)
- 5 E-mail of 5 March 2010 from Principal Development Management Engineer
- 6 Policies H1, H16 and BE1 of the Maldon District Replacement Local Plan
- 7 Policy H3 of the Regional Spatial Strategy for the East of England
- 8 Council's suggested list of conditions