



Appeal Decision

Hearing held on 29 August 2007
Site visit made on 29 August 2007

by **C J Anstey** BA(Hons) DipTP DipLA
MRTPI

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

The Planning Inspectorate
4/11 Eagle Wing
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN

☎ 0117 372 6372
email: enquiries@pins.gsi.gov.uk

Decision date:
25 September 2007

Appeal Ref: APP/E1210/A/07/2043917 23B Dudmoor Farm Road, Christchurch, BH23 6AQ.

- 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 John Gaskin against the decision of Christchurch Borough Council.
- The application Ref 8/07/0021, dated 15 January 2007, was refused by notice dated 12 March 2007
- The development proposed is the change of use of land to the stationing of a static caravan and a touring caravan for a Gypsy family.

Decision

1. I allow the appeal, and grant planning permission for the change of use of land to the stationing of a static caravan and a touring caravan for a Gypsy family at 23B Dudmoor Farm Road, Christchurch, BH23 6AQ, in accordance with the terms of the application, Ref 8/07/0021, dated 15 January 2007, and the plans submitted with it, subject to the following conditions:
 - 1) The use hereby permitted shall be carried on only by John Gaskin and Bee Gaskin and their resident dependants and shall be for a limited period, being the period of 5 years from the date of this decision, or the period during which the premises are occupied by them, whichever is the shorter.
 - 2) When the land ceases to be occupied by John Gaskin and Bee Gaskin and their resident dependants or at the end of the specified temporary period, whichever shall first occur, the use hereby permitted shall cease and all materials and equipment brought on to the land in connection with the use shall be removed.
 - 3) No later than 6 months following the cessation of the use by John Gaskin and Bee Gaskin and their resident dependants the land shall be restored in accordance with a scheme of work previously submitted to and approved in writing by the local planning authority. The restoration works shall be carried out in accordance with the approved scheme.
 - 4) The residential use hereby permitted shall be for the stationing and occupation of no more than 2 caravans as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968. The site shall be laid out in accordance with a site layout plan previously submitted to and approved in writing by the local planning authority.

- 5) No trade or business may be carried on at the site and no materials associated with any trade or business shall be stored on the site.
- 6) No vehicle over 3.5 tonnes shall be stationed, parked or stored on the site.

Preliminary Matters

2. During the Hearing the Council accepted that the appellant, John Gaskin, and his wife, Bee Gaskin, accorded with the definition of Gypsies as set out in *Circular 01/2006: Planning for Gypsy and Traveller Caravan Sites*. On the basis of the material submitted and the discussion during the Hearing I share this view. It is evident that until recently Mr & Mrs Gaskin travelled extensively for work and to attend fairs, stopping in various locations. In the last year, however, because of Mrs Gaskin's health problems there has been a need to find a settled base close to Bournemouth Hospital where Mrs Gaskin is being treated. As a result they moved onto the appeal site in the second half of 2006 and since then have been occupying a touring caravan. Mr Gaskin intends to continue travelling for the purpose of work in the future.
3. It was confirmed at the Hearing that permanent permission was being sought for the stationing of a static caravan and a touring caravan on the site for Mr and Mrs Gaskin. In the event that permanent permission was found to be unacceptable the appellant asked that consideration be given to a five-year temporary permission. Consequently the appeal has been determined on the basis that the development involves the change of use of land to the stationing of a static caravan and a touring caravan on a permanent or temporary basis for John and Bee Gaskin who are Gypsies.

Main Issues

4. The main issues in this case are:
 - (i) whether the change of use constitutes inappropriate development in the Green Belt, having regard to the impact on openness and the purposes of including land in the Green Belt;
 - (ii) the effect on the rural character of the local area;
 - (iii) whether there are other considerations that need to be given weight;
 - (iv) the effect on the nature conservation value of the Dorset Heaths;
 - (v) whether the other considerations weighing in favour of the development clearly outweigh the harm to the Green Belt, and any other harm, thereby justifying the proposal on the basis of very special circumstances.

Reasons

Inappropriate Development in the Green Belt

5. The appeal site is located in the countryside to the north-east of Christchurch and in the South East Dorset Green Belt. Within the Green Belt there are very strict controls over new development in order to prevent urban sprawl and keep land permanently open. Both local and national planning policies make it

clear that there is a presumption against inappropriate development in the Green Belt. *Paragraph 3.12 of Planning Policy Guidance Note 2: Green Belts [PPG2]* indicates that the making of any material change in the use of land is inappropriate development unless openness is maintained and there is no conflict with the purposes of including land in the Green Belt. *Settlement Policy E of the Bournemouth, Dorset and Poole Structure Plan (2001)* and *Policy ENV17 of the Borough of Christchurch Local Plan (2001)* endorse the presumption against inappropriate development in the Green Belt.

6. The stationing of a static caravan and a touring caravan on the appeal site, together with any associated ancillary buildings and vehicular parking, would reduce the openness of the site to a significant extent. As the site would encroach into the countryside and constitute unrestricted sprawl the appeal scheme would also be contrary to two of the purposes of including land within the Green Belt. The appeal development, therefore, is inappropriate development, harmful to the Green Belt and in conflict with policies to protect the Green Belt. Substantial weight needs to be attached to this harm.

Rural Character

7. For the most part the land around the appeal site is wooded or laid out as paddocks whilst any development in the area is limited and scattered. As a result the local area has a pleasant rural character. The appeal site is not particularly noticeable in longer distance views because of local topography and/or intervening vegetation and trees. However any caravans stationed on the site would be clearly visible from Dudmoor Farm Road and from the adjacent lane. Viewed from here they would appear incongruous in this area of substantially undeveloped well-wooded countryside. I am aware of the other mobile homes and buildings in the area but this does not alter my view that the appeal development would be intrusive and appear out of place.
8. Limited consideration can be given in any assessment of local character to the three caravan pitches opposite as they do not have the benefit of planning permission and are the subject of an extant enforcement notice. Although the existing hard-surfacing across the appeal site may be immune from enforcement action and some of the boundary fencing may be permitted development these elements are relatively inconspicuous in comparison to what is proposed. I acknowledge that additional planting of appropriate indigenous species would help to lessen the site's impact, but this would take time to mature and would be unlikely to screen all views throughout the year.
9. Consequently the site has a detrimental impact on the rural character of the local area and is not compatible with its surroundings. As such it is contrary to *Policies ENV17(4) and H18 of the Borough of Christchurch Local Plan*. This finding must be given significant weight. I am aware that *Circular 01/2006* does not rule out gypsy sites within rural settings. However in my view this does not obviate the need to assess the impact of such development on the countryside and on rural character.
10. In reaching these views on the impact on openness and local character I believe that very little weight can be given to a fallback position. There are no existing planning permissions on the site and possible future uses are extremely limited, given the site's restricted size and countryside location.

Other Considerations

Need for Accommodation for Gypsies in the Area

11. The recently prepared Dorset Traveller Accommodation Assessment (GTAA) estimates a demand in 2006 for 544 additional pitches for Gypsies and Travellers in Dorset, with 54 of these required in Christchurch. By 2011 it is estimated that at least 597 additional pitches will be required in the County, of which 60 will be needed in Christchurch.
12. This information forms the basis for the additional pitch requirements specified for Dorset and its Districts in the South West Regional Assembly's *Partial Review of the Draft Regional Spatial Strategy for the South West 2006-2026: Provision for Gypsy and Traveller Caravan Sites*. This *Review* will endeavour to establish how many new pitches will be needed in each area of the region in the period to 2011. Views on the provision of additional pitches, including numbers, are currently being sought from across the region. The *Review* will then be the subject to an Examination in Public in early 2008. Once the final figures are established the Dorset Authorities have agreed to prepare a joint Gypsy and Traveller Accommodation Development Plan Document (DPD) identifying sites. It is anticipated, however, that this document will not be adopted until 2012.
13. The final figures for additional pitch requirements have not yet been established. However on the basis of the information available in the GTAA it is fair to say that there is a substantial shortfall of sites for Gypsies in both Dorset and Christchurch Borough. Furthermore it is likely to be a number of years before new additional pitches are brought forward. These findings must be accorded considerable weight in the determination of the appeal.

Availability of Alternative Accommodation

14. Apart from one small private site at Hurn there are no existing authorised Gypsy sites within the Borough. This particular site is occupied by members of the same family and consequently pitches are unlikely to be made available to other families. With one exception all the public sites in the County are fully occupied with waiting lists. The exception is a site at Wareham where the Council believes there are vacancies. However this site is in the order of 20 miles away from the appeal site and in view of Mrs Gaskin's need to stay close to Bournemouth Hospital, referred to below, is not a suitable alternative. Mr Gaskin has endeavoured to find alternative sites in the local area but to no avail. As the couple are Gypsies used to travelling and living in caravans moving into a permanent dwelling would not be a suitable alternative.
15. In the event of dismissal of the appeal the Council confirmed at the Hearing that steps would be taken to secure the vacation of the site. In the absence of alternative sites being available it is likely that Mr and Mrs Gaskin would have to resort to unauthorised camping. The lack of alternative accommodation in the local area and the likelihood that this family would have to resort to unauthorised camping must be given substantial weight.

Health Care

16. Mrs Gaskin has in the last year been diagnosed as having essential thrombocythaemia (very high platelet count), a chronic myeloproliferative

disorder. Her present symptoms include dizziness, lethargy, nose bleeds, gum bleeding, easy bruising and frequent headaches. She attends Bournemouth Hospital, which is a short distance away from the appeal site, on a fortnightly basis. There is a specialist haematology department at the hospital where she is treated and monitored. Her GP confirms that she is likely to need monitoring throughout her life. At some stage in the future it is likely that her treatment will need to be increased as the rising platelet count puts her at risks of producing blood clots that in turn can lead to strokes and heart attacks. Her GP has advised her not to travel if it can be avoided and to avoid actions that may lead to developing blood clots.

17. By remaining on the appeal site Mrs Gaskin could continue to have ready access to the medical care and monitoring that she receives at Bournemouth Hospital. An itinerant lifestyle stopping by the roadside would make it extremely difficult for Mrs Gaskin to maintain these arrangements and would be likely to have a detrimental impact on her health. In addition the help and support she currently receives from those living on neighbouring plots, particularly when Mr Gaskin is away travelling, would be lost. The health-care needs of Mrs Gaskin, therefore, must be given significant weight.

Dorset Heaths

18. The application site lies about 165m (linear distance) from the Town Common Site of Special Scientific Interest (SSSI), one of the 43 SSSIs that comprise the Dorset Heathlands Special Protection Area (SPA). It is also one of the SSSIs that make-up the Dorset Heaths Special Area of Conservation (SAC). It is also a component part of the Dorset Heathlands Ramsar site.
19. Town Common covers about 250ha, making it one of the largest of the 150 heathland fragments that make up the Dorset heathlands. The large size of Town Common and its topographic variation means that the area contains, on a large scale, several distinct types of heath habitat ranging from dry heath through to wet heath and mire. As a result there is a high diversity of heathland plants and animals. These include rare breeding birds such as the Dartford warbler, nightjar and woodlark, rare and local species from a wide range of invertebrate groups and Britain's two rarest reptile species, the sand lizard and smooth snake.
20. In view of the proximity of the European sites (SPA & SAC) determination of the appeal needs to be undertaken with regard to the requirements of the Conservation (Natural Habitats, &c.) Regulations 1994. In particular Regulation 48 requires a determination to be made as to whether the development is likely, either alone or in combination with other plans or projects, to have a significant effect on the SPA and SAC.
21. Natural England indicate in their submissions that the harmful effects of this development alone are likely to be small. However NE considers that the appeal scheme in combination with other residential development proposals would increase the population in the local area and this in turn would have an unacceptable impact on the protected designated sites. In particular damage to the flora and fauna of the SPA and SAC would be likely to occur as a result, of amongst other things, increased recreational and leisure usage, including dog-walking, increased risk of fires and tipping, and predation by domestic cats.

22. It is Natural England's view that the granting of planning permission in this case would set a presumption in favour of this type of residential development and encourage further such development that would be difficult to resist. As a result there would be potential for a large number of similar applications within 400m of the SPA. Consequently it is the cumulative effect of this proposal and other similar proposals that would have a significant effect on the protected sites.
23. In my view it is extremely unlikely that similar applications to the appeal scheme with the same justification would be forthcoming. This particular application is to provide a site, either on a permanent or temporary basis, for a married Gypsy couple who because of the wife's particular health problems need to have a settled base close to Bournemouth Hospital. There are no alternative Gypsy sites close to the hospital where the couple could be accommodated. The possibility of this set of circumstances arising again and forming the justification for subsequent applications in the area is remote. Consequently I believe that it is reasonable to set aside the argument relating to the cumulative effect of similar proposals. I believe a case such as this is quite different from a proposal for an additional permanent dwelling the approval of which could well set a precedent for additional house-building in the local area.
24. I share Natural England's view that the harmful effects of the development alone are likely to be small. In reaching this view I am mindful that as far as I am aware there are no direct links to Town Common from the site and that to gain access, those living on the site would be likely to have to walk considerably further than the linear distance. This is likely to deter visits, including dog walking, on a regular basis. Mr Gaskin's intention to continue travelling and Mrs Gaskin's health are also factors that would reduce the likelihood of regular visits to Town Common. As the site is somewhat divorced from Town Common its residential occupation would be unlikely to increase the risk of fires or tipping taking place on the heath. The keeping of a pet cat by Mr and Mrs Gaskin is a possibility and would be difficult to prevent by planning condition. However given the substantial size of Town Common an additional domestic cat is unlikely to have a significant impact on its wildlife. If I believed that allowing the appeal development would set a precedent for allowing more people to live within 400m of the SPA it is likely that I would have found the cumulative effects on Town Common to be significant.
25. In summary I consider that allowing this particular development is unlikely to have a significant effect, either alone or in combination with other plans and projects, upon the protected European sites. It is therefore not necessary to undertake an appropriate assessment under the terms of Regulation 48 of the 1994 regulations. I conclude, therefore, that the development would not cause significant harm to the nature conservation value of the Dorset Heaths. As such the scheme is not in conflict with the objectives of *Settlement Policies A, B, C & D* of the *Bournemouth, Dorset and Poole Structure Plan (2001)*, *Policies ENV11 and ENV12* of the *Borough of Christchurch Local Plan (2001)* and *The Dorset Heathlands Interim Planning Framework 2006-2009 (2007)*.

Whether the other considerations weighing in favour of the development clearly outweigh the harm to the Green Belt, and any other harm, thereby justifying the proposal on the basis of very special circumstances.

26. I have found that the appeal scheme would be harmful to the Green Belt and would have a detrimental impact on the rural character of the local area. Substantial weight needs to be attached to this harm in the determination of this appeal. I have identified a number of other material considerations that favour the appeal development and to which I believe significant weight should be attached. There is a substantial shortfall of accommodation for Gypsies in the area and a current lack of locally available sites for Mr and Mrs Gaskin. Furthermore Mrs Gaskin has strong medical grounds for a settled base close to Bournemouth Hospital.
27. Dismissal of the appeal may mean that the occupiers of the site would have to leave the site in the near future without any certainty of suitable alternative accommodation being readily available. I recognise that this would represent a substantial interference with their home and family life. However these other material considerations, even when added together, do not clearly outweigh the harm that would be caused by the development in terms of the impact on the Green Belt and local character. In view of this a permanent permission would not be appropriate.
28. However given the acknowledged difficulties of finding a suitable alternative site within the locality, the planned DPD for Gypsies and Travellers, which is likely to lead to the identification of additional sites, and the specific health-care needs of Mrs Gaskin, I consider that a temporary planning permission is reasonable and justified.
29. The joint Gypsy and Traveller Accommodation DPD is due for completion in 2012. A 5 year temporary permission would allow for this exercise to be completed and additional sites to be identified. During this time Mr and Mrs Gaskin can continue to search for alternative accommodation in the area, enjoy a stable and settled existence and have ready access to Bournemouth Hospital. Consequently there is a time-limited factor, which in combination with other material considerations, clearly outweigh the identified harm in the short and medium term and justify a temporary planning permission. At the end of the temporary period any further application for the continued use of the site would have to take account of the harm and other material considerations relevant at that time, including the joint Gypsy and Traveller Accommodation DPD
30. In adopting this approach I am particularly mindful of *paragraphs 45 and 46 of Circular 01/2006*. This indicates a temporary planning permission may be appropriate where there is an unmet need but no available alternative Gypsy and Traveller provision in an area but there is a reasonable expectation that new sites are likely to become available at the end of that period in the area. It is also made clear that the fact that a temporary permission has been granted on this basis should not be regarded as setting a precedent for the determination of any future applications for permission for use of the land as a caravan site.

31. I consider that the protection of the public interest cannot be achieved by means that are less interfering of this family's rights. They are proportionate and necessary in the circumstances and hence would not result in a violation of their rights under *Article 8* of the *European Convention on Human Rights*.
32. My overall conclusion, therefore, is that whilst a permanent permission is not appropriate there are other material considerations that when taken together justify a temporary permission for a period of 5 years. I have read and taken into account the various appeal decisions and judgements referred to me. These decisions highlight the importance of balancing any conflict with development plan policy against other material considerations. This has been the basis to my approach in this case. I do not consider that allowing this appeal and granting a temporary planning permission for 5 years would set a precedent for allowing other gypsy sites either locally or in the wider area, as each planning decision must be determined on its merits. None of the other matters raised, including the past history of the site and the surroundings, outweigh the considerations that have led to my conclusions.

Conditions

33. The need for conditions has been considered in the light of the advice contained in *Circular 11/95*. It is clear from my reasoning that I do not consider that, on the basis of the material before me, that a permanent planning permission would be justified. However the particular circumstances of the case justify a temporary planning permission for John Gaskin and Bee Gaskin and their resident dependants (*Condition 1*). A 5 year temporary permission would allow for the identification of additional gypsy sites in the joint Gypsy and Traveller Accommodation DPD.
34. At the end of the 5 years, or when Mr and Mrs Gaskin and their resident dependants vacate the site, whichever is the sooner, the use shall cease and the site shall be laid out in accordance with a scheme to be approved by the Council (*Conditions 2 & 3*). Other conditions are required to minimise the impact of the scheme on the local area, including restricting the use of the site to no more than 2 caravans (*Condition 4*), the prohibition of trade or business (*Condition 5*) and limiting the size of vehicles to be kept on the site (*Condition 6*).

Christopher Anstey

Inspector

PLANS

Plan A. Site Location Plan

Plan B. Site Layout.

Plan C. Heathland SPA – 400m Development Buffer – handed in by Mr Moir.