
Appeal Decision

Hearing held on 21 October 2014

by Louise Phillips MA (Cantab) MSc MRTPI

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

Decision date: 7 January 2015

Appeal Ref: APP/X2220/A/14/2220315

Land off Hay Hill, Eastry, Deal, Kent CT14 0ED

- 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 J Ransley against the decision of Dover District Council.
 - The application Ref DOV/14/00169, dated 19 February 2014, was refused by notice dated 19 May 2014.
 - The development is described as "change of use of a brownfield site presently used as a waste/rubbish area to a residential development of a maximum of four static caravans".
-

Decision

1. The appeal is allowed and planning permission is granted for the change of use of the site to a residential development of a maximum of four static caravans at Land off Hay Hill, Eastry, Deal, Kent CT14 0ED in accordance with the terms of the application, Ref DOV/14/00169, dated 19 February 2014, subject to the conditions set out in Annex A.

Application for Costs

2. Before the Hearing, an application for costs was made by Mr J Ransley against Dover District Council. This application is the subject of a separate decision.

Procedural Matters

3. It was confirmed at the Hearing that the site has no official use as a waste or rubbish area. Rather, it has suffered fly-tipping and unauthorised dumping after being vacated by the previous owner. Therefore I have amended the description of development in the formal decision to more accurately reflect the proposal at hand.
4. The proposal is made on the basis that the site would be occupied by gypsies and travellers and the appellant states that he and his family are Romany Gypsies. The Council is satisfied that the family has gypsy status in accordance with the definition given in Annex 1 of the Government's Planning Policy for Traveller Sites (PPTS) and, based on the evidence I have read and heard, I have no reason to disagree. National and local policies specific to gypsies and travellers are therefore relevant in this case.
5. The residential use of the site has commenced as two of the four static caravans proposed are present and occupied. Some of the associated operational development has also taken place, but the scheme as a whole is

incomplete. I note that the new point of access which has been constructed to serve Plot 4 is not in the position shown on the plans, but I must determine the appeal on the basis of the development applied for.

6. In this respect, I recognise that the appellant wishes to station four touring caravans (tourers) on the site and to construct four utility blocks (one of each per pitch). Indeed, three tourers were on the site at the time of my visit as were a couple of small utility 'sheds'. The appellant considers that I should take account of these additional structures in making my decision and that any planning permission should include them in the event the appeal is allowed.
7. The merits of this approach were discussed at length at the Hearing, but I remain of the view that to take it would prejudice the interests of third parties by denying them an opportunity to comment. I acknowledge the government guidance which states that an average family pitch could be expected to accommodate a large trailer, a tourer and an amenity building¹, but the inclusion of the latter elements would significantly alter the scale and nature of the proposal before me. This could come as a surprise to anyone unfamiliar with the document to which I have referred.
8. Consequently, I have determined the application on the basis of the four static caravans applied for so that tourers and utility buildings do not form part of the scheme. It would not be appropriate to impose conditions requiring details of the additional structures to be submitted to the Council for approval as this would effectively sanction development that neither the Council nor interested parties have formally considered. The appellant advises that where a caravan site licence requires utility buildings to be provided, they may be constructed under permitted development rights. Whilst this could happen it does not change my view of how I should proceed, particularly as the scope of the original application and subsequent appeal are different matters.
9. The appeal site is surrounded by earth bunds on three sides and the plans show that they are to be retained. They were constructed some years ago by the previous owner of the land and retrospective planning permission was refused in 2007. A subsequent appeal was dismissed in October 2008² but the Council did not take enforcement action and it now agrees that the bunds are immune from such action in the future. Thus the appellant does not seek to regularise the situation with the present proposal, but rather relies on the fact that the bunds are *in situ* and that the Council cannot require their removal. I have determined the appeal on this basis.

Main Issues

10. The main issues are:

- Whether the development meets the objectives of sustainable development in respect of the need to travel to services and facilities;
- Its effect on the character and appearance of the area;
- Its effect on the supply and productive use of high quality agricultural land; and

¹ Designing Gypsy & Traveller Sites: Good Practice Guide, May 2008.

² Ref APP/X2220/A/08/2070085.

- If any harm arises from the issues above, whether it is outweighed by other considerations, including the need for gypsy and traveller sites generally, and the specific circumstances of the people involved in this case.

Reasons

Travel

11. The appeal site lies approximately 1km to the east of the village of Eastry, outside the settlement confines and in the countryside for development plan purposes. Policy DM1 of the Core Strategy³ restricts development in such locations subject to specific exceptions or unless it is justified by other development plan policies. Policy DM7 of the Core Strategy concerns the provision of gypsy and traveller sites, but the Council considers it to be out of date with the requirements of national policy. Nevertheless, it remains a development plan policy and so I have had regard to it as required by Section 38(6) of the Act⁴. I have taken account of national policy as a significant material consideration.
12. Policy DM7 sets criteria for the location of gypsy and traveller sites. It does not specifically preclude development in the countryside, but neither does it explicitly justify a departure from the terms of Policy DM1. Similarly, while Policy C of the PPTS clearly anticipates sites in rural or semi-rural settings (paragraph 12), Policy H of the same document states that new traveller sites in open countryside, away from existing settlements, should be strictly limited (paragraph 23). Therefore, the strategy for the location of development comprised in Policy DM1 is legitimately applicable to gypsy and traveller proposals and the scheme before me would, strictly speaking, conflict with it.
13. The Council's first reason for refusal is that the appeal site is unsustainable because it would lead to an increase in travel by private car beyond the settlement boundary. Certainly the short walk into Eastry along Hay Hill (turning into Brook Street) would not be easy because the road is narrow, there are no pavements, it is overhung by trees and it is not lit. However, it is not necessary to walk far from the site before it is possible to access a surfaced, traffic-free path into the village. The presence of this path satisfies me that residents of the site could walk safely and relatively easily into Eastry.
14. Eastry is not a particularly large centre, but it does offer a range of services and facilities including a primary school, doctor's surgery and post office as well as a number of small shops, pubs and takeaways/restaurants. Thus while I do not doubt that residents of the appeal site would, like other residents of this rural area, travel frequently by private car, they would not be dependent upon this mode of transport for their day-to-day needs. The domestic traffic which would be likely to result from just four additional households would not be significant and it is not proposed to operate any business activities from the site. Planning conditions could be imposed to limit the number and size of any commercial vehicles to be kept on the site for use elsewhere.
15. Therefore, while the location of the appeal site conflicts with development plan policy, it would be accessible to local services and facilities in accordance with criterion i of Policy DM7. Furthermore, paragraph 29 the Framework recognises that opportunities to maximise sustainable transport solutions will

³ Dover District Local Development Framework, Core Strategy, February 2010.

⁴ Planning & Compulsory Purchase Act, 2004.

vary from urban to rural areas. Consequently, I conclude that the proposal meets the objectives of sustainable development in respect of the need to travel to services and facilities. The aims of Policy DM11 of the Core Strategy, to reduce reliance on private vehicles and manage the demand for travel, would not be compromised.

Character and Appearance

16. Brook Street/Hay Hill leading east from Eastry towards the appeal site has a rural feel for much of its length, being narrow and dotted with houses set well apart as far as the bridge over the A256. The site is to the east of the bridge where the area is characterised by open countryside. Indeed, there is no vegetation along the roadside immediately opposite the appeal site and this permits long views across the farmland to the north. Many of the fields are large and boundary hedgerows are few, but groups of trees and tree lines are by no means unusual features in the landscape.
17. In views from the east and west along Hay Hill, the development is well screened by recent planting along the boundary of the site and by mature vegetation along the A256 cutting respectively. In nearer views, it is not prominent because the ground level of the site is above that of the road and the bunds provide significant screening. With the passage of time, the bunds have become covered with grass and plant life and while they presently look a little untidy, they do not appear to me incongruous.
18. Turning to longer views, some elements of the development can be seen from a picnic area on Sandwich Road to the north-west of the site and from certain points along a footpath adjacent to Felderland Lane. However, given the small scale of the development overall, and the modest height and size of the individual structures proposed, it would not stand out unduly when viewed from this distance. Nor would it be likely to draw the attention of casual observers.
19. The site is on high ground on a ridge, but some of the caravans are/would be viewed against a wooded backdrop while others would be partially screened by trees in the foreground. With some modest landscaping at the front of the site, neither the caravans now proposed nor any associated paraphernalia would be particularly conspicuous. Details of any landscaping scheme could be the subject of a planning condition and some well-considered planting would not look out of place in the wider landscape. Therefore the site could be screened from wider view in line with Policy DM7. Whilst I have taken account of the advice in paragraph 24(d) of the PPTS that sites should not be so enclosed that they appear deliberately isolated, this concerns hard landscaping, walls and fences rather than the trees and shrubs envisaged.
20. I have also had regard to the concerns expressed by interested parties that the site would look over-developed, but I am satisfied that it could comfortably accommodate the caravans proposed. Moreover, the balance of hardstanding to garden would be reasonable and I did not observe that the garden areas shown on the plans had been concreted over as some of the representations suggest.
21. For the reasons above, I conclude that the proposed development would not harm the character and appearance of the area and I find no particular conflict with Policy DM15 of the Core Strategy.

Agricultural Land

22. The site comprises best and most versatile agricultural land (BMV land), likely of Grade 1 quality, but of Grade 3 quality at worst. Paragraph 109 of the Framework requires the planning system to contribute to and enhance the natural environment, including with reference to soils, while paragraph 112 specifically states that the economic and other benefits of BMV land should be taken into account.
23. In considering the effect of the bunds in respect of this matter, the previous Inspector found that they had led to the direct loss of valuable BMV and reduced the efficient and productive use of the site (paragraph 7). I agree with her conclusion and with the current position of the Council that the loss of the whole site to a non-agricultural use would be regrettable. However, given the likelihood that the bunds will remain whether or not I dismiss this appeal, it seems there is little prospect of the site returning to productive use in the near future.
24. On this basis, I conclude that the development would have little practical effect on the supply and productive use of BMV land.

Other Considerations and Balancing

25. The proposal would not cause harm in terms of either the need to travel, or its effects on the character and appearance of the area and agricultural land, but it would be contrary to development plan policy by virtue of being located outside settlement boundaries. However, the Council accepts that it cannot identify any sites to meet the need for gypsy and traveller pitches in the District. Nor can it point to any alternative sites which would be available to the appellant and his family in Dover or neighbouring local authority areas.
26. Furthermore, the four pitches proposed would provide almost a quarter of the unmet need for sites in the District⁵. This would be a significant benefit of the scheme in general terms. More specifically, the appellant explains that his family now requires a settled base because it is increasingly difficult to stop on the roadside when travelling. The family has historic ties to Eastry and, in addition to the basic domestic convenience a permanent home would offer, several children require access to education while other individuals are in need of ongoing medical care. Thus the development would clearly be of benefit to this particular family and, in light of the Government's aim to facilitate the traditional and nomadic life of travellers (PPTS, paragraph 3), I am satisfied that at present there is no other suitable accommodation available to meet their needs.
27. Therefore, I give substantial weight to the benefit of gypsy and traveller accommodation and this outweighs the conflict with Policy DM1. In reaching this view, I acknowledge that the Council is preparing a Land Allocations Local Plan⁶ in order to identify preferred sites for gypsies and travellers. Moreover, in determining the application at hand, the Planning Committee resolved not to take enforcement action against the development until it decides whether the appeal site will be allocated. However, while this decision was undoubtedly

⁵ The Gypsy, Traveller & Travelling Showpeople Accommodation Needs Assessment, undertaken by Salford University in 2013, identified a need for 17 additional pitches in Dover during the period 2013-2027.

⁶ Gypsy, Traveller & Travelling Showpeople Land Allocations Local Plan.

well-intentioned, it offers little security of tenure for the appellants and makes no significant progress towards addressing the immediate need for sites.

28. I recognise that paragraph 25 of the PPTS indicates that where a Council cannot demonstrate a five-year supply of deliverable gypsy and traveller sites, this weighs in favour of a grant of temporary, rather than permanent planning permission. Nevertheless, as the scheme would cause no tangible harm, a permanent permission is appropriate in this case.

Other Matters

29. In reaching my decision, I have had regard to the issues raised by interested parties which, in addition to those covered above, include that local schools and other services are over-subscribed and that the site is potentially contaminated by hazardous substances. There is no detailed evidence before me to substantiate the first concern and it would appear that the second relates to the fly-tipping which took place before the appellant moved onto the site. I was told that the appellant has cleared a great deal of rubbish from the site and that asbestos has been removed by specialist contractors. There is no technical information to indicate any underlying problem with pollution.
30. Consequently, these other matters neither outweigh nor alter my findings in relation to the main issues of the appeal.

Conclusion and Conditions

31. For the reasons given above, I conclude that the appeal should be allowed.
32. I have considered the conditions suggested by the Council in light of the tests set out at paragraph 206 of the Framework and the advice in the Planning Practice Guidance.
33. Whilst the Council has suggested a condition to require the development to be carried out in accordance with the approved plans, this is not appropriate for a change of use of land. Matters related to operational development can be satisfactorily covered by other conditions. It is necessary to limit the number of caravans which can be stationed on the site in order to define the extent of the planning permission given and, in the interests of highway safety and character and appearance, it is also necessary to limit the number of commercial vehicles kept by residents. As permission is justified by the need for gypsy and traveller accommodation in the area, it is necessary to restrict the occupation of the site to that by gypsies and travellers as defined in the PPTS.
34. As discussed above, a scheme of landscaping is needed to protect the character and appearance of the area. Details are therefore required to be submitted by condition, and for the same reason, details of any external lighting and of bin storage to be provided are also required. As the use has commenced, the condition is imposed in a form which would give rise to significant consequences in the event of non-compliance. Similarly, it is necessary for works to be carried out to provide safe vehicular access and adequate sanitation and drainage as a matter of urgency.
35. To protect the character and appearance of the area, I have imposed a condition removing permitted development rights to erect any means of enclosure along the boundary of the site with the highway.

36. The Council agreed at the Hearing that it was not necessary to restrict the size of the caravans to that shown on the plans but rather to rely on the definitions in the relevant Acts and I have amended its suggested condition No 2 accordingly. Likewise, it was not considered necessary to seek details of parking bays given that sufficient space is clearly available within the site. Consequently I have not imposed the Council's suggested condition No 8.
37. Nor have I imposed a condition requiring visibility splays at the points of access to be kept clear of obstructions. No specific dimensions for visibility splays have been shown and, because in practice they consist only of the driveway openings themselves, it seems highly unlikely that they will become blocked.

Louise Phillips
INSPECTOR

Annex A – Conditions

- 1) No more than 4 caravans (including static caravans and touring caravans) as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 shall be stationed on the site at any time.
- 2) The site shall not be occupied by any persons other than gypsies and travellers as defined in paragraph 1 of Annex 1 to the Planning Policy for Traveller Sites, March 2012, or in any subsequent Government policy re-enacting or modifying that definition.
- 3) No more than two commercial vehicles per pitch shall be kept on the land at any time. These shall be for use only by the occupiers of the caravans hereby permitted, and shall not exceed 3.5 tonnes in weight.
- 4) 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 28 days of the date of failure to meet any one the requirements set out in (i) to (v) below:
 - i) Within 3 months of the date of this decision, a scheme for the landscaping of the site, including the bunds; any external lighting on the boundaries of and within the site; and bin storage as indicated on the plans hereby approved (hereafter referred to as the site development scheme) shall have been submitted for the written approval of the local planning authority along with a timetable for its implementation.
 - ii) Within 11 months of the date of this decision the site development scheme shall have been approved by the local planning authority or, if the local planning authority refuse to approve the scheme, or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
 - iii) If an appeal is made in pursuance of (ii) above, that appeal shall have been finally determined and the submitted site development scheme shall have been approved by the Secretary of State.
 - iv) The approved scheme shall have been carried out and completed in accordance with the approved timetable.
 - v) Within three months of the date of this decision, the following works shall have been completed:
 - The repositioning of the access to Plot 4 in accordance with the details shown on drawing No 1953-102 Revision B. The access as presently constructed shall be closed.
 - The surfacing of the first five metres from the edge of the highway of each access, including those already constructed and the repositioned access to Plot 4, in a bound material;
 - The installation of the septic tanks and site drainage scheme as shown on drawing No 1953-104 Revision B.
- 5) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking, re-enacting or modifying that Order), no means of enclosure shall be erected on the front boundary of the site between the bunds and the highway.

APPEARANCES

FOR THE APPELLANT:

Mrs A Heine	Agent
Mr J Ransley	Appellant
Mr J Ransley	Appellant's father
Mr F Sykes	Appellant's cousin
Mr A Mobey	Appellant's cousin

FOR THE LOCAL PLANNING AUTHORITY:

Mr J McEwan	Principal Planning Officer (Enforcement), Dover District Council
Cllr B Gardner	Planning Committee, Dover District Council
Cllr P Beresford	Planning Committee, Dover District Council

INTERESTED PERSONS:

Mrs L Ousey	Local resident
Mrs M Ovenden	Local resident
Mr R Platt	Local resident
Cllr S Manion	District and County Councillor speaking on behalf of residents

DOCUMENTS

1. Appellant's final comments in relation to costs application.