



# Appeal Decision

Hearing held on 8 March 2023

Site visit made on 8 March 2023

**by Rachael Pipkin BA (Hons) MPhil MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 3 April 2023**

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**Appeal Ref: APP/L2250/W/21/3285174**

**Land adjacent to A259, Old Romney, Romney Marsh**

- 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 C Delaney against the decision of Folkestone and Hythe District Council.
  - The application Ref 21/0585/FH, dated 18 March 2021, was refused by notice dated 6 August 2021.
  - The development proposed is change of use of land for 4no pitch Gypsy & Traveller site with associated operational development including 2no new entrances, installation of 2no water treatment plants, hardstanding and landscaping.
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## Decision

1. The appeal is dismissed.

## Preliminary Matters

2. The site has been previously used for the purposes proposed but this was unauthorised. The Council became aware of development on the site and the stationing of motorhomes on the land in June 2020. An injunction was served on the appellant on 28 August 2020 forbidding further development and the stationing of additional caravans on the site. A further injunction was granted prohibiting the works in the August injunction until 27 January 2024. The use has temporarily ceased, pending the outcome of this appeal and following the court action. The site is currently unoccupied with some evidence of the previous occupation of the site remaining.
3. The appellant submitted a revised plan alongside her statement of case. It was agreed at the Hearing that due to discrepancies between this plan and those submitted as part of the original planning application, this plan would be for illustrative purposes only. I have proceeded on that basis.
4. Since the appeal was lodged, the Folkestone & Hythe District Core Strategy Review (the CSR) was adopted on 30 March 2022. Both parties were given the opportunity to comment on the implications of this plan for the appeal.

## Main Issues

5. The main issues are:
  - the effect of the proposed development on the character and appearance of the area;

- whether the proposal would result in an unacceptable loss of the best and most versatile agricultural land; and
- whether there are any material considerations which mean that the decision should be made otherwise than in accordance with the development plan.

## **Reasons**

### *Character and appearance*

6. The appeal site is a relatively open, rectangular plot of land adjacent to the A259. It forms part of a much larger field from which it has been separated by a post and wire fence. A short distance to the west of the site, and separated by an area of open land, there is a small cluster of three residential dwellings with a gypsy site, Willow Springs, immediately to the west of these. There are fields on the opposite side of the A259. The area has a strong rural character.
7. Whilst the appeal site does not lie within a nationally designated or protected landscape, it is within the locally designated Romney Marsh Landscape Area (the RMLA). Local Landscape Areas are described in the Places and Policies Local Plan 2020 (the PPLP) as areas which are of particular local landscape value, contributing to local environmental quality and identity.
8. The surrounding area within the RMLA comprises an area of marsh with fields separated from each by ditches rather than boundary vegetation which gives this rural landscape a distinctive open and spacious character. Along the A259, which sits in a slightly elevated position to the surrounding landscape, there is sporadic vegetation comprising trees and hedgerows. There is none between the appeal site and the road. Prior to the unauthorised use of the site with associated development, the appeal site would have made a positive contribution to the landscape in much the same way as the adjacent parcel of land does.
9. The appeal site is highly visible from the road. Although there are only some limited remnants of caravans that were previously stationed on the site, the hardstanding, two access points, the fencing and some immature planting are visible. These appear incongruous against the backdrop of the field that surrounds the site. With four pitches including both static and touring caravans and other domestic paraphernalia on the site, the interruption of the rural landscape would be significant and adverse in its effect, detracting from the openness and rural character of the landscape.
10. I appreciate that the site is a short distance from some existing development, however, it is separated from this by the adjacent open land. I also recognise that the Council has allocated the nearby gypsy site for the same purpose as the appeal proposal. Arguably, this indicates that such development is acceptable in this location. However, the allocated site is not comparable to the appeal site, being directly adjacent to existing development. It also extends further back from the road, thereby the caravans and other paraphernalia on the site are less prominent in public views from the highway.
11. Development along the A259 is limited and dispersed between settlements. Although close to a small cluster of development, the appeal proposal would extend the amount of development along the A259 away from any defined settlements and would be harmful.

12. The appellant has suggested that landscaping planting could be planted to soften the appearance of the development and provide some screening to reduce its visual impact. This could be native planting to better integrate with the surroundings. However, the area and wider landscape is not characterised by boundary planting. I appreciate there is some associated with the nearby residential properties, including a substantial evergreen hedge between the westernmost property and Willow Springs. However, this is not a typical feature of the area.
13. There was some discussion at the Hearing about the required planting for Willow Springs and that a landscaping scheme had yet to be submitted and approved. I have not been provided with the full details of this as part of the appeal submissions but it was suggested to me that this planting would most likely run along the site's boundary with the road. I recognise that this would not be dissimilar to what the appeal scheme proposes. However, the cumulative effect of this type of landscaping would begin to change the character along this stretch of the A259 in a manner unsympathetic to the open landscape.
14. I have been referred to a number of appeal decisions where it is suggested that similar proposals to the appeal scheme have been allowed, notably with regards to their position in close proximity to a road frontage and planning gains being achieved through landscaping. This includes appeals<sup>1</sup> at Ash Gardens, Pudsey Hall Lane and Birchanger Lane. None of these are within the same local authority area as the appeal site.
15. The Ash Gardens decision refers to significant roadside hedges and mature tree planting, which do not exist at the appeal site. In both the Pudsey Hall Lane and Birchanger Lane decisions, the Inspectors were considering the effect on Green Belt and openness and not specifically character and appearance. Furthermore, in both these cases there are references to the sites being screened by hedges and mature trees, which do not exist in the case of the appeal scheme. These appeals have therefore been considered in their own context and are not directly comparable to the scheme before me. They do not lead me to a different finding in respect of the effect of the appeal proposal on the character and appearance of the locality.
16. Various other appeal decisions have been brought to my attention in support of the appellant's case but no specific parallels with the appeal scheme highlighted. I note that these decisions have dealt with matters in respect of character and appearance. However, my conclusions remain as above that these sites will have been assessed in their own context. I recognise that soft landscaping a site can, in some circumstances, mitigate harm that arises but that needs to be considered within the context of the site itself which I have done.
17. I conclude that the proposal would significantly harm the character and appearance of the area. It would therefore conflict with Policies SS3 of the CSR, NE3 and HB14 of the PPLP which together seek to protect or enhance the landscape character and functioning landscape character areas and require new gypsy and traveller sites to not result in an adverse effect on the landscape. It would also not accord with the National Planning Policy Framework (the Framework) which requires development to add to the overall quality of the

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<sup>1</sup> APP/U2235/W/18/3199316, APP/B1550/C/18/3209438, APP/C1570/C/18/3219384

area and should contribute to the local environment, recognising the intrinsic character and beauty of the countryside.

*Best and most versatile agricultural land*

18. Policy HW3 of the PPLP sets out, amongst other things, that to reduce the environmental impact of importing food, development proposal should not result in the loss of the best and most versatile agricultural land (BMV agricultural land) unless there is a compelling and overriding planning reason to do so and mitigation is provided through the provision of productive landscapes on-site or in the locality.
19. The Framework sets out in paragraph 174 that planning decisions should contribute to and enhance the local environment, recognising the economic and other benefits of the BMV agricultural land. Footnote 58 goes on to explain that where significant development of agricultural land is demonstrated to be necessary, areas of poorer quality land should be preferred to those of a higher quality.
20. The appeal site lies on an area of land which is classified as Grade 1 under the Agricultural Land Classification. This is excellent quality and the highest grade of agricultural land. This is a national and scarce resource. There is no dispute that it falls within this classification although the appellant disagrees with its value. Nevertheless, the proposal would result in the loss of BMV agricultural land.
21. The Framework does not define what is meant by 'significant'. It is not disputed that in terms of scale, the area of land that would be lost through the proposal would not be significant. However, the Council has argued that significant should also relate to the need required to justify development on BMV agricultural land.
22. In support of its position, the Council has referred me to an appeal decision<sup>2</sup> at land at Spade Lane, Hartlip where the Inspector set this out, explaining that to discount that loss on the grounds of scale would be to accept the possibility of continual marginal accretion of our best agricultural land that might eventually result in a major depredation of this major national resource. I accept and understand both the Council's and the Inspector's concerns that the incremental development of BMV agricultural land would, over time, deplete this resource. However, I have no evidence before me that this is a particular issue in this case.
23. The appellant has drawn my attention to historic aerial images of the area indicating the position of the appeal site and the adjacent vacant parcel of land as being separate from the active agricultural use adjoining these to the south. The appellant has argued that this diminishes the value of the site.
24. The photographic evidence supports the appellant's view that this area of land has been used differently to the larger field which it adjoins. However, the fact that there is limited evidence that it has been actively farmed or grazed, does not mean it is not capable of such use and could be put to that use in the future. For this reason, I do not accept that the overall value of appeal site as BMV agricultural land is diminished.

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<sup>2</sup> APP/V2255/A/14/2220447

25. No evidence has been put forward to demonstrate that poorer quality land has been considered as part of the justification for the use of this high quality BMV agricultural land. However, as I have not concluded that this is a significant development, there is no requirement to do so.
26. In terms of the requirements of Policy HW3, I shall come onto whether other considerations would outweigh the harm that would arise from the loss of BMV agricultural land in my overall planning balance. However, no mitigation is proposed as required by policy. The proposal would therefore conflict with it.

#### *Other considerations*

27. As I have found that the proposal conflicts with the development plan, I now turn to whether other considerations put forward by the appellant outweigh that conflict. These are that the proposal is compliant with criteria set out under Policy HB14, there is a need for more gypsy and traveller pitches in the district, the inevitability of these pitches being located in the countryside and the personal circumstances of the appellant and her family. I deal with each in turn.

#### Compliance with Policy HB14

28. Policy HB14 of the PPLP deals with accommodation for gypsies and travellers. It is a criteria based policy, dealing with living conditions of future occupants and nearby neighbours, the sustainability of the location, highway safety matters, justification for the loss of land allocated for another purpose and matters in respect of landscape and the environment. The Council has confirmed that apart from conflict with the landscape criterion, the proposal is not in conflict with this policy.

#### Unmet need

29. The Council published a Gypsy and Traveller Accommodation Assessment<sup>3</sup> (GTAA) in 2018. This formed the evidence base to the PPLP. It identified that there is a need for five permanent residential pitches during the plan period to 2037. The Council has met and exceeded this target within the first three years of the plan period. This is not disputed.
30. The GTAA was drawn up in the context of the PPTS 2015 Annex 1 definition. A recent judgment of the Court of Appeal in *Smith v SSLUCH & Ors*<sup>4</sup> has found the PPTS 2015 Annex 1 definition of gypsies and travellers to be unlawful on the basis that it discriminates against those gypsies and travellers who have permanently ceased to travel due to age and / or disability.
31. The Council explained that the GTAA took into account the needs of cultural gypsies and travellers. This includes those gypsies and travellers who do not meet the now unlawful definition. The needs of cultural gypsies are included within the pitch requirement identified within the PPLP. As I understand it, the same need applied to both those who met the definition and those who did not.
32. The appellant has argued that since the GTAA is over five years old, it is out of date. It should be refreshed every five years so it can properly assess current need. It has been argued that the appellant and her family should be taken as part of that need given that they were recently residing in the district.

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<sup>3</sup> Folkestone & Hythe Gypsy and Traveller and Travelling Showpersons Accommodation Assessment 2018

<sup>4</sup> *Smith v SSLUCH & Ors* [2022] EWCA Civ 1391

33. I accept that the GTAA should be refreshed given its age. However, as highlighted by the Council, there are few symptoms of unmet need which normally manifest themselves as temporary permissions, unauthorised encampments, doubling up, appeals and outstanding applications. In respect of these, the Council told me that there have been one or two encampments but these have been temporary in nature and there are two appeals, including this one, and one undetermined application.
34. This does not indicate a high level of unmet need. I recognise that the appellant and her family are seeking accommodation within the district and could be considered to contribute to need.
35. I shall come on to the personal circumstances of the appellant and her family later in my decision. However, whilst I recognise that the appellant and her family moved onto the site during 2020 and within the current period covered by the GTAA, I am cautious in accepting that this group represents unmet need in the district. This is because they are not currently residing on site, nor indeed, within the district itself. From the submissions and what I heard, they have chosen to live in this area, relocating from another part of the county. If I were to accept this argument, it seems to me that any such household moving into an area could argue that the Council's evidence base is out of date, as is being argued here, because their needs have not been taken into account.
36. This, to my mind, is unreasonable as such households would not have been known to the Council at the time it undertook its GTAA. In such circumstances, I consider it reasonable that the plan makes provision for that identified unmet need and policies are sufficiently flexible to allow for any additional need to be accommodated should it arise. This is the approach the Council has adopted.
37. The appellant agreed that the policy itself is not out of date and that, theoretically it is flexible to meet needs. However, it is argued that the policy sets too high a bar in respect of its final criterion in respect of landscape and environmental impacts, I have not been pointed to any evidence to substantiate this claim that the policy is unduly onerous and preventing development from going ahead.
38. I therefore find that although the appellant and her family wish to reside in the district, there is limited evidence to support the argument that there is unmet need within the district.

#### Location of sites

39. The appellant has argued that traveller sites will inevitably be located within the countryside and outside defined settlement boundaries on the basis that land in and around settlements is reserved for housing for the settled population. Consequently, the traveller community is forced to seek land beyond this area and therefore within the countryside. The affordability of land within or close to settlements is recognised. However, this in itself, does not justify the location of the pitch in such a prominent and visible countryside location.

#### Personal circumstances

40. The appellant and her family group comprise two related families, Ms Delaney and her children and the Molloy family. The status of the families as gypsies and travellers is not disputed by the Council.



41. From the submissions and discussion at the Hearing, it appears the families had been living at the site for around 4 months in 2020 but vacated it following the issuing of the injunction.
42. There are children within both families. Currently, Ms Delaney's children are attending a local school in the Gravesend area where the family is currently living. One of her children also has a limiting health condition that requires regular access to hospital. The family is registered at an address in Gravesend, through this the family is able to access both education and health services.
43. The children from the Molloy family are being home schooled as they have been unable to access school places in the area in which they are staying. I was told this was due to a combination of lack of school spaces and the family having no fixed address. There is also some evidence from 2019 of health issues affecting adults within the Molloy family but nothing to indicate that these are ongoing matters requiring regular hospital access.
44. In view of the circumstances of both families, it would clearly be beneficial for them to have a permanent base from which to access education and healthcare. This is not disputed by the Council. Evidently, in their current circumstances the children within the Molloy family are not currently accessing education and it would be in their best interests for them to do so.
45. I heard that during the time the families were residing at the appeal site, the children were attending the local school. However, the details of this were somewhat vague, particularly given the short period during which the families were living at the site.
46. It is not disputed that there are no available, suitable, acceptable and affordable alternative sites for the appellant and her family to resort within the district. Under paragraph 24 of the PPTS, there is no requirement for a local connection in order to justify an application for a site. However, there is no compelling evidence that the family group needs to reside at either the appeal site nor within the district area other than a desire to live close to the sea for health reasons.
47. In the event the appeal was dismissed, the appellant and her family group would not be able to return to the site to live. It would not provide them with the permanent base they require. However, they have not lived on the site since 2020 having stayed with friends. There is no firm evidence that a dismissal will lead to a roadside existence or cause them to move from where they are currently staying. However, the lack of a permanent base would not be in the best interests of the children, particularly the Molloy children who currently have no access to formal education.

#### Intentional Unauthorised Development

48. The Written Ministerial Statement (WMS) of December 2015 introduced a planning policy to make intentional unauthorised development a material consideration that would be weighed in the determination of planning applications and appeals. The Council has indicated that the use of the site, without the benefit of planning permission, amounts to intentional unauthorised development of the site. The appellant has not disputed that this is not the case.

49. The appellant has however argued that the WMS should be disregarded. In support of this position, I have been referred to an appeal decision<sup>5</sup> at Land rear of Kenwood, Green Lane, Chessington where an Inspector concluded that the WMSs should be disregarded given that the revised Framework is now the Government's statement of national planning policy.
50. Whilst the requirements of the WMS have not been incorporated into the latest revisions of the National Planning Policy Framework, the WMS has not been cancelled by the publication of either the 2018 or 2021 Framework nor has it been withdrawn. For this reason, whilst I acknowledge the Inspector's conclusions in the appeal to which I have been referred, I do not concur with that view. The WMS remains a relevant policy consideration. The unauthorised development of the site therefore weighs against the proposal.

### **Planning Balance**

51. At the start of considering the issues in the planning balance I have borne in mind the duty placed on me within the Public Sector Equality Duty under section 149 of the Equality Act 2010. I have also considered the best interests of the children in the family group that intend to occupy the site as a primary consideration.
52. The proposal would cause significant harm to the character and appearance of the area and would lead to the loss of a modest area of the highest quality BMV agricultural land. The other considerations do not amount to compelling and overriding planning reasons to justify the loss of the BMV. Together, I give these harms significant weight in the planning balance. The intentional unauthorised development of the site additionally weighs against the proposal.
53. In favour of the appeal, the appellant and her family group have a personal need for a settled base. The appellant's children are currently attending school and accessing health care although not from a permanent base. The Molloy family children, on the other hand, are not attending school. A permanent settled base would enable this to happen. The proposal would help advance equality of opportunity for these families. I attach significant weight to these considerations.
54. On balance, I am satisfied that the harm which would be caused by the development outweighs the other considerations to the extent that permanent planning permission should not be granted. A personal permission would give rise to similar harms that would be long-term in their effect and would also not justify the proposal.
55. However, it is also necessary to consider whether a time-limited permission could be granted. There is a case to do so in order that all the children have a secure and stable upbringing and education. However, both families are and have been residing elsewhere for a number of years, albeit the Molloy family stated they have moved around. I see no advantage in the appellant and her children relocating to the appeal site for a temporary period when her children are already in school.
56. It is not clear what the implications would be for the Molloy children if they were to move back to the appeal site for a temporary period. It may be possible for them to be enrolled in local schools. Nevertheless, I find that a

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<sup>5</sup> APP/Z5630/W/17/3191630



temporary permission would not give them the permanent settled base nor the certainty they require.

57. I have had regard to the rights of the appellant under Article 8 of the European Convention on Human Rights as incorporated into the Human Rights Act 1998. Article 8 affords the right to respect for private and family life and home and the best interests of the children. It is a qualified right, and interference may be justified where that is lawful and in the public interest. The concept of proportionality is crucial.
58. On the basis that the family group has not been residing on the site since 2020, dismissing the appeal or granting a time-limited permission would not render them homeless. Nevertheless, they would not be able to form the stable family environment that they are seeking, which I recognise would amount to an interference with home and family life. However, the interference would be in accordance with the law and in pursuance of a well-established and legitimate aim: the protection of the character and appearance of the countryside and the BMV agricultural land.
59. I consider that the protection of the public interest cannot be achieved by means which are less interfering of the proposed occupants' rights. They are proportionate and necessary and hence would not result in a violation of rights under Article 8.

### **Conclusion**

60. For the reasons set out above, I conclude that the appeal should be dismissed.

*Rachael Pipkin*

INSPECTOR

## **APPEARANCES**

### FOR THE APPELLANT:

Mr Brian Woods	Agent for the appellant, WS Planning & Architecture
Mr Peter Brownjohn	Agent for the appellant, WS Planning & Architecture
Ms C Delaney	Appellant
Mr J Molloy	Member of the appellant's family group
Mr Michael Francis	Member of the appellant's family group

### FOR THE LOCAL PLANNING AUTHORITY:

Mr Rob Bailey	Development & Enforcement Manager
Ms Lisette Patching	Enforcement and CIL Team Leader

## **HEARING DOCUMENTS**

HD1 Appeal Decision, New Acres, Spade Lane, Hartlip, Kent ME9 7TT  
(Ref: APP/V2255/W/20/3254539 & 3244340)