



Appeal Decisions

Hearing Held on 31 October 2023

Site visit made on 31 October 2023

by H A Orr MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16th January 2024

Appeal A Ref: APP/L2250/C/21/3278430

Land adjoining The Cottage, Canterbury Road, Selsted, Kent

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Bill Mobey against an enforcement notice issued by Shepway District Council.
 - The enforcement notice, numbered 21/0290/FH, was issued on 8 June 2021.
 - The breach of planning control as alleged in the notice is the change of use of the land from agriculture to a mixed-use for agriculture and as a residential caravan site and the carrying out of incidental works to facilitate the change of use comprising the laying of hard standing, alterations to the access and the erection fencing.
 - The requirements of the notice are:
 - I. Cease the use of the land for the stationing of caravans for residential purposes.
 - II. Remove all caravans and associated vehicles from the land.
 - III. Remove all equipment and paraphernalia associated with the residential use from the land.
 - IV. Take up the hard standing and remove the resulting materials from the land.
 - V. Remove the fencing, gates, posts and gravel boards and any associated concrete on the post holders, rubble and debris from the land.
 - VI. On completion of steps iv and v, restore the land to the condition it was in before the breach of planning control took place.
 - The period for compliance with the requirements is 9 months for steps I. to V. and 15 months for step VI.
 - The appeal is proceeding on the grounds set out in section 174(2) (a) and (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Appeal B Ref: APP/L2250/W/21/3273843

Land adjoining The Cottage, Canterbury Road, Selsted, Kent

- 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 Bill Mobey against the decision of Shepway District Council.
 - The application Ref 21/0290/FH, dated 5 February 2021, was refused by notice dated 21 April 2021.
 - The development proposed is the change of use of land to use as a residential caravan site for 4 gypsy families, each with two caravans, including no more than one static caravan/mobile home together with Laying of hard standing, erection of 4 No amenity buildings, improvement of access and direction of fencing.
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Decisions

Appeal A

1. The appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal B

2. The appeal is dismissed.

Preliminary matters

3. The development proposed as part of the planning application (Appeal B) included four amenity buildings. These had not been built at the time that the notice was issued so they were not included. Apart from this, the two appeals relate to the same matters, so I shall deal with them together.
4. At the time of my site visit there were several caravans located towards the front of the site, some evidence of hard surfacing and a number of vehicles. The appellant confirmed in evidence, that none of the caravans were currently fit to be occupied and would need to be replaced if the appeals were allowed.
5. The Council have raised no issues, either before, or during the Hearing regarding the gypsy status of any of the families who are proposed to occupy the site. I have no reason to come to a different view.
6. A Statement of Common Ground (SoCG) was signed during the Hearing and I shall have regard to this in my decision.

Main Issues

7. It is common ground that the site is located within the Kent Downs Area of Outstanding Natural Beauty (KDAONB), a locally designated Special Landscape Area and the Stodmarsh Special Protection Area (SPA). The site lies within Flood Zone 1. A public right of way (HE116) runs along the northern boundary.
8. During the Hearing it was apparent that the highway issues, and in particular the provision of suitable visibility splays are intrinsically linked to matters relating to character and appearance. Accordingly, I have dealt with these main issues together in my decision.
9. On this basis I consider that the main issues are:
 - The location of the development;
 - The effect of the development on the character and appearance of the KDAONB and on highway safety;
 - The effect of the development on biodiversity, habitats and the Stodmarsh SPA; and
 - Whether any harm arising from the above matters is outweighed by any other material considerations.

Reasons

Policy background

10. Since the issue of the notice and determination of the related planning application, the Council has adopted the Core Strategy Review (2022) (CS).

Both parties agreed that this change did not materially affect their position on the appeals.

11. Planning law requires that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise. Applications should be assessed and determined in accordance with the presumption in favour of sustainable development and the application of specific policies in the National Planning Policy Framework (the Framework) and Planning policy for traveller sites (PPTS).
12. The PPTS requires Councils to make their own assessment of need and develop fair and effective strategies to meet need through the identification of land for sites. Accordingly, the policies pertinent to these appeals are set out in the CS and the Folkestone and Hythe District Place and Policies Local Plan (2020) (LP). Policy HB 14 of the LP specifically deals with the needs of gypsy and travellers. It is a criteria-based policy and is relevant to the assessment of these appeals.

Location

13. The Council's settlement hierarchy is set out in Policies SS1 and SS3 of the CS. The purpose of the settlement strategy is to direct new development towards existing and the most sustainable settlements in order to maintain the open countryside. Selsted is not designated as a settlement by the Council.
14. Paragraph 25 of the PPTS makes it clear that new traveller sites in the open countryside, away from existing settlements should be very strictly limited. Whilst the site lies outside any identified settlement, it was acknowledged that, due to the small number of residential properties in the immediate area, the appeal site is not completely isolated. Nevertheless, other than the local primary school, there are no day-to-day facilities available within Selsted. The nearest shop is understood to be a newsagent in Densole which is some 3km away. A more comprehensive range of general facilities and services are available in Hawkinge some 4.7 km from the site. From the evidence, the nearest secondary schools are in Folkestone some 9 km away and Canterbury approximately 17 km away.
15. Nonetheless, the site is located on the A260 which is the main road between Folkestone and Canterbury. The road has a pedestrian footpath to the western carriageway and a grass verge to the east. There is no street lighting to this part of Canterbury Road. The site lies some 300m from a bus stop where a bus service is available between Canterbury and Folkestone, going through Hawkinge. This service would be available to the families living on the site.
16. It is clear that over the years, there have been changes in the way people shop, with greater emphasis on home delivery, although physical access to some services and facilities are still necessary. Accordingly, the development will inevitably result in an increase in car movements from the occupiers of the site accessing shops and other services.
17. Overall, I find that the residents of the site would undoubtedly have some reliance on the private motor car. However, in common with other nearby residents, there is a viable alternative bus service available that is readily accessible on foot. In the context of this rural location, where I accept that accessibility is not normally as good as that of urban areas, this degree of

reliance is not uncommon. Moreover, the distances involved to access shops and other services either by car or bus, are not excessive. For these reasons, I find no conflict with this aspect of Policy HB14 of the LP.

Character, appearance and the highway

18. Paragraph 176 of the Framework, makes it clear that great weight should be given to conserving and enhancing landscape and scenic beauty in National Parks, the Broads and Areas of Outstanding Natural Beauty, which have the highest status of protection in relation to these issues. The scale and extent of development within all these designated areas should be limited, while development within their setting should be sensitively located and designed to avoid or minimise adverse impacts on the designated areas.
19. The prevailing character of this part of the KDAONB is rural, with open fields generally set behind native hedges. There are some sporadic farm buildings and dwellings to the south and the hamlet of Selsted lies to the north. The appeal site comprises a roughly rectangular parcel of land, formally laid to grass, to the western side of Canterbury Road. Towards the western boundary lies an area of ancient woodland and there are mature hedgerows to three boundaries. A public right of way (HE116) runs along the northern boundary giving further public views into the site.
20. From the evidence and my observations, it is apparent that prior to the development that has taken place, the land would have appeared as an undeveloped field, forming a visual gap between Selsted to the north and the more sporadic development to the south. This open gap in the built development would have provided some transitional relief between Selsted and the dwellings to the south, contributing to the generally rural character of the area and the KDAONB.
21. Vehicular access to the site is through the original field access from Canterbury Road, where part of the original hedge has been removed, to provide a wider access suitable for vehicles and towed caravans. The access is secured by four timber gates set back from the carriageway, with close boarded timber fencing to each side forming a bell mouth.
22. The location plan submitted with the planning application, shows that the land would be divided into two distinct areas. The four caravans and amenity buildings would be sited within four fenced plots, served by an internal access road. The remainder of the site, which is edged in blue and understood to be in the same ownership, was referred to as the back field during the Hearing.
23. With the planning application, the appellant submitted a Transport and Highways Technical Note drafted by The Transportation Consultancy. This indicated that whilst Canterbury Road is subject to the national speed limit, generally vehicles are travelling significantly below this and the road is subject to light traffic. Kent County Council: Highways and Transportation Department, had the opportunity to consider these findings and conceded that, due to the relatively straight nature of the A260 in this location, provided visibility spays were retained at no higher than 1.05m, over a distance of 107m to the north and 97m to the south, the proposal would be acceptable in this regard. I have no reason to come to a different view.

24. To accord with this, the development would therefore result in further significant changes to the boundary hedge, with a reduction in height to 1.05m to provide the required visibility splays. To my mind this would significantly open views into the site to those travelling in either direction along the A260.
25. I accept that landscaping does have a role to play in enhancing, rather than hiding new development. However, in the context of this site and the quantum of development proposed, the caravans, amenity buildings, vehicles and the other residential paraphernalia would be significantly at odds with existing development and the prevailing rural character of the KDAONB.
26. At the Hearing the appellant suggested that the effect of the changes to the boundary hedge, could be mitigated by the planting of a second hedge behind the original, in a way that it would not affect the sightlines. It was submitted that this would achieve screening of the development. It is accepted that a scheme to plant and maintain a second native species hedge could be secured through a suitably worded condition. However, it seems to me that this would, in itself, appear contrived and incongruous in the street scene, drawing attention to the development behind. Moreover, the development is still likely to be visible through the widened access, from the public footpath and those travelling in higher vehicles and busses, especially in the winter when plants are not in leaf.
27. Drawing all of the above points together, I find that the siting of the caravans for residential use, amenity buildings, hard standing, together with the number of vehicles and the associated domestic paraphernalia, would be significantly at odds with existing development and the prevailing rural character of the KDAONB. Accordingly, it causes unacceptable and significant harm to the character and appearance of the KDAONB and is contrary to Policy SS3 and of the CS and Policies NE3 and HB14 of the LP. These policies seek to protect the open countryside, and to ensure that development does not detract from the distinctive character and special qualities of the KDAONB.

Other considerations

Personal circumstances

28. The appellant confirmed that the families who would occupy the site are either living with relatives in bricks and mortar, doubling up on other sites, or travelling from site to site. The appellant's father also spoke candidly about the health conditions affecting the appellant and proposed occupiers.
29. The needs of the children are a primary consideration of substantial weight but are not necessarily determinative. Two of the families wishing to move onto the appeal site have a number of children, ranging in age from 4 to 15 years old.
30. I acknowledge that as with all those who travel, a settled base would enable these families, to have better access to both medical care and education. However, it is pertinent, that none of the families are currently occupying the site. The children attend various schools in Whitstable, Ashford and New Romney, all some distance from the appeal site.
31. Furthermore, at the Hearing it was confirmed that some of the original occupiers have changed from those named on the planning application. It was not clear why the needs of the original occupiers have changed, although it is

understood that part of the land has since been sold to one of the new proposed occupiers.

32. I accept that the land has been bought for the purposes of providing four pitches for gypsy and traveller families with a permanent home. However, from the evidence I have, there is little to suggest that this needs to be provided at this particular site, rather than one in a more appropriate location.
33. For the above reasons, the appellant's personal circumstances, those of his extended family and the advantages of providing a settled base for these families, weigh moderately in favour of the development.

The need for sites for gypsies and travellers

34. At the Hearing the Council gave an update on their position on need. The most recent Folkestone & Hythe District Council Gypsy, Traveller and Travelling Showpersons Accommodation Assessment (GTAA), was carried out in 2018. The veracity of this GTAA was challenged by the appellant. However, I have no substantive evidence to demonstrate that it is unsound. Moreover, the LP was adopted in September 2020 and the examining Inspector accepted the GTAA and policy position. I have no reason to come to a different view and accordingly give the LP Policies full weight.
35. The Council's evidence sets out that the GTAA found that there was a need for five additional caravan pitches for the period up to 2037, with three of these required within the first five years of the GTAA. At the Hearing they confirmed that since then seven pitches have been permitted, thus meeting and exceeding the identified unmet need.
36. Whilst there has been no annual review of need since the GTAA, the Council confirmed that there are no unauthorised encampments, or sites with temporary planning permission in their district, which I acknowledge can be an indicator of hidden unmet need. They have two undetermined planning applications, with a further review of need to be carried out during 2024, with a call for additional sites already underway. Notwithstanding this, the Council confirmed that there were no suitable, affordable sites available either now or in the foreseeable future. This undoubtedly weighs in favour of the development.
37. Turning to Policy HB14 of the LP which sets out a number of criteria for assessing Gypsy and Traveller sites. As set out above, I have found no harm caused by virtue of the location of the site, or loss of land to land identified for another purpose. I have no evidence to suggest that the development would result in poor living conditions for either those living on the site, or nearby. I note that, subject to the provision of visibility splays, no objection has been raised by the Highway Authority in terms of highway safety, or on the operation of the highway network.
38. Intentional unauthorised development has been a material consideration since 2015. I have had due regard to the sequence of events that took place leading to these appeals. From the evidence, the site was partly developed then occupied, during June 2020. The site was then only vacated after the Council took formal enforcement action and sought injunctive relief. The regularising planning application Ref 21/0290/FH was not submitted until 5 February 2021. Accordingly, I have attached some weight to this in my considerations.

Overall balance

39. I have found no conflict with the location of the site and have identified and attributed weight to a number of other considerations that weigh in favour of the development. The need for a settled base is a consideration weighing in favour, but I have nothing before me to suggest that this has to be provided from this particular site.
40. Overall, I have attributed moderate weight in favour of the development to the lack of alternative sites, the personal circumstances of the appellant, the desirability of keeping the extended families together and the best interests of the children. I have afforded limited weight to the other social and economic benefits, including the contribution that 4 additional pitches would make to the District's overall supply.
41. However, weighed against these benefits is the significant harm I have found to the KDAONB, despite proposals to screen with planting. Overall, in my judgement I find that the other considerations I have identified and those put forward by the appellant in favour of the development, are insufficient to outweigh the identified harm to the KDAONB and the conflict with LP policies. I therefore find that a grant of permanent permission is not justified.
42. I have also considered whether a temporary grant of planning permission would be appropriate for these appeals. The Planning Practice Guidance advises that temporary permissions may be appropriate where it is expected that the planning circumstances will change in a particular way at the end of the permitted period.
43. The appellant submitted that the PPTS makes it clear that, where a local planning authority cannot demonstrate an up to date 5 year supply of deliverable sites, as is his view, this should be a significant material consideration in any subsequent planning decision when considering applications for the grant of temporary planning permission. However, this does not apply where the proposal is on land designated as a site protected under the Birds and Habitats Directives or an Area of Outstanding Natural Beauty. As set out above the appeal site is protected by such designations and moreover, the Council has demonstrated an up to date supply of deliverable sites. As such a temp planning permission would not be appropriate.
44. I am very mindful of the circumstances of those who would be occupying the site and acknowledge that if the appeal fails, there will be a need for the families to find an alternative site which provides a settled base. I have carefully considered the Human Rights issues that are pertinent to this appeal. However, the protection of the public interest cannot be achieved by means which are less interfering of the appellant's rights.
45. I have had due regard to the Public Sector Equality Duty, contained in section 149 of the Equality Act 2010, which sets out the need to eliminate unlawful discrimination, harassment and victimisation, and to advance equality of opportunity and foster good relations between people who share a protected characteristic and people who do not share it. Nonetheless, for the above reasons, I consider that the decision is proportionate and necessary in the circumstances.

Other matters

46. The Habitat Regulations 2015 require an assessment to be undertaken, as to whether a proposal would be likely to have a significant effect on the important features of a protected site. The Stodmarsh Special Protection Area is such a protected site.
47. In the days before the Hearing, the appellant provided a number of documents to demonstrate the nutrient budget for the development and how suitable mitigation, through the planting of trees in the back field, might be achieved. No detailed plans were provided, although the appellant suggested that this is not uncommon, with details secured at a later stage by condition. However, as I have already identified, substantial harm to the character and appearance of the area, such that the appeal should be dismissed, there is no need to consider this further.
48. Matters relating to enhanced bio-diversity measures were raised during the Hearing. I consider that these could be secured through a suitably worded condition if the appeal was allowed.

Interim conclusion

49. For the above reasons, the appeal on ground (a) and the s78 appeal both fail.

Appeal A ground (g)

50. The appellant's case for the ground (g) appeal is found in his appeal form and was expanded upon at the Hearing. In summary it is the appellant's case that he and his family have nowhere else to go. The shortage of suitable land for caravan site development means that a period of at least 18 months is required.
51. It is clear from the site visit that the appeal site was not occupied. I accept that the alternative arrangements that the appellant has made for his family may not be ideal. Nonetheless, given the substantial harm I have found to the character and appearance of the KDAONB there is no justification for extending the period of compliance beyond that, set out in the notice. The appeal on ground (g) therefore fails.

Conclusions

Appeal A

52. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal B

53. I have considered all of the matters that have been raised, but for the reasons outlined above, I conclude that the appeal should be dismissed.

Hilary Orr

INSPECTOR

Appearances

FOR THE APPELLANT:

Mr Philip Brown	Agent
Mr Bill Mobey	Appellant
Mr Amos Albert Mobey	Appellant's father
Tom Smith	Prospective occupier

FOR THE LOCAL PLANNING AUTHORITY:

Ms Lisette Patching	CIL and Enforcement Team Leader
David Whittington	Strategy and Policy Team leader

INTERESTED PERSONS:

Mr Mark Pender	PMM Planning; Speaking on behalf of local residents.
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