

Appeal Decision

Hearing held on 28 March 2017

Site visit made on 28 March 2017

by S J Papworth DipArch(Glos) RIBA

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

Decision date: 2 August 2017

Appeal Ref: APP/E2205/W/16/3165236

Jobens Farm, Steeds Lane, Kingsnorth, Ashford TN26 1NH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
 - The appeal is made by Mr & Mrs Ripley against the decision of Ashford Borough Council.
 - The application Ref 16/00663/AS, dated 4 May 2016, was approved on 1 July 2016 and planning permission was granted subject to conditions.
 - The development permitted is the change of use of land for gypsy/travellers including the stationing of 1 mobile home and 1 touring caravan together with hardstanding and a cesspit.
 - The conditions in dispute are Nos 2 and 3 which state:
 - 2) The use hereby permitted shall cease on or before 1st July 2019 unless otherwise agreed in writing by the Local Planning Authority. At the end of this period the use hereby permitted shall cease, all caravans, buildings, structures, materials and equipment brought onto or erected on the land in connection with the use, shall be removed, and the land restored in accordance with a scheme previously submitted to and approved in writing by the Local Planning Authority.
The reason given is as the site is not considered suitable for permanent occupation and in the interest of visual amenity.
 - 3) No more than one twin unit mobile home and one 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.
The reason given is in accordance with the terms of the application and in the interests of visual amenity.
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Decision

1. I allow the appeal and vary the planning permission Ref 16/00663/AS for the change of use of land for gypsy/travellers at Jobens Farm, Steeds Lane, Kingsnorth, Ashford TN26 1NH granted on 1 July 2016 by Ashford Borough Council, by deleting conditions 2), 3), 5), 6), 7) and 8), and substituting for them new conditions 2), 3), 5) and 6) together with the retention of conditions 1) and 4) unvaried, all as the attached schedule.

Preliminary Matters

2. The Council's grant of permission on 1 July 2016 resulted from an application which sought the removal of condition 3) attached to a permission granted on appeal on 26 June 2013, the condition limited the use to three years from that date (Ref APP/E2205/A/12/2188513). The new condition 2) as set out in the bullet points above limited the permission to a further three year period ending on 1 July 2019. The Statement of Case that accompanied the present Appeal makes clear that the objection is to both the new condition 2), where a
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permanent permission is sought, and the new condition 3) to permit the stationing of a second mobile home specifically for the use of a carer for Mrs Ripley when her husband is away seeking work. The medical reasons for this were accepted by the Council on the evidence presented.

3. There was some concern from local residents as to the validity of this request; their view was that this should be the subject of a new, separate, application. Section 78 of the 1990 Act provides a right of appeal where a local planning authority has granted permission subject to conditions to which the applicant objects, and section 79 enables the Secretary of State to allow or dismiss the appeal, or reverse or vary any part of the decision of the local planning authority (whether the appeal relates to that part or not) and may deal with the application as if it had been made to him in the first instance. Clearly the law allows condition 3) to be considered now, and following submissions made at the Hearing, and taking into account the opportunity provided local residents to write to the Inspectorate and take part in the Hearing, I am satisfied that no interest would be prejudiced by considering both disputed conditions.
4. There had also been comment on the extent of the red-line site boundary shown on drawing ASH/09/PL01A as it included part of Steeds Lane from the end of the tarmac road to the site entrance. The status of this lane will be addressed in the reasons to the first main issue, but a replacement drawing ASH/09/PL02A was submitted which showed the red-line round only the appeal site and added the blue-edged land under the appellants' control. In view of the status of the lane as will be explained later, this appears correct and was accepted as an appeal drawing.

Main Issues

5. Paragraph 206 of the National Planning Policy Framework sets out the six tests for conditions; whether they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects. In order to assess conditions 2) and 3) and the requested variations to them against these requirements, the main issues are;
 - The effect of the proposals on the character and appearance of the area.
 - The weight to be attached to other considerations, including the supply of sites generally, the availability of alternative sites, and the personal circumstances of the appellants.

Reasons

Policy

6. Core Strategy Policy CS1 contains guiding principles which include protection for the countryside. Policy CS14 is specific to gypsies and travellers and refers to an intended site allocation Development Plan Document, which is no longer being pursued as then envisaged, but the supporting text states that in the meantime, any proposals for additional facilities can continue to be assessed against national guidance. The Tenterden and Rural Sites Development Plan Document contains Policies TRS17 and TRS18 which seek to complement and enhance the landscape character of an area, and enhance rural lanes and rights of way. Saved Local Plan Policy GP12 looks to protect the countryside for its own sake.

7. National guidance as referred to in the text to Policy CS14 is now in Planning Policy for Traveller Sites of August 2015 and the introduction states the Government's overarching aim to ensure fair and equal treatment for travellers, in a way that facilitates the traditional and nomadic way of life of travellers, while respecting the interests of the settled community.
8. Decisions on traveller sites should also have regard to the policies in the Framework so far as relevant, and this document states the presumption in favour of sustainable development at paragraph 14.

Character and Appearance

9. This issue concerns the effect of a permanent permission, with or without the additional unit of accommodation sought. The reasoning of the Inspector writing in 2013 is pertinent to these considerations. She concluded that there was harm to the character and appearance of the surrounding area and conflict with relevant policies of the Development Plan. That harm was described as limited and capable over time of a degree of mitigation but her overall conclusion was that it could not be completely overcome by landscape planting and she attached significant weight to the matter. Harm was also found through conflict with paragraph 23 of the national traveller policy as the site was considered to be in open countryside away from an existing settlement. The replacement paragraph 25 in the 2015 edition has added the word 'very' to the first sentence which now states '*Local planning authorities should very strictly limit new traveller site development in open countryside that is away from existing settlements or outside areas allocated in the development plan.*'
10. Local residents questioned how this proposal could be found acceptable when development in Steeds Lane generally has been refused permission. The previous Inspector addressed similar concerns in paragraph 38 of her Decision. It is the case that policies of restraint are in place with regard to infilling and further development beyond the built-up frontage of the lane, but specific policies in Planning Policy for Traveller Sites provide for different considerations with regard to such sites. Notwithstanding the statement in paragraph 25 as set out above, consideration may be given to rural locations where residential built development would not normally be permitted, as stated in paragraph 14 and the second part of paragraph 25 that '*local planning authorities should ensure that sites in rural areas respect the scale of, and do not dominate, the nearest settled community, and avoid placing an undue pressure on the local infrastructure*' which is not the case here.
11. Looking to the reasoning for the previous Inspector's conclusions, weight was attached to the view available from the lane and a footpath crossing the appellants' paddock to the east of the site. On the former there was doubt at that time as to the status of the lane, but that has now been resolved. An Order bestowing right of way status on the unmade lane passing the site was never confirmed, and the highway authority have since confirmed that the lane to within 10m of the A2070 is in fact, and had previously been, a highway maintainable at the public expense. That appears consistent with the fact that the remaining 10m to the main road was the subject of a stopping-up Order when the road was built that is still in force, that Order being on the basis that the lane is a highway.
12. The second element of this consideration is the footpath across the paddock shown on the definitive rights of way map as running from the lane to join

another path north of the fishing lakes. As a matter of fact this path is incapable of being traversed along its proper line due to the intervening stretch of water associated with the fishing lakes, and some fences. Attempting to traverse the path from the north met further obstacles and an incorrect signpost. It was clear that those local residents accompanying the inspection did not know the correct line at that point. It was stated that people use the driveway to the lakes instead, which is clearly marked 'no right of way' although it is unclear where they would go from there without straying from the line of the footpath.

13. The inference is that limited use is likely to be made of the lane to the obstruction at or about the 10m point where all legitimate access stops, although possibly as a 'there-and-back' outing such as dog walking. Significantly less use would likely be made of the footpath crossing the paddock as this would offer a very limited 'there-and-back' route. Taking account of the viewpoints available and the likely numbers of receptors, the effect of the single mobile home and other items on these publicly accessible locations is only moderately adverse.
14. The previous Inspector found harm in the view from the fishing lakes, while the appellants stated at the Hearing that being a private view, limited weight attaches. Certainly there is no right to a private view as such, but this appears to be a facility that is well-visited and one where a rural character and appearance might be expected. Were the site and its surroundings to be an open field, the introduction of the mobile home would cause some harm, but that finding must now be tempered by the presence of the stables, stated to have been in place so long as to be lawful, although no Certificate has been granted. Having mind to the buildings associated with the fishing lakes, the proximity of the bungalow Hookstead to the mobile home, and the distances concerned, modest weight attaches to the effect on the outlook from the fishing lakes now.
15. There is limited evidence of additional mitigation through landscaping, the hedge along the boundary to the lane is clearly well established and would have been in 2013, but that along the northern boundary with the paddock is not well established considering the time available. However, there was discussion at the Hearing on the need for a Site Development Scheme, and opportunities exist for more robust mitigation, whilst not hiding the site, a failing warned against in paragraph 26 of Planning Policy for Traveller Sites.
16. Overall, there remains an adverse visual impact at present with one mobile home, and some erosion of the rural character of the area. As a result there is conflict with Policy CS1, and to a lesser extent Policies TRS17 and TRS18. Policy CP12 does not fully accord with the Framework and the conflict here is accordingly less still. However, on balance the effect is less profound than found by the previous Inspector and the weight afforded the harm now should be considered as moderate rather than significant.
17. Turning to the proposal to vary condition 3) to allow a second mobile home, this would appear as a further visual intrusion into the rural area although the nature of the use for a carer rather than for an additional family, would limit the activity associated with it and hence the effect on the character of the area. A condition could control that use. However, the addition of this other unit of similar size to the existing mobile home, within the red-line area, would cause

harm contrary to the same Development Plan policies and the level of that harm would be back to being significant even having mind to the changes that have taken place since 2013.

18. There was discussion at the Hearing as to the possibility of Mrs Ripley's need for a live-in carer being addressed by a second touring caravan, provided it had all the facilities necessary for the independent use of the carer. Following an adjournment and discussion between the appellants and the Council officers, the Council stated that they were able to back the proposal for a touring caravan due to its lesser size and effect.
19. Such an additional touring caravan would be less intrusive when compared with a second static caravan, and whilst it would be in place throughout, there would be times when the appellants' touring caravan would be absent, while Mr Ripley is away seeking the work expected of his gypsy status, and that absence is the reason why the carer is needed. On balance, the effect would be greater than that already determined for the present arrangement, of a moderate adverse visual impact but not substantially so, and there would be only limited discernible further effect on the character of the area.

Other Considerations

20. The Inspector writing in 2013 noted an unmet need for gypsy sites and having considered the evidence as to progress with assessment of need she noted further that *'there is no reason to suppose at the moment that an adequate number of sites for travellers could not be identified and delivered within the next three years'*, that is to say by June 2016. That conclusion prompted the grant of the three year permission in 2013.
21. However that identification and delivery has not occurred and the continuing state of affairs was acknowledged in the Council's grant of a further three year permission in July 2016. It should be borne in mind that whilst Planning Policy for Traveller Sites provides at paragraph 27 for the lack of a five year supply of sites to be a significant material consideration in the grant of temporary permission, the web-based Planning Practice Guidance advises that it will rarely be justifiable to grant a second temporary permission, further permissions should normally be granted permanently or refused if there is clear justification for doing so (Paragraph: 014 Reference ID: 21a-014-20140306). Paragraph 27 does not however preclude the grant of a permanent permission in the absence of a five year supply.
22. The present situation as reported to the Hearing is that the Council has had to look again at general housing projections, causing a delay to the Local Plan progress. In terms of traveller sites, 7 new pitches on 2 sites have been identified but this is acknowledged not to meet the whole need. The remaining need is anticipated to be made up by windfalls from planning applications. The suitability of such windfalls will be tested against a new policy, but no policy exists at present other than the previously mentioned CS14 with its reliance on national guidance. It appeared that the delay may allow a further round of site allocation proposals to be put to the Council.
23. The appellants have provided letters written in pursuit of sites, with no success, and the fact that their requirement included space for stables is not an unusually restrictive search criterion for a gypsy family. It can be concluded that there are no readily identified, available, suitable sites.

24. The personal circumstances of the appellants were detailed in their Appeal Statement and added to at the Hearing. The evidence on the need for a carer is undisputed and the use of a touring caravan was supported by the Council, but the degree of relief to their situation provided for by the further three year permission would be limited. It is clear that Mrs Ripley's need for a live-in carer will not reduce and should be considered a permanent and essential part of her care package.
25. As things stand, there is no Development Plan policy or document for the supply of sites, and paragraph 14 of the Framework is engaged; *'where the development plan is absent, silent or relevant policies are out-of-date, granting permission unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole'*.
26. In the balance, the adverse impacts of unrestricted permanent use of the land for the stationing of a single mobile home and one touring caravan would not demonstrably outweigh the benefits of providing a site in a Council area that is unable to demonstrate a five year supply of sites, and where the evidence is that there has been a failure of policy in progressing a Plan as anticipated by an Inspector writing in 2013, and where even when adopted, there would be a reliance on windfall sites to meet the need.
27. The harm through the stationing of a second mobile home however would demonstrably outweigh the benefits, taking account of the personal circumstances of the appellants, and would risk appearing out of scale with the surroundings and the settled community nearby. The benefits of unrestricted use of that second mobile home, the possibility of a second touring caravan and hence the formation of an additional pitch to count towards the unmet need would also be demonstrably outweighed by the harm.
28. It is agreed that those same personal circumstances can be met through the use of a self-contained touring caravan, and in that case the balance lies in the benefits not being demonstrably outweighed, with Mrs Ripley being able to remain cared-for in her home, while Mr Ripley is able to provide for the needs of the family through working away from home. The traditional and nomadic way of life of travellers would be facilitated as provided for in Planning Policy for Traveller Sites. Even then, the proposal does not comply with the requirements of Policies CS1, TRS17 and TRS18 but the material considerations set out above of a lack of supply of sites, lack of alternative sites for this family, and their personal circumstances indicate a decision other than in accordance with the Plan, as provided for in section 38(6) of the 2004 Act and paragraph 14 of the Framework.
29. In conclusion therefore, permission should be granted for permanent unrestricted use of the site as a single gypsy pitch with no more than one mobile home and one touring caravan, provided further mitigation can be secured by condition. The provision of a second touring caravan for the exclusive use of a person providing care for Mrs Ripley is also justified, but that provision should be restricted to only that use and while the site is occupied by Mrs Ripley. There would not however need to be a remediation clause in the condition requiring removal due to the nature of a touring caravan and its siting.

30. As a result, condition 2) is not necessary and should be removed, as the site is suitable for permanent use. Condition 3) restricting the numbers of caravans should be varied to provide for the additional touring caravan, subject to the safeguards just discussed.

Other Conditions

31. As stated previously, section 79 of the 1990 Act enables the Secretary of State to vary any part of the decision of the local planning authority whether the appeal relates to that part or not. Whilst it is conditions 2) and 3) that have been objected to, discussion proceeded at the Hearing on a suite of conditions to address whichever way the Decision went.
32. There is a need to restrict the use of the site to gypsies and travellers as defined in Annex 1 to Planning Policy for Traveller Sites due to that being the basis on which the use of the land is acceptable, and condition 1) should remain. A condition to prevent commercial activities is required to safeguard the character and appearance of the area and condition 4) should remain. The Council's suggested condition requiring details of planting was agreed to be amended to require a full Site Development Scheme to be submitted, which should include hard and soft landscaping features, site layout, parking and turning. Since the use has commenced further to the previous grants of temporary permission, the condition should include provisions should there be any default. That is the new condition 6).
33. The previous Inspector removed permitted development rights for gates, walls, fences or other means of enclosure, as did the Council more recently. In view of the opportunity provided by the Site Development Scheme, and the risk of cutting the site off from its surroundings, such restriction should be continued and an amended condition 5) is attached. With the Scheme, there would be no need for condition 7) naming the drawings, but it is reasonable that any hardstanding and vehicle turning areas provided pursuant to the site development scheme should remain available for that use, consequently the requirement of the previous condition 6) is stated within the new condition 6). The final previous condition 8) regarding the site being made available for inspection is not necessary or reasonable, in view of powers available to the Council under the planning enforcement regime, and is removed.

Conclusions

34. In view of the lack of supply of sites generally in the Council area, the limited progress having been made in addressing this matter since a previous Inspector granted a three year permission and the lack of alternatives for the appellants, it is appropriate for the reasons given to grant an unrestricted permission for a single pitch, one mobile home and one touring caravan. The stationing of a second touring caravan should be permitted to address the particular needs of Mrs Ripley, and that should be linked only to her continued occupation of the site. A site development scheme is to be required to ensure mitigation and control of the appearance of the site in the interests of the surrounding environment. For the reasons given above it is concluded that the appeal should be allowed.

S J Papworth

INSPECTOR

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

K Jethwa BA(Hons) MA MRTPI	Senior Planning Officer Ashford Borough Council
I Grundy BSc(Hons) MRTPI	Principle Planning Policy Officer Ashford Borough Council

FOR THE APPELLANTS:

B Woods BA(TP) MRTPI	Managing Director WS Planning and Architecture
A Masters B & J Ripley	Of Counsel Appellants

INTERESTED PERSONS:

J Taylor	On behalf of local residents including as listed on the Attendance Sheet
Dr H Moorby	Councillor Kingsnorth Parish Council

DOCUMENTS

Document	1	Signed Statement of Common Ground submitted jointly
Document	2	Drawing ASH/09/PL02A with correct redline site boundary submitted by appellants (substituted for 01A)
Document	3	Kent County Council ' <i>Recommendation to Make an Order</i> ' 13 October 2016 and attached reports etc submitted by residents
Document	4	Kent County Council to Kingsnorth Parish Council 8 November 2016 submitted by residents
Document	5	Kent County Council to WS Planning & Architecture 16 March 2017 submitted by appellants

SCHEDULE OF CONDITIONS

- 1) The site shall not be occupied by any persons other than gypsies and travellers as defined in Annex 1: Glossary of Planning Policy for Traveller Sites (or its equivalent in replacement national policy).
- 2) There shall be no more than 1 pitch on the site and on the pitch hereby approved no more than 3 caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 as amended, shall be stationed at any time (of which no more than 1 shall be a static caravan).
- 3) One of the non-static caravans referred to in condition 2) shall only be stationed on the site so long as the site is occupied by Mrs J Ripley, and shall be occupied only by a carer as and when required as part of Mrs J Ripley's care package. When the site ceases to be occupied by Mrs J

Ripley, one of the non-static caravans hereby permitted shall be removed.

- 4) No commercial activities shall take place on the land, including the storage of materials.
- 5) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) (or any Order revoking or re-enacting that Order with or without modification), no gates, walls, fences or other means of enclosure other than as agreed in the Site Development Scheme, and no building as defined by Section 336 of the Town and Country Planning Act 1990 shall be erected within the application site area.
- 6) 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 60 days of the date of failure to meet any one of the requirements set out in i) to iv) below:
 - i) Within 6 months of the date of this decision a scheme for the means of foul and surface water drainage of the site; the internal layout of the site, including the siting of caravans, hardstanding, access roads, parking, turning and amenity areas; tree, hedge and shrub planting including details of species, plant sizes and proposed numbers and densities; boundary treatment such as fences, gates or walls; and external lighting; (hereafter referred to as the Site Development Scheme) shall have been submitted for the written approval of the Local Planning Authority and the scheme shall include a timetable for its implementation.
 - ii) If within 11 months of the date of this decision 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 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.

Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter be maintained/retained/remain in use and the hardstanding, access roads, parking and turning areas shall be kept available and accessible at all times for the parking and turning of motor vehicles in connection with the development hereby approved.

If any of the soft landscaping planting is removed, dies or becomes seriously damaged or diseased this shall be replaced in the next available planting season or sooner with others of similar size, species and number unless otherwise agreed in writing by the Local Planning Authority.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.