



Appeal Decision

Hearing Held on 1 June 2017

Site visit made on 1 June 2017

by Andrew R Hammond MSc MA CEng MIET MRTPI

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

Decision date: 04 August 2017

Appeal Ref: APP/A2280/C/16/3157450

Land adjacent to Gamerci, known as Harewood, Matts Hill Road, Hartlip, Sittingbourne, ME9 7XA.

- 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 John Peckham (deceased) against an enforcement notice issued by The Medway Council.
 - The enforcement notice, reference ENF/14/0418, was issued on 28 July 2016.
 - The breach of planning control as alleged in the notice is;
 - Without the benefit of planning permission the change of use of the land to residential use and the stationing of caravans;
 - Without the benefit of planning permission the construction of timber buildings for the use as a day room/utility room;
 - Without the benefit of planning permission the siting of a toilet block;
 - Without the benefit of planning permission the construction of timber kennels;
 - Without the benefit of planning permission the erection of fencing;
 - Without the benefit of planning permission the laying out of hard surfacing on the land;
 - Without the benefit of planning permission the change of use of the land for the storage of vehicles.
 - The requirements of the notice are:
 - i. Cease the use of the Land for residential purposes;
 - ii. Permanently remove from the Land all caravans;
 - iii. Demolish the timber day room/utility room;
 - iv. Demolish the timber shed;
 - v. Permanently remove from the land the toilet block/wash block;
 - vi. Permanently remove all stored cars and vehicles from the Land;
 - vii. Demolish the timber kennels;
 - viii. Permanently remove all close board fencing from the Land;
 - ix. Remove all hard surfacing and gravel from the land;
 - x. Remove all resultant debris and rubbish from the land arising from compliance with requirements (iii) to (v) inclusive, (vii) and (viii);
 - xi. Restore the site to its condition prior to the commencement of the use of the land for residential purposes by spreading with a minimum of 300mm topsoil and seed with grass.
 - The period for compliance with the requirements is within four calendar months from the notice taking effect for requirements (i) & (ii); within six calendar months from the notice taking effect for requirements (iii) to (x) inclusive; and within seven calendar months of the notice taking effect for requirement (xi).
 - The appeal is proceeding on the grounds set out in section 174(2)(a) (f) and (g). of the Town and Country Planning Act 1990 as amended.
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Decision

1. It is directed that the enforcement notice be corrected by the deletion of the words "Without the benefit of planning permission the change of use of the Land for the storage of motor vehicles" from the matters that appear to the local planning authority to constitute the breach of planning control; and the rewording of the first matter to read "Without the benefit of planning permission the material change of use of the Land to a mixed use for the stationing of caravans for residential use and for the storage of motor vehicles" Subject to these corrections the appeal is dismissed and 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.

Application for costs

2. At the Hearing an application for costs was made by Medway Council against the executors of John Peckham (deceased). This application is the subject of a separate Decision.

Procedural Matter

3. The enforcement notice was served on John Peckham; the executors of the estate of Pheobe Peckham (John Peckham's late wife); John Hilden Junior (resident on the site and great grandson of Mr John Peckham); and the owner/occupier of the Land. Only John Peckham appealed against the enforcement notice within the requisite period.
4. The Planning Inspectorate were informed in March 2017 that Mr John Peckham had died and that the appeal would be pursued by his son, Mr Shane Peckham as executor.
5. At the appeal on 1 June Mr Shane Peckham was unable to produce legal documentation to demonstrate the appropriate authority to proceed with the appeal as executor of his father's will. However following a telephone conversation with his solicitor, Mr Peckham confirmed that confirmation of his status could be provided 'within a few weeks'.
6. Following a discussion involving all interested parties it was concluded that it would be in no person's interests for the appeal to be adjourned whilst awaiting formal confirmation of Mr Shane Peckham's status; but that no decision would be issued until the confirmation had been received.
7. The Inspectorate received formal confirmation on 20 June 2017 that Mr Shane Peckham had been lawfully appointed administrator of his father's estate and the appeal has been determined on that basis.

The Enforcement Notice

8. The enforcement notice alleges both the change of use to residential use and the siting of caravans and also a change of use of the Land for the storage of motor vehicles. The first is more correctly described as a material change of use to use for the stationing of caravans for residential purposes and the two uses should be combined into an allegation of material change of use to a mixed use. It was agreed at the Hearing that no prejudice would be caused to any party by the correction of the notice in this respect.

Main Issue

9. The grounds of appeal for the ground (a) appeal were that the appeal site is a sustainable and suitable site for a gypsy and traveller site which would help meet unmet need for gypsy and traveller accommodation in Medway Borough and the personal circumstances of the appellant in requiring health care and support due to serious illness.
10. Clearly the personal circumstances of the appellant no longer apply. No personal circumstances of other occupiers of the site were raised in the initial stages of the appeal and cannot, therefore, now form part of the appellant's case; therefore the main issues in the ground (a) appeal are the sustainability and suitability of the appeal site as a gypsy and traveller site and the level of unmet need for such sites in Medway Borough.

Reasons

Sustainability

11. The appeal site is located to the north of Matts Hill Road to the east of a detached dwelling known as Gramerci. To the east of the appeal site is a former gypsy and traveller site which benefitted for a temporary planning permission for the siting of two static caravans and one tourer and which was occupied by Mr John Hilden Senior (Mr Shane Peckham's grandson) and Mr John Hilden Junior, now resident on the appeal site, and their respective families.
12. The site is located within the designated Kent Downs Area of Outstanding Natural Beauty and to the rear of the site is an part of an area of ancient woodland, known as Beeches Broom Wood, which is subject to a Tree Preservation Order (Number 145/94).
13. Policy H of Planning Policy for Traveller Sites (PPTS) states that applications for traveller sites should be 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 PPTS.
14. The Framework states, at paragraph 14 that at the heart of the National Planning Policy Framework is a presumption in favour of sustainable development, which should be seen as a golden thread running through both plan-making and decision-taking. For decision-taking this means approving development proposals that accord with the development plan without delay; and 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 the Framework taken as a whole; or
 - specific policies in the Framework indicate development should be restricted, such as those policies relating to land designated as an Area of Outstanding Natural Beauty.
15. The Framework further explains that there are three dimensions to sustainable development: economic, social and environmental. These dimensions give rise to the need for the planning system to perform a number of roles, the

environmental role consisting of contributing to protecting and enhancing our natural, built and historic environment; and, as part of this, helping to improve biodiversity, use natural resources prudently, minimise waste and pollution, and mitigate and adapt to climate change including moving to a low carbon economy.

16. PPTS at paragraph 25 states that local planning authorities should strictly limit new traveller site development in open countryside that is away from existing settlements or outside areas allocated in the development plan and, at paragraph 11 that authorities should ensure that traveller sites are sustainable economically, socially and environmentally.
17. The site lies within the Kent Downs Area of Outstanding Natural Beauty (AONB) where Medway Local Plan (LP) Policy BNE 32 applies. That policy states that development within the AONB will only be permitted where it conserves the natural beauty, wildlife and cultural heritage of the area.
18. Matts Hill Road is a country lane with sporadic residential development in an area with a strong rural character, separated from the built up outskirts of Gillingham and Chatham by the M2 motorway, albeit that some 300m to the south east is the grass runway of Farthing Corner Airfield. The Medway Landscape Character Assessment identifies the area as being within "Matts Hill Farmland".
19. The use of the appeal site for residential purposes, with the stationing of residential caravans, the laying of hardstanding, the ancillary buildings or structures, the parking and storing of motor vehicles and the general residential paraphernalia introduces an urbanising element into the sensitive rural character, failing to conserve the natural beauty of the AONB. The use of the site for residential use and the siting of caravans is therefore environmentally unsustainable and contrary to LP Policy BNE 32 and to the provisions and policies of PPTS and the Framework.

Unmet Need

20. The Gypsy and Traveller Accommodation Needs Assessment (GTAA) carried out in 2013 identified a need for 22 gypsy and traveller pitches by 2028 (the Council have also referred to a target of 28 permanent pitches by 2023 against which there are 13 proposed permanent pitches).
21. Paragraph 27 of PPTS states that if a local planning authority cannot demonstrate an up-to-date five-year supply of deliverable sites, this should be a significant material consideration in any subsequent planning decision when considering applications for the grant of temporary planning permission. However an exception is where the site is on land designated as an AONB. (Note that this exception did not apply when temporary permission was granted for the adjacent site.)
22. The Council have not demonstrated that they have a five year supply of deliverable sites, albeit that there are sites with planning permission, both permanent and temporary, within the borough. Although PPTS specifically refers to temporary permissions in paragraph 27, paragraph 24 also states that when considering planning applications for traveller sites local planning authorities should consider the availability (or lack) of alternative accommodation for the applicants. Whilst the only appellant in this case is the

late John Peckham, a current lack of available alternative accommodation for the other occupiers of the site is a material consideration which adds some weight in favour of the appeal.

23. The possibility of a temporary permission is a matter dealt with later in this decision.

Other Considerations

24. The appellant's statement claims that the appeal site is adjacent to but not within the AONB. That is based on a misunderstanding that the boundary of the AONB is contiguous with the area of ancient woodland, which benefits from separate and additional protection under a Tree Preservation Order. The appeal site is wholly within the AONB as defined in the LP.
25. Neither John Hilden nor any other current occupier of the site lodged an appeal against the enforcement notice and their personal circumstances were not raised other than the need for a stable base for John Hilden and his family to bring up their child in accordance with their traditional way of life.
26. The best interest of the child is a primary consideration. It is in the interest of the child, who is well under school age, to be at a site with access to health care but there is no firm evidence that the appeal site is the only location where such access could be provided.
27. Although the appellant's representative argued that Mr & Mrs Hilden and Mr Heathen Peckham had no alternative sites available, the Council argued that there were other sites nearby occupied by family members. Indeed Mr Hilden had occupied the adjacent site with Mr Shane Peckham, his great uncle and brother of Heathen Peckham before Mr Shane Peckham sold that site and moved to a site with permanent permission.
28. John Hilden claims to have travelled for the purposes of employment up until the time he moved to the appeal site to care for his great grandfather, the late John Peckham, at present he is working as a specialist contractor within the local area for Railtrack. At the time of the Hearing, despite John Peckham's death in February, he had not resumed a nomadic way of life and did not demonstrate a clear intention of doing so. Annex 1 of PPTS states that in determining whether persons are "gypsies and travellers" for the purposes of planning policy, consideration should be given, *inter alia*, to whether there is an intention of living a nomadic habit of life in the future, and if so, how soon and in what circumstances. It has not been demonstrated therefore that John Hilden meets the definition of "gypsies and travellers" in Annex 1: Glossary of PPTS and any personal need for a secure base for him and his wife on which to bring up their child in accordance with their traditional way of life carries little weight in support of the appeal.
29. The appellant's representative argues that the site is previously developed land, the effective use of which adds weight in support of the appeal. The lawful use of the land is agricultural and no evidence was produced as to it being previously developed.
30. John Hilden, his wife and child live on the appeal site along with Heathen Peckham, described as a vulnerable adult and for whom Mr & Mrs Hilden provide care and support. Dismissing the appeal would deprive them of their home contrary to Article 8 of the European Convention on Human Rights: the

Right to Respect for Private and Family Life and for the Home. However the right is a qualified right and the European Convention on Human Rights states that *"there shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."*

31. The economic well-being of the country has been accepted as encompassing the protection of the environment and therefore a balance has to be drawn between environmental harm and interference with rights under Article 8.

Conclusions on the Ground (a) Appeal.

32. The use of the appeal site for the siting of caravans for residential use and the storage of motor vehicles, along with ancillary buildings and structures, introduces substantial harm to the character of the Area of Outstanding Natural Beauty and is environmentally unsustainable in conflict with LP Policy BNE 32, the provisions of the National Planning Policy Framework and Planning Policy for Traveller Sites. This harm carries substantial weight.
33. The apparent lack of alternative sites for the current occupiers of the site is a material factor in favour of the appeal but is insufficient to outweigh the substantial harm identified and conflict with policy.
34. For the above reasons the appeal on ground (a) fails in respect of a permanent permission.

Temporary Permission

35. The appellant's final comments raise the possibility of a temporary permission.
36. As reasoned above paragraph 27 of PPTS states that if a local planning authority cannot demonstrate an up-to-date five-year supply of deliverable sites, this should be a significant material consideration in any subsequent planning decision when considering applications for the grant of temporary planning permission but that an exception is where the site is on land designated as an AONB, as is the case in this appeal.
37. In any event a temporary permission would only be appropriate where circumstances regarding the provision of an alternative site were likely to change significantly. The environmental harm to the AONB is substantial and would remain throughout any temporary permission period. Given the degree of harm and the improbability of a significant increase in the availability of suitable sites, a temporary permission cannot be justified.

Human Rights

38. Dismissing the appeal results in interference with the human rights of the occupiers of the site. Given the degree of harm the interference with those rights is proportionate.

Public Sector Equality Duty

39. In reaching this decision I have had full regard to my responsibilities under the Public Sector Equality Duty.

The Ground (f) Appeal

- 40. Under ground (f) it was argued that the fencing was permitted development provided it was removed back from the highway and that the dog kennel had been moved 'outside the AONB'.
- 41. An enforcement notice can require the removal of development which facilitated a breach of control even if that development would otherwise comprise permitted development.
- 42. As reasoned above, the entire appeal site is within the AONB.
- 43. For the above reasons the ground (f) appeal fails.

The Ground (g) Appeal

- 44. Under the ground (g) appeal the appellant pleaded that one year is a proportional amount of time for compliance.
- 45. The caravans and motor vehicles on the site are readily removable from the site and timber buildings and fences could be dismantled without delay. There is no reason given as to why this could not be achieved within the periods specified in the notice.
- 46. The appeal on ground (g) therefore fails.

Overall Conclusion.

- 47. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice as corrected and refuse to grant planning permission on the deemed application.

Andrew Hammond

Inspector

DOCUMENTS (provided after the Hearing)

- 1 Details of gypsy and traveller sites within Medway, provided by the Council.
- 2 Comments on Document 1, provided by the appellant's representative.

APPEARANCES

FOR THE APPELLANT:

Dr Maria Faraone
Shane Peckham
John Hilden

FOR THE LOCAL PLANNING AUTHORITY:

Mrs Hannah Gunner
Vicky Nutley
Alison Munck

INTERESTED PERSONS:

Gillian Flaher
Dudley Jordan
Ray Richards
Keith Lamming