



Appeal Decisions

Hearing Held on 29 March 2018

Site visit made on 29 March 2018

by Katie Peerless DipArch RIBA

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

Decision date: 23 April 2018

8 Appeals at Land off Westmarsh Drove, Westmarsh, Canterbury, CT3 2LP Appeal Refs: APP/X2220/C/17/3180882 – 9 (Appeals A – H)

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeals are made by Mr Eugene Lee (A), Mr A Macdonald (B), Mr M Purcell (C), Mr J Delaney (D), Mr P Ellis (E), Mr R Delaney (F), Ms E Doran (G) and Mr T Delaney (H) against an enforcement notice issued by Dover District Council.
 - The enforcement notice, numbered ENF/ASH/17/00143, was issued on 20 June 2017.
 - The breach of planning control as alleged in the notice is the material change of use to a mixed use for the stationing of caravans for residential purposes, including development facilitating the use, the erection of fences and other means of enclosure, the creation of areas of hardstanding and the laying of trackways.
 - The requirements of the notice are: permanently cease the use of the land as a caravan site and the occupation of the caravans for residential occupation. Remove from the land all caravans, vehicles, means of enclosure, hardstanding, equipment, goods, machinery, residential paraphernalia and any other items associated with the unauthorised use.
 - The period for compliance with the requirements is three calendar months.
 - 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.
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Decision

1. It is directed that the enforcement notice be corrected: by the deletion of the words '*to a mixed use*' and '*fences and other*' in the allegations. Subject to these corrections the appeal is allowed and the enforcement notice is quashed. Temporary planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended, for the development already carried out, namely the use for the stationing of caravans for residential purposes, including development facilitating the use, the erection of means of enclosure, the creation of areas of hardstanding and the laying of trackways subject to the conditions set out in Annex A to this Decision.

Main Issues

2. I consider the main issues in this case are:
 - (i) the effect of the development on the character and appearance of the surrounding countryside
 - (ii) whether the site complies with the relevant policies relating to the location of gypsy/traveller sites;
 - (iii) the level of flood risk to the occupants of the site.

The Enforcement Notice

3. The appellants have pointed out that the enforcement notice refers to a '*mixed use*' but that the other components of this use have not been specified. The Council accepts that this was a typographical error and has suggested that the Notice be amended by the deletion of the words '*to a mixed use*' in the allegations. The appellants accept that this can be done without prejudice to their case and I will therefore make this alteration, in the interests of clarity and precision.
4. The appellants have also queried what is meant by '*other means of enclosure*' in the allegations. The Council has now clarified its concerns and has suggested that the notice be amended by the deletion of the words '*fences and other*' in the allegations, which would then cover all means of enclosure erected on the site that are related to the unauthorised development. Again, I consider no prejudice would arise from this change and I will make the alteration.

Procedural matters

5. The appellants have confirmed that, under the appeal on ground (a), they are seeking a temporary planning permission for 3 years, to allow for the adoption of the Council's Local Plan and the identification of land suitable for Gypsy/Traveller sites in the District.
6. The fee for the deemed planning application that is the subject of the appeal on ground (a) has been paid only in respect of Appeal A. The other appeals are therefore proceeding on ground (g) only. In respect of this ground of appeal the Council has now suggested that 6 months would be a reasonable time for compliance.
7. Some of the plots have changed hands since the appeals were lodged and the Decision reflects the ownership/occupation at the time of the Hearing.

Site and surroundings

8. The appeal site is a piece of land situated in the Ash Levels outside the settlement of Westmarsh. I am told by the Council that Westmarsh has about 40 houses and a population of about 100. There is a village hall but little else in the way of facilities although there is a shop, primary school and bus stop in Preston village at a maximum distance of about 1.8 miles by footpath from the appeal site. By vehicle, the distance is about 2.8 miles.
9. The area is comprised of flat, low-lying agricultural land segmented by drainage ditches. The appeal site falls within Flood Zone 3 as defined on the Environment Agency's (EA) Flood Map for Planning (Rivers and Sea).
10. The appeal site has been divided into 8 individual gypsy plots and Appeal A seeks a temporary, personal planning permission for the whole site for 3 years. At the time of the site visit, pitches 1, 3, 5 and 7 were the only ones occupied. These pitches had either 1 or 2 touring caravans stationed on them, with plot 7 having a static caravan, a utility block and a portaloo.

Reasons

11. The appellants ask for a temporary permission only and this is to allow time for the Council's emerging Local Plan (LP) to bring forward its allocation for gypsy and traveller sites and for permission to be granted for them. The LP is expected to be adopted in the autumn of 2019.

12. In the meantime, there are no other authorised pitches for the appellants to move to and, although there is a dispute about the scale of the shortage of gypsy/traveller accommodation in the District, there is no claim that there are any other sites that would currently be suitable or available. I give this consideration substantial weight in the planning balance.
13. Whilst the site is in the countryside, that is the case for many authorised gypsy sites. However, the introduction of a caravan site that would be home to, I am told, 31 children and 21 adults would bring about a considerable change in these open, largely undeveloped, agricultural surroundings. I consider that this would result in a detrimental impact on the established character of the area, urbanising it through the accumulation of domestic paraphernalia, as would permanent bricks and mortar accommodation. The site, although not on a public highway, is accessed along a public footpath and can also be seen from nearby properties. The visibility of a site is not, in itself, necessarily a reason for refusing permission but, in this case, the contrast between the flat, wide views that are presently afforded and the development of a permanent gypsy site would, in my opinion, be stark.
14. I am also concerned about the location of the site in relation to nearby services. Policy DM1 of the Dover District Council Adopted Core Strategy 2010 resists development outside rural settlement confines and, as such, the proposal to retain the gypsy site conflicts with this policy. Policy DM7, which deals with the provision of gypsy and traveller sites, is no longer compliant with the guidance in Planning Policy for Traveller Sites 2015 (PPTS) as it calls for sites to be screened from wider views, whereas PPTS encourages sites to be located where they can be integrated with the local community. For this reason the weight to be accorded to this limb of the policy is limited. However, sites should also be located from where travellers can access education, health, welfare and employment infrastructure¹.
15. As previously noted, many traveller sites are in the countryside and it is a feature of their lifestyle that gypsies will necessarily travel for work and to access other services. Nevertheless, in this case, there is little infrastructure in the locality that would support those members of the community, such as the children and their carers, who might not be travelling as frequently as others on the site. I am not, therefore, persuaded that this site would necessarily be amongst those included as suitable locations for a permanent permission.
16. It is also the case that PPTS seeks to ensure that gypsy sites do not dominate the local community. Whilst this site might not be large compared to many, the closest settlement, Westmarsh, is also small and the introduction of over 50 new residents would make a significant change to the balance between the settled and travelling community. The development of the site has apparently already caused tensions between these 2 communities and this indicates that the location and scale of the development might fail criterion a) of paragraph 13 of PPTS.
17. The Council and local residents have also raised concerns over the amount of traffic that would be generated using the roads around the site. These roads are narrow country lanes, but I have been given no indication that their capacity would be exceeded or that the vehicle movements would be so significant such that highway safety would be harmfully affected.

¹ PPTS Paragraph 4j

18. Turning to flood risk, as noted above, the site lies within Flood Zone 3 and national² and local planning policy makes clear that the location of the site is unsuitable for a permanent caravan site because of this. Caravan sites are classified as highly vulnerable development and PPTS notes³ that, for this reason, traveller sites should not be located in areas at high risk of flooding. This is also supported by criterion ii of policy DM7.
19. It is accepted that the site potentially lies within the functional flood plain (Flood Zone 3b) but the appellants submit that it is towards the edge of this area and because of this, it is unlikely that the site would flood rapidly. This factor, combined with the flood warnings that are in place for the area, means that residents would have plenty of time to evacuate the site. The distance to the edge of the area at risk of flooding (as set out on the EA Flood Map for Planning [Rivers and Sea]) appears to be about 450m and this equates to a 5 - 6 minute walk or an obviously shorter drive.
20. The location of development in an area at risk of flooding should be subject to the Sequential Test to determine if there are any other sites where it could be located that have a lower risk of flooding. In this case, it has been agreed by the parties that there are not, as no sites have been identified or allocated for gypsy/traveller accommodation in the District.
21. If the Sequential Test is passed, an Exception Test is to be applied for sites proposed for development that are within zones with a lower probability of flooding. However, that is not the case here, as Flood Zone 3 represents the highest probability of a flood event. Nevertheless, the appellants submit that there are measures that could be applied that would justify the grant of a temporary permission until allocated sites come forward and that these measures could be subject to conditions attached to any planning permission.
22. These are the anchoring of the caravans to the ground to prevent them being washed away, the raising of their floor levels, the provision of flood warning alerts to the residents and the development of a flood evacuation plan in conjunction with the Council.
23. Having considered the ground levels of the site and the fact that the height of the caravan floor levels would need to be raised to 600mm above the undefended flood level of 1.92m AOD, I see no reason why this should not be achievable. Given that the likelihood of the 1 in 100 year flood event occurring during the timescale of a 3 year permission would be about 3%, I also consider that the other suggested measures would together be sufficient to ensure the safety of the residents of the site for that time. There would be no further operational development such as day rooms on the site and consequently no additional loss of flood plain area, as the caravans would allow the water to flow beneath them.

Other matters

24. Whilst there is another caravan site in the locality, in Wass Drove, this is apparently for seasonal workers on the local farms. I do not have details of how often they are occupied or, indeed, the Flood Zone that this location falls within and consider that it does not set a precedent for a planning permission for the appeal site.

² National Planning Policy Framework Chapter 10

³ Paragraph 13g

25. I have also noted another recent appeal decision⁴ refusing permission for a gypsy site on the grounds of flood risk, but this is in another District and the site had a history of flooding, which is not the case here. Again, I consider this does not set a precedent for these appeals, which I have considered on their own merits.
26. I noted at the site visit that the site is surrounded by drainage ditches and there are concerns that this would prove dangerous for the children living on the site. However, I have also considered the risks posed to those children if they were forced to live on the roadside, as some of them apparently are at present. I consider that the provision of temporary fencing, secured through a planning condition, would be more likely to ensure a safer environment for the children than a roadside existence.

Conditions

27. A number of conditions that might be appropriate in the event of appeal A succeeding were discussed at the Hearing, in addition to those outlined above. As the appeal is for a temporary consent for the owners/occupants of the site, conditions limiting the use to these people for the limited time of 3 years would be necessary. It will also be necessary to limit the number of caravans per pitch, restrict the size of any commercial vehicles kept on it and prevent any commercial activities on the site, to limit the impact on the surroundings.
28. It would also be necessary for the appellants to submit a site development plan showing where the caravans would be located and how the site would be fenced, drained and lit and where storage facilities would be placed. It would also need to include the flood prevention measures discussed in preceding paragraphs. This will not include landscaping as the permission would be a temporary one.
29. I agree with the appellants that there is no need to prepare a further Flood Risk Assessment in addition to that already submitted or that there is a need to provide a bound surface at the entrance to the site, given that the access to it is not surfaced.
30. Although it was suggested that a condition removing permitted development rights would not be needed, as no such rights would pertain to this site, I consider that a condition making clear that only the boundary treatments approved under the site development scheme are permitted would be appropriate, to prevent the erection of additional fences associated with this change of use. Although it was suggested that the prevention of any materials or waste being buried on the site is a matter for the EA, I nevertheless consider that a condition imposing this restriction is needed for the avoidance of any doubt.

Conclusions

31. I have found that the location of the site would be unacceptable for a permanent planning permission because of the risk of flooding and the consequent conflict with local and national planning policy on this topic. I also consider that the residential use of the site would have a detrimental impact on the character and appearance of the area, in conflict with LP policies DM1 and DM15, which seeks to protect the countryside. As explained in preceding paragraphs, I also have concerns about the distance of the site from most services and the size of the development when compared to the settlement at Westmarsh.

⁴ APP/U2235/W/17/3183893

32. However, the appellants have no authorised sites to which they can move at present and to refuse their application for a temporary consent would make them homeless. I have also considered the best interests of the children presently living, and hoping to live, on the site and consider that these would best be served by allowing them to live on the site until the local planning authority has published its adopted site allocations for gypsy and travellers.
33. In terms of traffic generation, I have found there would be no conflict with planning policy and no detriment to highway safety that would be serious enough to warrant refusal of a temporary permission. I also conclude that the risk of flooding on this site over a 3 year period would be less of a danger to the residents than would living on the roadside.
34. I therefore conclude that the harm resulting from flood risk could be managed for a temporary period and the benefits of providing a settled base for the appellants and their families outweighs the other harm that I have found would be caused by the development.
35. Because these conclusions are based on the needs of the particular families for which planning permission is sought, including the interests of the children of those families, the permission will be a personal one, aimed at providing a settled base in the District for some of those contributing to the current unmet need.
36. As noted in preceding paragraphs, I will vary the allegations of the notice in order to clarify the terms of the deemed application under section 177(5) of the 1990 Act as amended. For the reasons given above I conclude that appeal A should succeed on ground (a) and I will grant temporary planning permission in accordance with the application deemed to have been made under section 177(5) of the 1990 Act as amended, which will now relate to the corrected allegation. Appeals A - H on ground (g) do not therefore need to be considered.

Katie Peerless

Inspector

Annex A

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) The use hereby permitted shall be carried on only by the following: Myles Smith, Nicole Charlotte Smith and Michael Smith and their dependent children (Plot 1), Alexander Macdonald and Charlotte Kiely and their dependent children (Plot 2), Michael Purcell, Bridget O'Sullivan, their daughter Katrina and James O'Donnell and their dependent children (Plot 3), John J and Mary Delaney and their dependent children (Plot 4), Philomena O'Brien and John O'Brien and their dependent children (Plot 5), Richard and Terry Delaney and their dependent children (Plot 6), Patrick Coyle, Louse Smith, Anthony Coyle and Frances McCarthy and their dependent children (Plot 7) and Thomas Delaney and Josephine Maughan and their dependent children (Plot 8) and shall be for a limited period being the period of 3 years from the date of this decision, or the period during which the premises are occupied by them, whichever is the shorter.
- 3) When the premises cease to be occupied those named in condition (2) above, or at the end of 3 years, whichever shall first occur, the use hereby permitted shall cease and all caravans, buildings, structures, materials and equipment brought on to the land, or works undertaken to it in connection with the use, shall be removed and the land restored to its condition before the development took place.
- 4) There shall be no more than 8 pitches on the site and on each of the 8 pitches hereby approved no more than 2 caravans, shall be stationed at any time, of which only 1 caravan shall be a static caravan.
- 5) No more than one commercial vehicle per pitch shall be stationed, parked or stored on this site at any time. These shall be for the use only be the occupiers of the caravans hereby permitted and no vehicle shall exceed 3.5 tonnes in weight.
- 6) No commercial activities shall take place on or from the land, including the storage of materials.
- 7) 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 6 months of the date of failure to meet any one of the requirements set out in i) to iv) below:
 - i) Within 3 months of the date of this decision a site development scheme for: the means of foul and surface water drainage of the site; a flood evacuation plan to include all plots and site residents, the means of tethering the caravans and the means by which the floor level of the caravans are to be raised to a minimum of 2.52m above AOD; proposed and existing external lighting on the boundary of and within the site; the internal layout of the site, including the siting of caravans, plots, hardstanding, access roads, bin storage; parking and amenity areas; boundary treatments; the restoration of the site to its condition before the development took place, (or as otherwise agreed in writing by the local planning authority) at the

end of the period for which planning permission is granted for the use, or the site is occupied by those permitted to do so (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 retained until the use ceases and the restoration measures have been implemented.

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.

- 8) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any other order revoking and re-enacting that order with or without modifications), no walls, fences or other means of enclosure other than those approved under condition 7 above shall be erected on the site .
- 9) No burying of waste or other materials shall take place on the land at any time.

APPEARANCES

FOR THE APPELLANTS:

Mrs Alison Heine BSc, MSc, MRTPI	Appellant's Agent
Mr Eugene Lee	Appellant
Mr Patrick Coyle	Proposed site occupant Plot 7
Mr Anthony Coyle	Proposed site occupant Plot 7
Mr Miles Smith	Proposed site occupant Plot 1
Mr Patrick Nugent	

FOR THE LOCAL PLANNING AUTHORITY:

Jim McEwen BA(Hons), MRTPI	Principal Planner Enforcement, Dover District Council
April Ewing	Senior Policy Planner, Dover District Council

INTERESTED PERSONS:

Jennifer Wilson	Sustainable Places Planning Specialist, Environment Agency
Meriel Mortimer	Environment Agency
Dr R G Allen	Local resident
Lindsay Frost BA Dip TP MRTPI	Planning Consultant to Ash Parish Council
Christine Haggart	Clerk to Ash Parish Council
Cllr. Michael Conolly	Dover District Council

DOCUMENTS

- 1 Supplementary Note on Flood Hazard Ratings submitted by the EA
- 2 Appeal Decision APP/U2235/W/17/3183893
- 3 Updated personal details of proposed site occupants
- 4 Appellants final comments on flood risk matters