
Appeal Decisions

Inquiry Held on 1 May 2018

Site visit made on 1 May 2018

by Paul Dignan MSc PhD

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

Decision date: 13 July 2018

Appeal A: APP/U2235/C/17/3175400

Land at Stockbury Valley, Stockbury, Kent, ME9 7QN.

- 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 Zac Kiddle against an enforcement notice issued by Maidstone Borough Council.
 - The enforcement notice, numbered 16/506144, was issued on 13 April 2017.
 - The breach of planning control as alleged in the notice is: Following the refusal of planning application MA/16/506144/FULL, has continued in the unauthorised change of use of the land to residential use for the stationing of 4 touring caravans and the installation of a cesspit for extended Gypsy/Traveller family which is contrary to national legislation and the local development policies.
 - The requirements of the notice are: (a) Permanently cease all residential use of the site; (b) Permanently remove all mobile homes, touring caravans and containers/buildings in connection with the residential use and any other use, from the land edged red on the attached plan marked A; (c) Permanently remove from the Land all hardstanding/hard surfacing situated beneath, surrounding and accessing the mobile homes and caravans associated with the residential use; (d) Remove the fencing enclosing the plot and that which aligns the access through the site. (f) Permanently remove from the land all resulting materials in association with the steps (b), (c), (d) and (e).
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (d), (f) and (g) of the Town and Country Planning Act 1990 as amended. The application for planning permission deemed to have been made under section 177(5) of the Act as amended also falls to be considered.
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Appeal B: APP/U2235/W/17/3173195

Land at Stockbury Valley, Stockbury, Kent, ME9 7QN.

- 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 Zac Kiddle against the decision of Maidstone Borough Council.
 - The application Ref 16/506144/FULL, dated 1 August 2016, was refused by notice dated 3 March 2017.
 - The development proposed is Continued use of the site for 4 touring caravans and erection of utility room with installation of cesspit for extended Gypsy/ Traveller family.
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Decisions

Appeal A: APP/U2235/C/17/3175400

1. It is directed that the enforcement notice be corrected: by the deletion of the description of development in section 3 and the insertion in its place of the

following: The material change of use of the Land to a use for the stationing of caravans for residential purposes for an extended gypsy/traveller family, and associated operational development including the installation of a cesspit; and by the substitution of the plan annexed to this decision for the plan attached to the enforcement notice. Subject to these corrections the appeal is allowed and the enforcement notice is quashed. 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 material change of use of the Land to a use for the stationing of caravans for residential purposes for an extended gypsy/traveller family, and associated operational development including the installation of a cesspit on the land shown edged black on the plan annexed to this decision, and subject to the conditions in Schedule 1 attached to this decision.

Appeal B: APP/U2235/W/17/3173195

2. The appeal is allowed and planning permission is granted for use of the site for 4 touring caravans and erection of utility room with installation of cesspit for extended Gypsy/ Traveller family at Land at Stockbury Valley, Stockbury, Kent, ME9 7QN in accordance with the terms of the application, Ref 16/506144/FULL, dated 1 August 2016, and subject to the conditions in Schedule 2 attached to this decision..

Background and preliminary matters

3. The appeals concern a parcel of land on the southern side of the A249. It is in the open countryside and within the North Kent Downs Area of Outstanding Natural Beauty (AONB) and the North Downs Special Landscape Area. The land the subject of the enforcement notice extends from the roadside to encompass a former chalk quarry that was used for a number of years for tipping non-toxic and inert waste materials before being restored as a completed landfill. Although there has evidently been some works on the restored quarry part of the site, the residential development is confined to the land between the restored quarry and the A249, and that is also the extent of the planning application site. The land used for residential purposes appears to have been used over the years for various purposes directly or indirectly related to the landfill, but not for waste disposal itself. Although all of the land the subject of the notice is in the appellant's ownership, the residential land is readily distinguishable from the completed landfill site, and aside from the access to the completed landfill passing through the residential part, there is physical and functional separation. In short they are separate planning units. In view of this it is appropriate to amend the enforcement notice so that the land affected is confined to the residential land alongside the A249, as identified in the planning application. Since the enforcement notice must stand on its own it is also necessary to amend the allegation to remove reference to extraneous material and for clarity, as follows: "The material change of use of the Land to a use for the stationing of caravans for residential purposes for an extended gypsy/traveller family, and associated operational development including the installation of a cesspit." I am satisfied that these amendments can be made without prejudice to the parties. I was also asked by the Council to amend the reasons and requirements, but that is not necessary.
4. Kent County Council objected to the development due to concern about the integrity of the completed landfill. However, it confirmed at the Inquiry that it no longer objected on the basis that the enforcement notice plan as amended excluded the completed landfill. There is also dispute between the appellant and a

neighbouring landowner about access rights over part of the land, but that is a private matter.

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Ground (b)

5. An appeal on this ground is that the matters alleged in the notice have not occurred. The basis of the appeal in this case is that the wording of the notice is incorrect. As set out above, I shall make amendments to the notice, including reducing the extent of the land affected. As amended, there is no argument that the matters alleged have not occurred, hence the appeal on this ground must fail.

Ground (c)

6. This ground is that the matters comprised in the description of the alleged breach of planning control, if they occurred, do not constitute a breach of planning control. This argument is made in respect of the hardstanding and the gates at the highway access.
7. Almost the entirety of the appeal site as amended is now laid to tarmac, and I understand that at the time the notice was issued the surface was mainly road planings. The appellant claims that the site was entirely hardsurfaced when he purchased it, and that all he has done is carry out repair or maintenance of the existing surface, which would not be a breach of planning control.
8. The history of the use of the site as a reception area for the tip, as a skip depot and a waste transfer station, not all of which was authorised, suggests that there would have been a trafficable surface over at least parts of the site in the past, and a neighbour, Mr Breeds, recalls the entirety of the site being covered in hardcore before the appellant purchased it. However, there is also photographic evidence provided by the Council that indicates that hardcore was brought onto the site and spread, and that levelling took place. Further, an aerial photograph taken in the early stages of development, submitted during consideration of the planning application, shows much of the site covered by trees and/or scrub. It seems to me more likely than not that whatever hard-surfacing was on the site prior to the commencement of the appeal development had been subsumed into the landscape, such that the works subsequently carried out and resulting in what is now an expanse of tarmac, went well beyond works of repair and maintenance. On the balance of probability I consider that the establishment of the existing hard surface is operational development that requires planning permission, in the absence of which it is a breach of planning control.
9. Turning to the gates, there is evidence that there were corrugated steel gates present at the access prior to what is there now, but there is no dispute that the corrugated steel gates were replaced. That is operational development that required planning permission.
10. For these reasons the appeal on ground (c) must fail.

Ground (d)

11. This ground is that it is too late to take enforcement action, and again it relates to the hardsurfacing and gates. I have concluded under ground (c) that the establishment of the existing hardstanding and the erection of the existing gates were operational development requiring planning permission. Since neither took

place more than 4 years before the notice was issued they do not benefit from immunity from enforcement by reference to sections 171B(1) and 191(2)(a) of the 1990 Act. The appeal on this ground fails accordingly.

12. It was suggested at the Inquiry that the site may have acquired some industrial or waste related lawful use because of its past history, and that this is a matter that I should consider under this ground. That does not fall within the ambit of ground (d) in an appeal such as this, which is solely concerned with whether the development enforced against has acquired immunity from enforcement through the passage of time. If the appellant wanted to establish the last lawful use to support the appeals under grounds (a) and (f) then he could have sought a certificate of lawful use or development.

Ground (a) and the deemed planning application

13. An appeal on ground (a) is essentially that planning permission should be granted for the matters stated in the notice. The appeal is accompanied by a deemed planning application. In essence, the deemed planning application is for the change of use of the land to use as a 4 pitch gypsy/traveller site, with associated operational development, and not for the 4 touring caravan site with utility building the subject of the planning application and Appeal B. The site is currently laid out as 4 defined pitches, delineated by internal fencing. There are some grassed areas being prepared or set aside, a wooden utility room on the southernmost pitch and an open-fronted shed with utilities on the pitch in the north-west corner. Having regard to the reasons given for issuing the notice, which mirror those given for refusing planning permission for the 4 touring caravan site, I consider that the main issues are:

- the effect of the development on the character and appearance of the area;
- whether the site can be considered as acceptable in policy terms, having regard to access to services and facilities, and the location of the site in the countryside;
- the weight that should be attached to the unauthorised nature of the development; and
- whether there are any material considerations to outweigh any conflict with the development plan or other harm identified.

Planning Policy

14. The development plan includes the recently adopted Maidstone Borough Local Plan 2017 (LP). LP Policies SP17 and DM30 apply to development in the countryside. Policy SP17 provides that development proposals in the countryside will not be permitted unless they accord with other policies in the plan and do not result in harm to the character and appearance of the area. It emphasises that great weight should be given to the conservation and enhancement of the Kent Downs AONB. Policy DM30 is a permissive policy that supports high quality design. It expects development to maintain or enhance local distinctiveness and to appropriately mitigate impacts on the appearance and character of the landscape. LP Policy DM15 is a criteria based policy for assessing applications for new gypsy and traveller and travelling showpeople sites. The relevant criteria require that local services be accessible and that the development would not result in significant harm to the landscape and rural character of the area. There is no dispute that the appellant and prospective occupiers meet the definition of

traveller for planning purposes, and that was clear from the evidence put before me.

15. Planning Policy for Traveller Sites (PPTS) and the National Planning Policy Framework (NPPF) are material considerations. PPTS aims 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. Amongst other things, it expects local planning authorities to increase the number of traveller sites in appropriate locations to address under provision and maintain an appropriate level of supply. The NPPF advises that great weight should be given to conserving landscape and scenic beauty in AONBs.

Character and appearance

16. The appeal site is alongside a dual-carriageway section of the A249. The road at this point is in a cutting with woodland slopes opposite and to the west and south of the site itself. The site is elevated above a paddock to the east and slopes gently upward from the highway. There is a residential property about 180m further east, then another block of woodland before a strip of residential and commercial development on the southern side of the highway. There is no footway along the A249 on this stretch, and it is unlikely to be used by pedestrians. There is apparently a public bridleway passing along the southern side of the adjoining paddock and into the woodland south of the completed landfill, but the line is obstructed in a number of places and does not appear to be in use. In reality the predominant public views of the site are from a short section of the A249 approaching from the east. Vehicles will just have passed the clusters of residential and commercial development on the same side of the A249, so that the presence of the appeal development would not be discordant or harmful to the rural character of the area. The gate piers have a somewhat urban character, but these would only be glimpsed in passing and their impact on rural character would be minimal.
17. A certain amount of landscaping has already taken place, green painted hit and miss fencing on the boundaries and some native tree planting, and there is a good screen of trees on the wide highway verge along the site frontage. There is considerable scope for further planting along the eastern boundary which would significantly filter views of the site, but the visual impact of the site as it stands is quite moderate, well contained and not harmful to the character and appearance of the area.
18. In landscape terms the Council's Landscape Character Assessment identifies the site as lying within the Hucking Dry Valleys character type, a gently undulating dry valley landscape with large woodland tracts, grassland pasture and paddocks, forming part of the Kent Downs AONB. In the vicinity of the site however, due mainly to the dominant presence of the A249, but also to the significant landform disruption of the former quarry/landfill and to the reasonably contained nature of the site, I consider that the development has little landscape impact. It is not displacing any other use, and there is evidence that the site was unattractive, with abandoned plant, rudimentary sheet metal fencing and significant fly-tipping, for some years prior to its acquisition by the appellant. There is ample space on the site for 4 pitches, and it does not appear over-developed or particularly urban in character. It does not in my view harm the landscape or scenic beauty of the AONB.

Is the location acceptable in policy terms

19. The wording of LP Policy DM15 makes it clear that new traveller sites in the Borough can be located in the countryside, and indeed the impression I got is that new traveller sites in the Borough are more likely than not to be in the countryside. There is no policy requirement to demonstrate an unmet need for sites. It is not disputed that the site is reasonably well located in terms of access to local services, and the development does not cause significant harm to the landscape and rural character of the area. The ecological impact of the development has not been assessed, but in view of the historical use of the site and the evidence of degradation of the land by fly-tipping and abandoned plant and equipment, and the potential for further native tree planting around the site, I consider that this is a matter that should not be treated as creating conflict with Policy DM15. The development meets all other Policy DM15 criteria, and does not result in harm to the character and appearance of the area, or to local distinctiveness, and there is scope to enhance the area by appropriate landscaping on and around the site. Policies SP17 and DM30 are therefore met in my view.

Intentional unauthorised development

20. It is now government planning policy that intentional unauthorised development is a material consideration that should be weighed in the determination of planning applications and appeals. The written ministerial statement announcing this policy stated that it applied to all new planning applications and appeals received since 31 August 2015. The change of use of the land was clearly done in the knowledge that planning permission was required. It was intentional unauthorised development to which I attach some weight against the grant of planning permission.

Overall balance

21. I have found no conflict with the development plan, read as a whole. The unauthorised nature of the development is a material consideration that weighs against it, but it is not sufficient in my view to displace the presumption in favour of sustainable development, which for decision taking means approving development proposals that accord with the development plan.
22. A good deal of evidence at the Inquiry was directed at other material considerations, including the current position in respect of the need for and supply of gypsy and traveller pitches, personal circumstances, Human Rights and equality considerations. In view of my conclusion that the development accords with the development plan, these are not matters that I need to address.
23. In view of the relevant planning policy considerations, and the nature of the development, I shall impose a condition restricting occupation of the site to travellers. In the interests of the character and appearance of the site and surrounding area, and to safeguard residential and visual amenity, I shall impose a condition requiring the submission of a Site Development Scheme which will enable outstanding details to be confirmed and ensure that the site layout and associated works respect the environment and local character. The Site Development Scheme will cover the internal layout of the site, including the position of the caravans and the extent of hardstanding, parking and amenity areas, ensure the appropriate positioning of entrance gates to enable vehicles entering the site to leave the highway safely, external lighting, surface water and foul sewage disposal, landscaping and boundary treatment. For the same reasons

I shall limit the number of caravans using the site, preclude commercial activities and limit vehicle size.

24. Since the grant of planning permission requires the quashing of the notice, there is no need to consider the appeals on grounds (f) and (g).

Appeal B: APP/U2235/W/17/3173195

25. This appeal is against the decision of the Council to refuse planning permission for development of the same site as that considered above, but with fewer caravans, all touring. The illustrative layout submitted with the application showed a 2m high bund on the eastern and highway frontages, but this was an element of site landscaping that is no longer sought. In view of my conclusions above it is clear that this would also accord with the development plan and it follows that that planning permission should be granted. However, it can be problematic in planning terms to have two planning permissions for similar development on the same site. The application is for prospective development that is materially different from what is now on site, and is unlikely to be implemented in the circumstances, but for consistency and clarity I shall grant planning permission subject to conditions covering the same matters as in Appeal A but worded differently where appropriate, and an implementation period of 1 year so that it will be clear relatively promptly which permission governs the development on the site. In my formal decision I shall grant planning permission for the specific use applied for and not for the "Continued" use, which is an imprecise term for the purposes of any future interpretation of the planning permission.

Paul Dignan

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Alan Masters

Of Counsel

He called

John Breeds

Joseph Jones

Zac Kiddle Jnr

Zac Kiddle Snr

Robert Petrow

Brian Woods

Paul Lewis

Neighbour

Appellant, site occupier

Site occupier

appellant

Landscape Architect, Petrow Harley Ltd

Planning consultant, WS Planning

Neighbour

FOR MAIDSTONE BOROUGH COUNCIL:

Nicholas Ostrowski

Of Counsel

He called

Robert McQuillan

Planning consultant, Robinson Escott Planning
LLP

Rebecca Prideaux

Site visit

INTERESTED PERSONS:

Jane Scott

Hobbs Parker LLP, representing neighbouring
land owner

Robin Gregory

Kent County Council

DOCUMENTS

- 1 Letter of notification
- 2 Aerial photograph dated 17 April 2018, submitted by Jane Scott
- 3 Appeal decision letters – APP/H1840/A/12/2170076,
APP/H2265/C/12/2179640, APP/H2265/A/12/2182789, and
APP/U2235/W/17/3168396
- 4 Gypsy and Traveller and Travelling Showpeople Accommodation
Assessment: Maidstone, dated January 2012
- 6 Maidstone Borough Local Plan Policy GT1 and detailed site allocation
policies
- 7 Appeal decision letters – APP/U2235/A/10/2129095 and
APP/U2235/A/10/2198352
- 8 Caravan Count July 2017: Last 6 Counts
- 9 Appeal decision letter APP/U2235/W/17/3183893
- 10 Council's suggested amendment to Enforcement Notice
- 11 Aerial photograph dated 1 September 2016 submitted by Jane Scott and
with objection at application stage.
- 12 Council's 5-year pitch supply calculation
- 13 Council's suggested conditions
- 14 Council's closing submissions
- 15 Appellant's closing submissions

SCHEDULE 1

Conditions - Appeal A: APP/U2235/C/17/3175400

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. No more than 8 caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 (of which no more than 4 shall be a static caravan) shall be stationed on the site at any time.
3. 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 28 days 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 scheme, hereafter referred to as the Site Development Scheme, including details of: proposed and existing external lighting on the boundary of and within the site; the internal layout of the site, including the siting of caravans; areas for vehicular access and turning and manoeuvring; the means of foul and surface water drainage of the site; areas of hardstanding; fencing and other means of enclosure; hard and soft landscaping including details of species, plant sizes and proposed numbers and densities and measures for their protection and retention; and the provision of a site access that enables all vehicles using the site to enter the site without stopping on the public highway, shall have been submitted for the written approval of the local planning authority and the said scheme shall include a timetable for its implementation.
 - ii) within 6 months of the date of this decision the Site Development Scheme shall have been approved by the local planning authority or, if 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 Site Development 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, and works comprised in the scheme shall be thereafter retained for the duration of the development.
4. No commercial activities shall take place on the land, including the storage of materials.
5. No vehicle over 3.5 tonnes shall be stationed, parked or stored on this site.

SCHEDULE 2

Conditions – Appeal B: APP/U2235/W/17/3173195

- 1) The development hereby permitted shall begin not later than 1 year from the date of this decision.
- 2) 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).
- 3) No more than 4 caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 as amended, none of which shall be a static caravan, shall be stationed on the site at any time.
- 4) No development shall take place until details of the siting and materials of the proposed utility block shown in application drawing No. J002506/PL-01 shall have been submitted to and approved in writing by the local planning authority. These details shall include an implementation programme. The development shall be carried out in accordance with the submitted application plan and the approved details.
- 5) No development shall take place until details of the proposed access shall have been submitted to and approved in writing by the local planning authority. These details shall include an implementation programme. The development shall be carried out in accordance with the approved details.
- 6) No development shall take place until details of site layout and landscaping shall have been submitted to and approved in writing by the local planning authority. The details shall include indications of boundary treatments, all existing trees and hedgerows on the land, identify those to be retained and set out measures for their protection throughout the course of development, and details of new planting. These details shall include an implementation programme. The development shall be carried out in accordance with the approved details.
- 7) All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the completion of the development, and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.
- 8) No development shall take place until details of the means of foul and surface water drainage shall have been submitted to and approved in writing by the local planning authority. These details shall include an implementation programme. The development shall be carried out in accordance with the approved details.
- 9) Details of any external lighting shall be submitted to and approved in writing by the local planning authority before the use hereby permitted takes place. Development shall be carried out in accordance with the approved details.
- 10) No vehicle over 3.5 tonnes shall be stationed, parked or stored on this site.
- 11) No commercial activities shall take place on the land, including the storage of materials.



Plan

This is the plan referred to in my decision dated: 13 July 2018

by Paul Dignan MSc PhD

Land at Stockbury Valley, Stockbury, Kent, ME9 7QN

Reference: APP/U2235/C/17/3175400

