The Planning Inspectorate

Appeal Decision

Hearing Held on 17 April 2018

Site visit made on 17 April 2018

by Stephen Brown MA(Cantab) DipArch RIBA

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

Decision date: 02 August 2018

Appeal Ref: APP/U2235/C/17/3189217
Acers Place, Lenham Road, Headcorn TN27 9LG

- 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 by Kevin Harrington against an enforcement notice issued by Maidstone Borough Council.
- The enforcement notice, ref. ENF/17/500611, was issued on 18 October 2017.
- The breach of planning control alleged in the notice is the unauthorised change of use of land to a gypsy/traveller site for one gypsy family including the laying of hard surfacing and the stationing of 2 no. caravans, and entrance with gates, which is contrary to both national guidance and local development policies.
- The requirements of the notice are to:
  a) Permanently remove the hard surfacing and resultant material which has been laid in preparation for residential use from the land within the red outline on the plan attached to the notice.
  b) Permanently remove all caravans or any other mobile structures intended for residential use.
- The period for compliance with the requirements is 3 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. The prescribed fees have been paid within the specified period, and the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended fall to be considered.

Decision

1. The appeal is allowed on ground (g), and it is directed that the enforcement notice be varied by:

   DELETION of 3 months and the SUBSTITUTION of 12 months as the period for compliance in paragraph 6 of the notice.

   It is further directed that the enforcement notice be varied by:

   INSERTION of the words *'the current'* before the words *'residential use'* in Requirement (a) of the notice; and

   DELETION of the word *'or'* and SUBSTITUTION of the word *'and'* in Requirement (b) of the notice

   Subject to these variations 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.

The enforcement notice

2. It was agreed that requirement (a) in paragraph 5 of the enforcement notice should read *'……in preparation for the **current** residential use…..'* (my emphasis in bold). This is to reflect the fact that some hard surfacing and a concrete base had been laid lawfully in connection with the previous temporary planning permission for the appeal site.

3. Requirement (b) in paragraph 5 of the enforcement notice says *'…..remove all caravans **or** any other mobile structure….'*. The parties agreed that this should read *'…..remove all caravans **and** any other mobile structures….'* (my emphases in bold).

4. I intend to vary requirements (a) and (b) accordingly, and do not consider any party would suffer significant prejudice as a result.

Background matters

5. The parties agree that the appellant and family are ethnic gypsies.

6. The appeal site has an area of about 0.75 of a hectare, and lies on the south-eastern side of Lenham Road, some 2.3 kilometres to the north-east of Headcorn. It is within generally flat open countryside, and within the Low Weald Area of Landscape of Local Value as designated in the Maidstone Borough Local Plan of 2017. The site extends approximately 140 metres back from the road, and is about 46 metres wide. On the road frontage is a close-boarded timber fence set behind a hedge, and an electrically operated sliding access gate set back 5.5 metres from the road edge.

7. The site is divided into three main areas by fences across its width. The front area of the site is about 42 metres deep, surfaced largely with road planings. On this part are two static mobile homes on concrete bases – one with a fenced patio/play area – two touring caravans, a timber storage shed and a gas tank. Several vehicles were parked there at the time of my visit. The mobile home towards the road boundary is on the concrete base laid in connection with the earlier temporary planning permission.

8. The middle section of the site, about 15.3 metres deep, is also largely surfaced with road planings, and there is a substantial barn/stables building, 2 containers, and a gas tank, as well as stacks of bricks and bags of aggregate. There is also another touring caravan, a small mechanical digger, and a fork-lift truck. The front and middle sections have close-boarded timber fencing along their side boundaries. The rearmost area of the site is about 85 metres deep, with post and rail fencing, and is meadowland used for grazing the appellant's horses.

9. In February 2012 a temporary personal planning permission was granted for Acers Place for a period of 5 years[1]. This permitted the stationing of 1 mobile home and 1 touring caravan, and erection of a utility building, laying of hardstanding, and installation of a cess tank. An application for the discharge of conditions attached to that planning permission was approved in August 2012. A further application for the variation of Condition 1 to the February 2012 permission – which would have allowed any gypsy family to occupy the

[1] Planning permission ref. 10/0266.

site - remains undetermined. The temporary planning permission has now lapsed, and the persons named in the permission have left the site.

10. One of the mobile homes on the appeal site is occupied by Mr Kevin Harrington, his partner, and their two children aged 3 years and 1 year. The other mobile home is occupied by the appellant's father, mother, and maternal grandfather.

11. There is a 4-pitch gypsy caravan site immediately to the south-west of the appeal site, known as Greengates, and there is another site for two gypsy families immediately to the rear of that. The Greengates site is unauthorised, and enforcement proceedings are pending. The adjacent site has a three-year temporary and personal gypsy site permission, granted on appeal in 2017[2]. Immediately to the east of that is a small site for which planning permission was refused in November 2017, and an enforcement notice issued in January 2018.

12. To the north-east of the appeal site is the Oak Tree Farm site. This had permanent permission as a gypsy caravan site subject to a personal condition. The named persons have sold the site and left. The Council say the condition has been breached, and the permission effectively no longer applies.

13. On the opposite side of the road are other sites occupied by gypsies. Smith's Cottage has an unrestricted use for 2 residential caravans, but I understand there are now 2 other unauthorised caravans on the site. To the north-east of Smith's Cottage is Plot 1, which has planning permission for one mobile home and one touring caravan. To the rear of Smith's Cottage is Plot 4, with permission for one residential caravan and a touring caravan. To the rear of that is Plot 3, where there was a temporary permission for a residential caravan that has now expired. Some 120 metres to the west of Plot 3 is a substantial gypsy caravan site, currently subject of an enforcement notice. To the north of these various plots are two substantial equestrian sites.

The appeal on ground (a) and the deemed planning application

14. This ground is that planning permission should be granted for the matters alleged in the enforcement notice.

15. From my inspection of the appeal site and its surroundings, and from all that I have heard and read I consider the main issues in this appeal to be:

- The effect of the alleged development on the character and appearance of the appeal site and the area in its vicinity, bearing in mind its location in the open countryside and the Low Weald Landscape of Local Value.
- Whether any harm found would be outweighed by the need for gypsy and traveller sites in the district, and any other circumstances.

16. Policy C of the government's Planning Policy for Traveller Sites (PPTS) sets out that when assessing she suitability of sites in rural or semi-rural settings, it should be ensured that the scale of such sites does not dominate the nearest settled community. At paragraph 25 Policy H includes the advice that new traveller site development in the open countryside, away from existing settlements, or outside areas allocated in the development plan, should be very strictly limited. While a single site such as this is not of a scale that could

[2] Appeal decision ref. APP/U2235/W/16/3160636, dated 13 September 2017.

dominate a local community, it must be regarded as within open countryside, and is quite remote from the large village of Headcorn.

17. The countryside in the vicinity the appeal site, and which surrounds the various sites I have described above, is predominantly made up of a patchwork of small open fields with fences and hedges. Apart from the various gypsy and traveller sites nearby – both authorised and unauthorised – there are occasional, somewhat isolated farmhouses, farm buildings and other dwellings sited on either side of the road. The land is generally quite flat, but the landscape has a gentle, agricultural/rural quality. This may not be a landscape of especially high value – such as an Area of Outstanding Natural Beauty – but is recognised as an area of local landscape value that Policies SS 1 and SP 17 of the Maidstone Borough Local Plan seeks to conserve or enhance.

18. The two areas of the appeal site towards Lenham Road, take up rather less than a half of the total depth of the site. The hard surfacing of road planings, the 1.8 metre high close-boarded fencing, the substantial barn/stables, mobile homes and other paraphernalia present a picture of quite intense development. In my opinion this has changed the character of this part of the site from its agricultural and rural origin to that of a largely enclosed residential and equestrian establishment, quite separated from the predominantly rural surroundings. This is in distinct contrast to the rear part of the site, which retains its agricultural/rural character. Although the barn/stables may be an acceptable feature in this countryside setting, in combination with the other elements it contributes to the incongruous character of the site as a whole.

19. The fencing off of the two front areas accentuates the concentrated developed nature of the site, and I do not accept the appellant's contention that this subdivision reinforces the pattern of small hedged fields apparent in the surrounding land. Furthermore, the appeal site is part of a small cluster of mostly unauthorised sites on the eastern side of the road. The fact that the Council had granted temporary personal permissions for 3 of these gypsy and traveller sites in 2009/10 does not indicate that permanent general permissions were envisaged. I do not have sufficient detail of the planning history of these sites to judge the weight the Council would have given to the value of the landscape at that time, or other circumstances that might have led to these grants of temporary personal permissions.

20. While there are other small groups of authorised gypsy and traveller sites on Lenham Road, this is not to an extent that they have become a constituent element of the overall landscape character. Their presence does not justify the legitimation of what is at present an unauthorised site, or the cumulative effect that might arise from the proximity of this site to other nearby approved sites.

21. Although it is argued the appeal site is well screened, this is largely the result of the close-boarded fence and gates on the road frontage and along the side boundaries. While the front fence is set behind a previously existing hedge and ditch, the close-boarded fencing generally is visually prominent, and is far from the sort of screening provided by existing landscape features - as envisaged in paragraph 1(ii)c of Local Plan Policy DM 15. Nor does it accord with the aims of PPTS paragraph 26(d), which seeks to ensure that sites are not enclosed with so much hard landscaping, high walls or fences that they create the impression that the site and its occupants are deliberately isolated from the rest of the community. Rather than being concealed by natural features, this site has

been effectively hidden away by use of conspicuous man-made features that are themselves incongruous elements in the rural scene.

22. Furthermore, I consider the development has a cumulative effect in terms of its impact on countryside and landscape as a result of proximity to other lawful residential caravan sites nearby – in conflict with one of the aims of Local Plan Policy DM 15.

23. I conclude on the first main issue that the development enforced against causes significant harm to the character and appearance of the appeal site and the area in its vicinity, bearing in mind its location in the open countryside and the Low Weald Landscape of Local Value. The development does not accord with the development plan, particularly in terms of Policies SS 1, SP 17, and DM 15 of the Maidstone Borough Local Plan of 2017. These policies include aims to protect and enhance landscapes of local value and their distinctive landscape character.

24. The Council's Gypsy and Traveller Accommodation Assessment of 2012 (the GTAA) estimates a need for a net addition of 187 permanent pitches in the Borough during the period October 2011-March 2031. These are to be provided by means of permanent pitches, site allocations and windfall sites. For the period October 2011 to March 2016 there was an assessed need for 105 pitches, and from April 2016 to March 2021, an assessed need for a further 25 pitches. Since the base date of 1 October 2011, planning permission has been granted for 112 permanent pitches with no personal ties. In addition planning permissions have been granted for 22 permanent, personal pitches; 3 temporary non-personal pitches, and 34 temporary personal pitches. The Council say they have a 5.2 year supply of Gypsy and Traveller sites, which is monitored on an annual basis, and the appellant agreed this is the case.

25. However, the appellant argues that the 37 temporary pitches provide in part an indication of the current unmet need for pitches. I concur with this view in that most of these sites will probably only delay a need for permanent pitches in the relatively near future. On that basis the number of new pitches with permanent planning permission provided since the base date is 134. However, it is further argued that the 22 permanent personal permissions cannot be relied upon, since some are now occupied in breach of the personal occupancy conditions. Also, of the pitches allocated in Local Plan Policy GT 1, several have already been provided, so that up to 33 allocated pitches remain available of the 41 originally allocated. In addition there are some 32 unauthorised pitches on various sites within the Borough. Overall, the appellant suggests there is a remaining unmet need for an additional 53 permanent pitches, which can only be met through the provision of windfall sites, such as the appeal site, which would accord with the criteria set out in Policy DM15 of the Maidstone Borough Local Plan of 2017.

26. Aggregating temporary permissions and unauthorised pitches, less the remaining allocated pitches, establishes an immediate unmet need for 34 pitches.

27. As regards public gypsy sites there are two in the Borough, managed by the County Council. The appellant says that all public sites in Kent are full, there is a low turnover, and a waiting list of over 100 families for any pitches that come available. The allocated sites are all in private ownership, on land already

owned by gypsy and traveller families. They are unlikely to become available to gypsies or travellers from outside the owner's family.

28. As the Council say, the rate at which pitches have been provided in the first 7 years of the period is more than keeping pace with the rate of need expressed in the GTAA. The Local Plan Inspector concluded - post publication of the 2015 Planning Policy for Traveller Sites (PPTS) – that if a new GTAA were to be undertaken, it would provide an adequate evidential base, and be likely to result in similar figures of need. Nevertheless, I consider that given the current number of temporary permissions and unauthorised sites, this slight advantage in rate of supply might be lost over the next 5 years - when a further 28 pitches on windfall sites would be required – as well as over the subsequent 5-year period, and beyond. However, looking at the immediate picture I do not consider the degree of unmet need sufficient to overcome the harm to countryside and landscape interests.

29. Regarding the appellant's circumstances, the family previously owned and occupied a site with permanent planning permission in Staplehurst. However a violent conflict with other gypsies had arisen, as a result of which the appellant decided to sell the site and move away. The Staplehurst site is now occupied by another gypsy family. It was argued that there are no pitches available on the public sites, and that a move from the appeal site would result in the appellant and family resorting to roadside camping. The Council acknowledged that there had been a violent incident at the previous site, but stated that no others had left as a result.

30. There may be difficulty in finding a suitable alternative site, but there was little evidence put forward to show what attempts had been made to find one, either at the time the appellant vacated the Staplehurst site, or since the enforcement notice was issued. Although there is a long waiting list for the public sites, there was no indication that any attempt had been made to join that list. I am not persuaded that no other suitable sites would be available.

31. Regarding the children, the elder child started attending a local pre-school in April 2018. As the Council say, this cannot be regarded as being established in a school, and in my view a possible move to another pre-school prior to starting at primary school would not cause significant difficulties. The younger child is well before school age. At the Hearing it was confirmed the children and family at large have no particular health problems, and the family are registered with a GP practice in Staplehurst, some 5 kilometres to the west of Headcorn. Again, I do not consider a move from the appeal site would be likely to affect access to health care either for the children or the wider family. The children's best interests are of course a primary consideration, but in my opinion could be properly catered for if the appeal is refused.

32. I have found the development to cause significant harm to the countryside and landscape, and it follows the development cannot be regarded as environmentally sustainable. Furthermore, given the distance from substantial settlements, I do not consider the site is sustainable in terms of access to services, and must rely upon the use of private vehicles. Nor can it be seen a sustainable in terms of promoting any meaningful co-existence with the local community – a factor promoted in PPTS Policy B.

33. Overall, while I accept there is a level of unmet need, given the rate of approvals in the first 7 years of the assessment period I consider there is a

reasonable likelihood that the necessary number of sites in the Borough – including windfall sites - will come forward. I have found that the development causes significant harm to countryside and landscape interests, and cannot be regarded as sustainable. I do not consider the significant harm caused to be outweighed by the need for gypsy and traveller sites in the Borough, or by the personal circumstances of the appellant and his family, including the primary consideration of the children's best interests. The appeal on ground (a) therefore fails.

34. I have considered the possibility of granting a temporary planning permission, which the appellant conceded would be acceptable. The section of the government's Planning Practice Guidance 'Use of Planning Conditions'[3] advises that the circumstances where a temporary permission may be appropriate include where a trial run is needed in order to assess the effect of the development on the area, or where it is expected that the planning circumstances will change in a particular way at the end of that period. A temporary permission may also be appropriate on vacant land to enable use for a temporary period prior to any longer term regeneration plans coming forward.

35. In this instance I have already come to the view that there is significant harm to countryside and landscape interests. This harm would only continue if a temporary permission were granted. Furthermore, there is no indication that planning circumstances are likely to change, given the relatively recent adoption of the Local Plan. In the light of these factors I do not consider the grant of temporary permission would be appropriate.

The appeal on ground (g)

36. This ground is that the compliance period is too short. The appellant appears to have done little in the way of searching for an alternative suitable site, and I accept that the circumstances are such that the 3 month period allowed in the enforcement notice is inadequate, particularly given the various structures that would need to be moved. I consider a period of 12 months would be suitable. The appeal therefore succeeds to this limited extent on ground (g).

Conclusions

37. For the reasons given above and having regard to all other matters raised I conclude that a reasonable period for compliance would be 12 months, and I am varying the enforcement notice accordingly, in addition to other variations noted above. The appeal on ground (g) succeeds to that extent. I shall uphold the enforcement notice with the variations, and refuse to grant planning permission on the deemed application.

Stephen Brown

INSPECTOR

[3] Paragraph: 014 Reference ID: 21a-014-20140306. Revision date: 06 03 2014.

APPEARANCES

FOR THE APPELLANT:

Philip Brown BA(Hons) MRTPI	Chartered Town Planner, Managing Director, Philip Brown Associates Ltd.
Kevin Harrington	Appellant
Michael Harrington	The appellant's father.

FOR THE LOCAL PLANNING AUTHORITY:

Rebecca Prideaux	Senior Planning (Enforcement) Officer Maidstone Borough Council.
Joanne Russell	Senior Planning Officer Maidstone Borough Council.

INTERESTED PERSONS:

Martin Round	Councillor for Headcorn Ward Maidstone Borough Council.
Shellina Prendergast	Councillor for Headcorn Ward, Maidstone Borough Council, and Kent County Council.

DOCUMENTS

1 Attendance list.
2 The Council's letter of notification of the appeal, dated 19 March 2018.
3 Letters of representation.
4 Policy DM 15 of the Maidstone Borough Local Plan 2017.
5 Maidstone Landscape Character Assessment as amended July 2013.

PHOTOGRAPH

1 Aerial photograph of the appeal site, 2015.