



Appeal Decisions

Hearing held on 12 June 2019

Site visit made on 11 June 2019

by Diane Lewis BA(Hons) MCD MA LL M MRTPI

an Inspector appointed by the Secretary of State

Decision date: 08 July 2019

Appeal Ref: APP/U2235/C/18/3198544 (Appeal 1)

Land known as Horseshoe Paddock, Lucks Lane, Chart Sutton, Maidstone, Kent ME17 3EZ

- 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 Terry Hickmott against an enforcement notice issued by Maidstone Borough Council.
- The enforcement notice, numbered ENF/14/500525, was issued on 16 February 2018.
- The breach of planning control as alleged in the notice is: "Without planning permission, Change of use of land as a residential gypsy site with the stationing of two mobile homes, outbuildings and stable block, associated hardstanding, boundary wall and gates, which is contrary to both national guidance and the local development policies".
- The requirements of the notice are:
 - i. Cessation of the residential use on the land within the red line outline on the attached plan.
 - ii. Removal of all caravans and any other structures and associated paraphernalia in connection with the residential use on land within the red line outline on the attached plan.
 - iii. Removal of hard surfacing under, around and leading to all caravans and structures from the land within the red line outline on the attached plan.
 - iv. Removal from the land all resultant materials from complying with requirement steps (ii) and (iii).
- The period for compliance with the requirements is three (3) months from the date the notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (d), (f) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The enforcement notice is quashed.

Appeal Ref: APP/U2235/W/18/3198220 (Appeal 2)

Horseshoe Paddock, Lucks Lane, Chart Sutton, Maidstone, Kent ME17 3EZ

- 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 Terry Hickmott against the decision of Maidstone Borough Council.
- The application Ref 15/504872/FULL, dated 10 June 2015, was refused by notice dated 5 December 2017.
- The development proposed is use of the land as a residential gypsy site and the stationing of two mobile homes, existing outbuildings, former stable block, hardsurfacing, entrance gates and walls etc (retrospective planning application).

Summary of Decision: The appeal is allowed.

Preliminary Matter

1. The appeals for Horseshoe Paddock were heard at a hearing held on the day after a hearing into two appeals on land to the west known as The Willows¹. Similar issues were discussed and both hearings were attended by the two appellants, who were represented by the same agent.

APPEAL 1

Reasons

2. The appellant, together with Ms Smith, owns an area of land bounded by Lucks Lane to the north and by Chart Hill Road to the east. The enforcement notice relates to the eastern part of this land (the Land).
3. The enforcement notice was issued in February 2018 after the refusal of planning permission in December 2017 for the development that is the subject of Appeal 2. The description of the matters which appeared to constitute the breach of planning control is very similar to the description of the development in the planning application ref 15/504872/FULL. The area of the Land covered by the notice is larger than that shown on the site plan in Appeal 2.
4. In the grounds of appeal the appellant explained that planning permissions were granted for use of the site as a residential gypsy site in 2000 and 2004, with planning conditions restricting occupation to named persons. The original occupiers subsequently vacated the site, which was then occupied by the appellant and his family. The point was made that the allegation should be directed at non-compliance with conditions attached to the 2000 and 2004 permissions, rather than a material change of use. The appeal on ground (d) was directed at the stable building, which according to the appellant was converted to a dwelling and had been used as such for a period in excess of 10 years.
5. The appeal site visit² confirmed that the stable block sited in the south east corner of the Land had been converted to a dwellinghouse, with parking and amenity areas adjacent. The remainder of the area immediately to the west of Chart Hill Road was used for purposes ancillary to the appellant's caravan site and included a workshop and a day room with associated play area. The workshop was used in connection with the appellant's horse trading business (repair of carts, equipment and so on). The appellant's residential unit was on the area of adjacent land to the west, outside the land covered by the 2000 and 2004 permissions³. Further to the west were two caravans on a separate pitch. The area of land adjoining the boundary with Little Appleby was used as a holding paddock by the appellant.
6. At the hearing the appellant considered that the Land was a single planning unit with a mix of uses – a caravan site, a dwellinghouse and the stabling and keeping of horses. The appellant accepted that the breach of planning control on the area as a whole was not confined to non-compliance with conditions. In

¹ APP/U2235/C/18/3198221, APP/U2235/W/18/3197529

² An initial accompanied site visit to Horseshoe Paddock took place on 11 June, after the site visit for the appeals concerning The Willows, with a view to informing discussion at the hearing the following day. At the hearing it was agreed that no further accompanied visit was necessary.

³ Appeal refs APP/U2235/A/00/1042929 and APP/U2235/C/00/1043714 & 1043715 dated 15 November 2000 and APP/U2235/A/03/1135320 dated 16 August 2004 dated 16 August 2004.

his view the notice did not correctly describe the breach and could not be corrected without injustice. The Council did not disagree with this assessment.

7. The documents produced for the 2000 and 2004 appeal decisions confirmed that the planning permissions granted on appeal covered a rectangle of land adjacent to Chart Hill Road, a much smaller area than the Land subject to the current enforcement notice. It is also relevant to note that the 2000 permissions linked to the enforcement notice were for a mixed use as grazing land and for the stationing of residential caravans and the 2004 permission was for a mixed use of keeping of horses and residential. A series of aerial photographs also illustrate how over a period of time development has spread from the authorised area westwards. Around the time the notice was issued in February 2018 the probability is that the Land was the relevant planning unit and was in a mixed use. That being so the allegation should refer to all the components of the mixed use.
8. The power under section 176 of the 1990 Act to correct any defect, error or misdescription in an enforcement notice should be exercised only if the correction would not cause injustice to the appellant or the local planning authority. In this case I have no doubt that to correct the description to a mixed use comprising a caravan site, a dwellinghouse and the keeping of horses would cause injustice. The probability is that the appellant would wish to make additional representations to support the ground (d) appeal. The deemed planning application would be for a different development that had not been addressed by either the local planning authority or the appellant. The requirements would have to be reviewed.
9. For the reasons given above I conclude that the enforcement notice does not specify with sufficient clarity the alleged breach of planning control. It is not open to me to correct the error in accordance with my powers under section 176(1)(a) of the 1990 Act as amended since injustice would be caused were I to do so. The enforcement notice is invalid and will be quashed. In these circumstances the appeal under grounds (d), (a), (f) and (g) as set out in section 174(2) of the 1990 Act as amended and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act as amended do not fall to be considered.

Decision APP/U2235/C/18/3198544

10. The enforcement notice is quashed.

APPEAL 2

The development

11. The site identified by the site plan and block plan extends further west than the areas covered by the 2000 and 2004 permissions. The site and block plans show a site layout to include two static mobile homes, the position of a touring caravan, two sheds, a stable building, two new lamp posts (to be installed) and a single access in the north east corner of the site at the junction of Lucks Lane and Chart Hill Road. A plan showed details of the new walls and gates at the site entrance.
12. The appellant accepted that because of the enlarged site a variation of condition could not be pursued and that a material change of use was involved. Following on from the appeal site visit the appellant also asked that the site

layout indicated on the submitted plans be excluded from consideration and instead be dealt with through the submission of a scheme in compliance with a planning condition. The Council raised no objection to this approach.

13. A revised description of the development was agreed: "A material change in the use of land to use as a residential gypsy site with the stationing of two caravans, including no more than one mobile home, with ancillary dayroom and workshop, laying of associated hard standing, the erection of boundary wall and entrance gates". On reflection it would be more appropriate and consistent to replace 'mobile home' with 'static caravan'.
14. The development for which a planning permission was sought was in effect a material change of use of the land to use as a residential caravan site. The revised description does not alter this and reflects essentially the proposal that was considered by the local planning authority and on which interested people's views were sought. I am satisfied that to consider the proposal in its amended form would not deprive interested parties of the opportunity of being consulted and would not cause prejudice to anyone. Therefore I will determine the appeal on the basis of the amended description and plans.
15. The lack of information pertaining to Gypsy and Traveller status was cited as part of the reason for refusal of planning permission. At the hearing Mr Hickmott confirmed that he derived most of his income from horse trading within a circle of gypsy horse traders, as he has done for over 20 years. He travels to Norfolk to show and bid for horses in competitive events and to a number of horse fairs. He is generally away in his touring caravan some 3 to 4 months during the summer. He has every intention of carrying on in a similar way in the future. In the light of this information I am satisfied that he travels for an economic purpose and has a nomadic habit of life.

Planning policy

16. The Maidstone Borough Local Plan adopted in October 2017 (the Local Plan) forms part of the development plan for the area. An aim of the Local Plan is to balance the reasonable need for lawful accommodation for gypsies and travellers with the responsibility to protect the environment. Policy DM15 sets out criteria to make decisions on proposals for gypsy and traveller accommodation. The appeal site is not within a specially designated area of countryside. Policy SP17 does not permit development proposals in the countryside unless they accord with other policies in the plan and do not result in harm to the character and appearance of the area. These are the most important Local Plan policies in respect of this appeal.
17. National policy is contained in Planning Policy for Traveller Sites August 2015 (PPTS), which should be read in conjunction with the National Planning Policy Framework.

Main issues

18. The main issues are derived primarily from the relevant policies and are:
 - The effect of the development on the character and appearance of the surrounding rural area, with particular regard to local landscape character, cumulative effect and existing landscape features;
 - The existing level of local provision and need for sites; and

- The availability (or lack) of alternative accommodation for the appellant and his family.
19. Exercising duties under the Human Rights Act 1998 and the Equality Act 2010 will be an integral part of my decision-making.

Character and appearance

20. The Local Plan recognises that rural sites are likely to be proposed as gypsy and traveller sites because of land availability. Where this is the case the impact of development on the landscape and rural character is regarded as an important factor in respect of the wider objective of protecting the intrinsic character of the countryside.
21. The appeal site is within the Linton Park and Farmlands landscape character area⁴ that lies to the south of Maidstone and comprises part of the wider Low Weald landscape. The key characteristics include sparse development with scattered farms and small hamlets, enclosed pasture and dominance of oak trees within pasture and as mature hedgerow trees.
22. The inspector in the 2000 appeal concluded that the caravan site was harmful to the rural setting by reason of the physical development of the site, its visual intrusiveness and the domestic activities and vehicular traffic associated with the use. The entrance was described as easily visible and incongruous when approaching from the north. Nevertheless, the development was found acceptable when the harm was balanced against other supporting considerations and the capability of additional planting to contribute towards more effective screening of the site.
23. In the 2004 appeal on the land to the south of the 2000 appeals sites the inspector concluded that the residential use, especially if a mobile home was installed, would consolidate the harm but the additional visual harm would be considerably reduced if a substantial landscape scheme were to be undertaken. The limited harm was outweighed by the lack of any realistic lawful alternative site becoming available in the foreseeable future.
24. Both permissions were personal to the occupants and therefore were time limited, so there was an expectation that in time the use would cease and the caravans, materials and equipment removed. The harm was considered to be primarily visual, hence the reliance on additional planting. Over the following period of time the context has changed, in that relevant policies have evolved, site conditions have matured and Little Appleby caravan site has gained planning permission.
25. A small scale caravan site situated on a main highway serving the locality would fit in with the characteristic settlement pattern. The ancillary workshop has the appearance of an agricultural building and is supportive of the gypsy way of life. The intention is that the boundary hedgerows and sense of enclosure would remain and provide a soft natural edge. They form the screening sought by Policy DM15 and there is a good prospect of long term retention of such features. Little Appleby has been developed in a thoughtful way, incorporating elements of good design. The addition of the appellant's site would not result in over-development but would complement this pocket of residential use that has now become an accepted addition to the community.

⁴ Maidstone Landscape Character Assessment (March 2012, amended July 2013)

Planning conditions could reasonably secure a site layout and control the number of caravans to ensure the low impact is maintained.

26. There is a network of public rights of way in the surrounding area. The Council and the appellant agreed that the field boundaries and topography ensure the caravan site is not prominent in local views. I agree that the main views would be from vehicles passing the site. PPTS encourages landscaping that would avoid the impression a site and its occupants are deliberately isolated from the rest of the community. In this instance the strong hedgerow along the Chart Hill Road frontage is very much in character with the local landscape. It has the advantage of filtering views of the caravans and domestic paraphernalia and ensuring the visual impact is acceptable.
27. The site entrance is in a prominent position on the corner of Lucks Lane and Chart Hill Road. The brick boundary wall and metal entrance gates at the site access present a hard physical feature, a sharp contrast to the soft hedgerows either side and more suitable to an urban rather than a rural setting. For these reasons the site access stands out as somewhat intrusive and is an unduly eye-catching feature when travelling southwards. However, with reference to the planning history, the site access is an existing feature. The wall is not unduly high and the gates are of railings rather than solid panels. The paved surface assists vehicle movement. Privacy and security for the site occupants are relevant considerations. At the hearing the appellant provided a photograph of the former wall, brick piers and five bar timber gates, which appeared rather untidy compared to the more uniform treatment currently in place. There is scope to soften its appearance by additional planting within the site using suitable species. On balance the gates and walls are acceptable.
28. In conclusion the proposal would not result in significant harm to the landscape and rural character and appearance of the area.

Other criteria of Policy DM15

29. The site is accessible to local services in Sutton Valence about 2 kilometres or so away. The car is the likely mode of transport rather than the preferred modes stated in the policy but in view of the wording of the criterion this does not prevent policy compliance.
30. There is safe access from the highway for all vehicles using the site on a regular basis and the site is not at risk from flooding.
31. The site has been developed for a number of years and the Council agreed that a survey to assess the ecological impact is not necessary. Enhancement measures would be secured through a planning condition.

Conclusion

32. The development complies with all the relevant criteria of Policy DM15. That being so there is no conflict with Policy SP17. Therefore the development plan supports the grant of planning permission.

Other considerations: Level of local provision and need for sites

33. This issue is set against a backdrop of a generally accepted national and regional need for traveller sites.

34. The need identified in the Local Plan is for provision of 187 permanent Gypsy and Traveller pitches in the borough during the period October 2011 and March 2031. Allocated sites would deliver in the order of 41 pitches. Therefore there is a heavy reliance on windfalls or unidentified sites to meet the identified need, even allowing for a small contribution from turnover on public sites. Horseshoe Paddock has been shown to be a suitable windfall site.
35. The Council considers that as of 1 April 2019 there is a 7.7 years supply of pitches, made up of 17 pitches on allocated sites, 6 pitches from turnover on public sites and 20 windfall sites. However, to be included in the 5 years supply sites should be deliverable, which the PPTS defines as being available now, offer suitable location for development and be achievable with a realistic prospect of delivery within the 5 year period⁵. The discussion at the hearing demonstrated that not all the pitches within the 5 years supply are deliverable, as defined by the PPTS. By contrast, Horseshoe Paddock is deliverable. This consideration supports the proposal.

Alternative accommodation

36. Mr Hickmott bought the site and the adjoining land to the west in July 2014. Horseshoe Paddock is suitable for his needs because his family and friends are based in the Maidstone area and whilst no children live on the site his 14 grandchildren visit regularly. Also, the site is well suited and located for his horse trading business – it has a workshop, a holding pen is next to the Little Appleby site and horses are kept on land at a local farm. The probability is that public sites in the area would not fulfil these needs even if a pitch became available. Allocated sites are likely to provide pitches for household growth of the families owning the land. Securing alternative accommodation would be dependent on finding another windfall site. These considerations also count in favour of the development.

Other matters

37. The development respects the scale of the nearest settled community and would not place undue pressure on the local infrastructure.

Planning Balance

38. The proposed development is in accordance with the development plan when read as a whole. Other considerations, including national policy in PPTS, lend support to the proposal and do not indicate that planning permission should be withheld.

Planning conditions

39. I have considered the planning conditions put forward by the Council against the tests set out in the Framework. Conditions should only be imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects.
40. No time limit for commencement of development is necessary because the application was retrospective. The site has been shown to be acceptable for a gypsy caravan site, fulfilling the criteria in Policy DM15 and responding well to the matters identified in PPTS. The acceptability of the development does not

⁵ PPTS paragraph 10 footnote 4

rely on the personal circumstances of the appellant. Therefore occupation should be restricted to gypsies and travellers as defined in Annex 1 to PPTS but there is no necessity to make the permission personal to the appellant.

41. The assessment on character and appearance has been on the revised proposal for two caravans, a static and a touring caravan. Consequently, a limit on the number of caravans is necessary to ensure the development is sympathetic to local character and appearance and that the site layout is well designed, bearing in mind the inclusion of an ancillary dayroom and workshop.
42. The extent of the site, limited to the red line area outlined on the application plan, will be confirmed by condition for the avoidance of doubt and to ensure the effect on local character is acceptable. The submitted site layout was withdrawn. In order to secure a good standard of development a condition is required to resolve the details of the site layout, a landscaping scheme, external lighting, site drainage and biodiversity enhancements.
43. In view of the quiet countryside location a condition precluding commercial activities and the parking/stationing of vehicles over 3.5 tonnes on the site is justified.

Conclusion

44. For the reasons given above I conclude that the appeal should be allowed.

DECISION

Appeal ref. APP/U2235/W/18/3198220

45. The appeal is allowed and planning permission is granted for a material change in the use of land to use as a residential gypsy site with the stationing of two caravans, including no more than one static caravan, with ancillary dayroom and workshop, laying of associated hard standing, the erection of boundary wall and entrance gates at Horseshoe Paddock, Lucks Lane, Chart Sutton, Maidstone, Kent ME17 3EZ in accordance with the terms of the application, Ref 15/504872/FULL, dated 10 June 2015, subject to the following 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) No more than two caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 as amended (of which no more than one shall be a static caravan) shall be stationed on the site at any time.
 - 3) The development hereby permitted shall be carried out only within the area of land showed outlined in red on the application site plan.
 - 4) 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 3 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 shall have been submitted for the written approval of the local planning authority. The scheme shall include details of: the internal layout of the site, including the siting of the static caravan,

the dayroom and workshop, the position(s) of the hardstanding, parking and amenity areas and access arrangements from the public highway; the means of foul and surface water drainage of the site; proposed and existing external lighting on the boundary of and within the site; existing trees and hedgerows to be maintained and new tree, hedge and shrub planting including details of species, plant sizes and proposed numbers and densities; measures to enhance biodiversity on the site and a timetable for implementation of the site development scheme.

- ii) If within 11 months of the date of this decision the local planning authority refuse to approve the site development 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.

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.

- 5) At the same time as the site development scheme required by condition 4 above is submitted to the local planning authority there shall be submitted a schedule of maintenance of the proposed planting for a period of 5 years, the 5 years beginning on the date of the completion of the final phase of implementation as required by that condition. The schedule shall make provision for the replacement, in the same position, of any tree, hedge or shrub that is removed, uprooted or destroyed or dies within 5 years of planting or, in the opinion of the local planning authority, becomes seriously damaged or defective, with another of the same species and size as that originally planted. The maintenance shall be carried out in accordance with the approved schedule.
- 6) No commercial activities shall take place on the land, including the storage of materials.
- 7) No vehicle over 3.5 tonnes shall be stationed, parked or stored on the site.

Diane Lewis

Inspector

APPEARANCES

FOR THE APPELLANT:

Mr Philip Brown BA(Hons) MRTPI	Managing Director of Philip Brown Associates Limited
Mr Terry Hickmott	The appellant
Ms Donna Smith	

FOR THE LOCAL PLANNING AUTHORITY:

Mr Jon Barnes	Planning Officer, Maidstone Borough Council
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INTERESTED PERSONS:

Mr and Mrs Webster	Occupiers of The Willows
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DOCUMENTS submitted at the hearing

- 1 Appeal decisions refs APP/U2235/A/00/1042929 and APP/U2235/C/00/1043714 & 1043715 dated 15 November 2000 and plans
- 2 Appeal decision ref APP/U2235/A/03/1135320 dated 16 August 2004 dated 16 August 2004 and plans
- 3 Planning permission ref MA/11/0675 dated 26 January 2012 and plan
- 4 Extract from Maidstone Landscape Character Assessment
- 5 Appeal decision ref APP/U2235/A/08/2063378 dated 29 July 2008 land at Rabbits Cross, Chart Hill Road, Maidstone
- 6 5 year supply of Gypsy and Traveller pitches at 1 April 2019
- 7 Aerial photographs of appeal site 2003/4, 2005/6, 2012, 2015 and around 2016
- 8 Street view images of entrance gates to appeal site.
- 9 Extract from Maidstone Borough Local Plan 2017 Policy GT1 Gypsy and Traveller site allocations
- 10 Letter of notification of the hearing
- 11 Count of Traveller Caravans January 2019: last seven counts

Note: Documents 10 and 11 were provided at the hearing on 11 June.