
Appeal Decision

Hearing Held on 11 March 2020

Site visit made on 11 March 2020

by Helen B Hockenhull BA (Hons) B.PI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 06 April 2020

Appeal Ref: APP/U2235/W/19/3236142

Broken Tree, Forstal Lane, Coxheath, Maidstone ME17 4QF

- 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 and Mrs D Hilden against the decision of Maidstone Borough Council.
 - The application Ref 19/500583/FULL, dated 6 February 2019, was refused by notice dated 5 April 2019.
 - The development proposed is a part retrospective and part proposed application for the material change of use of land to allow the stationing of two residential caravans and the storage of one touring caravan for use by a traveller family unit together with associated access, parking facilities, hardstandings, cesspit and landscaping (retrospective elements being the use of land for siting two residential caravans, the installation of an access and cesspit with proposed elements being revised siting of mobile homes and provision of new associated hard standings and reduced access and parking areas).
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Decision

1. The appeal is allowed and planning permission is granted for the material change of use of land to allow the stationing of two residential caravans and the storage of one touring caravan for use by a traveller family unit together with associated access, parking facilities, hardstandings, cesspit and landscaping at Broken Tree, Forstal Lane, Coxheath, Maidstone ME17 4QF in accordance with the terms of the application, Ref 19/500583/FULL, dated 6 February 2019 subject to the conditions in the attached schedule.

Procedural Matter

2. As indicated in the Banner Heading above, the appeal proposal is partly retrospective as the use of the land and the provision of the site access, cesspit and landscaping have already taken place and partly proposed with the resiting of the two residential caravans and amendments to hardstanding areas, access and parking being part of the submitted scheme. I have considered the appeal on this basis.
3. The appellant has submitted a draft Statement of Common Ground however this has not been signed by the Council. Instead the Council have provided a written response outlining the areas of agreement and disagreement. I have had regard to this in my consideration of the appeal.

4. The Council at the hearing confirmed that Policy DM30 of the Local Plan, which provides design principles for development in the countryside was being relied on as part of their case, despite it not featuring in the reason for refusal. As the appellant has made reference to this policy in his evidence, I consider that there would be no prejudice should I have regard to it in my decision.

Main Issue

5. The main issue in this case is:
 - the effect of the proposal on the character and appearance of the area.

Reasons

6. The appeal site lies to the north of Forstal Lane on the northern edge of the village of Coxheath. It is located within the open countryside as defined by Policies SS1 and SP17 of the Maidstone Borough Local Plan 2017 (LP). The Planning Policy for Traveller Sites (PPTS 2015) accepts that gypsy and traveller sites may be located in countryside locations but requires that their suitability should be assessed so that the scale of such sites does not dominate the nearest settled community.
7. LP Policy DM15 seeks to guide the development of Gypsy, Traveller and Traveling Show People Accommodation in the Borough. Part 1 of the Policy states that permission will be granted subject to 5 criteria being met. The second criterion, which requires that development should not result in significant harm to the landscape and rural character of the area, is in dispute in this appeal. The policy goes on to state that the impact on these aspects will be assessed with particular regard to a) landscape character b) cumulative effect and c) existing landscape features. The Policy also states that additional planting should be used to supplement existing landscaping but should not be the sole means of mitigating the impact of the development.
8. The appeal site is located within the Loose Greensand Orchards and Pasture Landscape Character Area. The key characteristics of this area are native hedgerows and tree lines, modern and traditional farm buildings, sunken lanes and earth banks in an undulating landform.
9. Policy SP17 of the Maidstone Local Plan seeks to preserve and enhance its valued landscapes. The Loose Valley, which forms part of the above Character Area and includes the appeal site, is designated as a Landscape of Local Value. It is described in paragraph 4.116 of the Local Plan as being characterised by the Loose Stream, mill ponds and springs with steep wooded valley sides, mature native woodland and traditional mill buildings and cottages.
10. The appeal site lies to the southern boundary of this area. It comprises a grassed field which I understand was a former orchard. East and west of the appeal site is farmland which was historically orchards. Some areas of remnant fruit trees also remain. To the north of the site the area comprises agricultural land and buildings but also includes several existing residential caravans occupied by travellers as well as a camping and caravan site at Forstal Farm. I noted on my site visit, a car sales establishment to the north west of the appeal site in the open countryside, though I understand this is unauthorised.
11. The Council accepted in their evidence that the important landscape characteristics of the Loose Valley Landscape of Local Value were not strongly

present in the vicinity of the appeal site. Following my observations on site, I concur with this view. Furthermore, as a result of the undulating landform typical of this area, the appeal site has little impact on the wider landscape. Bearing in mind the site's location on the edge of the Landscape of Local Value, I consider that the appeal proposal would cause limited harm to this area.

12. Turning to the matter of cumulative impact, there are other residential caravans in the area around the appeal site. These are however sporadic and of sufficient separation distance so that cumulatively they do not cause harm to the character of the area. In this regard the development would also comply with paragraph 25 of the PPTS in that the site would "respect the scale of, and not dominate, the nearest settled community, and avoid placing undue pressure on local infrastructure."
13. With regard to existing landscape features, there is a mature boundary hedge running along the appeal site frontage and beyond along the northern edge of Forstal Lane. This assists to provide a strong boundary to the edge of the village separating the urban area from the countryside. It also assists to screen the site. The scheme retains this feature except for a small gap which facilitates the access. Whilst this punctuation in the hedgerow allows views into the site from Forstal Lane, this view is limited and only achievable standing at the access itself.
14. Existing hedgerow and trees lie just outside the western site boundary and additional planting has been provided within the site to strengthen this feature. I observed on my site visit that looking from a westerly direction there are glimpses of the residential caravans through this vegetation. However, my visit was in early Spring and in the Summer months when vegetation would be in leaf, the impact of the development on the character and appearance of the area would be much reduced.
15. The northern and eastern boundaries of the appeal site were planted with a new hedgerow in 2017 with further trees, including fruit trees, planted around the same time within the site itself. Whilst the mature hedge along Forstal Lane prevents oblique views into the site from the east, glimpses of the development can be achieved from the access to Ashtree View.
16. The appellant has brought my attention to a new housing development under construction to the east of Coxheath village. As part of this scheme Forstal Lane is being widened. Work was in progress at the time of my site visit. I accept that it will have an urbanising effect on the local character. However, this new development is sited to the south of the lane and forms an eastern extension to the village. I do not therefore agree that it will materially change the character of the countryside area to the north of Forstal Lane in the immediate vicinity of the appeal site.
17. In summary, I consider that the proposal would be adequately screened from Forstal Lane due to the presence of the existing mature hedge. There would however be some harm to the character and appearance of the area as a result of views into the site from the access and access to neighbouring properties. However, as these would be relatively localised, I consider that this harm would be limited.
18. The Council has argued that the landscaping already provided on the site and any further landscaping to be provided may screen the development but

would in itself be uncharacteristic of the area and cause harm to the character of the rural area. I accept that some of the planting already provided includes non-native species such as laurel. However, should the appeal be allowed, an appropriate condition could be imposed to require a detailed landscaping scheme to address such matters and ensure the provision of native species appropriate to the area.

19. In conclusion, I have found that the harm to the Loose Valley Landscape of Local Value and to the character and appearance of the countryside would be limited. LP Policy DM15 seeks to prevent development causing significant harm to the landscape. The limited harm I have identified, would not exceed this policy threshold. The appeal scheme would therefore comply with this Policy and also with LP Policies DM1, DM30 and SP17 which seek to ensure that development mitigates the impact on the character and appearance of the landscape.

Other matters

20. There is no dispute between the parties that the appellant and his family are travellers meeting the relevant definition set out in PPTS. I have no reason to disagree.
21. The Council has provided evidence that they can demonstrate a 7.7-year supply of deliverable pitches at 1 April 2019. The appellant has not challenged this. Whether or not there is a 5-year supply of sites in the borough, LP Policy DM15 allows for additional sites providing the criteria it sets out are met. As I have found that the scheme would comply with this policy, it is not necessary for me to consider the supply position in any detail.
22. At the hearing there was discussion of the availability of alternative sites and the personal circumstances of the appellant and his family. Whilst these matters may weigh in favour of the proposal, as I have found that the appeal scheme would comply with the development plan, they are not determinative to this case. I therefore do not need to consider these matters further.
23. The appeal scheme is part retrospective and therefore unauthorised. It is government policy that intentional unauthorised development is a material consideration in determining planning applications and appeals. The rationale of the policy is that if land is developed before obtaining permission there is no opportunity to appropriately limit or mitigate any harm that may have occurred as a result.
24. I note from the planning history that there was a previous planning application on the site submitted in 2017 which was refused and subsequent enforcement action, during which time the appellant and his family occupied the site. I have no evidence that there was then or is currently any other suitable accommodation available. I also take account of the fact that appropriate conditions could be imposed to mitigate the landscape harm resulting from the development. Accordingly, whilst intentional authorised development has taken place, given the lack of realistic alternative accommodation, I afford this matter limited weight.

Planning balance

25. I have found that the appeal scheme would comply with the development plan

and the PPTS. As there are no other material considerations that would indicate otherwise, planning permission should be granted.

Conditions

26. I have considered the Council's suggested conditions in light of the advice in Planning Practice Guidance (the PPG), the National Planning Policy Framework (the Framework) and the discussions at the hearing. It is necessary that the development shall be carried out in accordance with the approved plans for the avoidance of doubt and in the interests of proper planning. A condition limiting the occupancy of the site to gypsies and travellers is required having regard to their special accommodation needs.
27. Conditions 3 and 4 are required to limit the number of caravans and prohibit commercial activities, the storage of materials and the parking of large vehicles in the interest of the character and appearance of the area. I have amended condition 4 to make it clear that no more than 4 vehicles shall be permanently parked on the site, in order to allow for the occasional parking of visitors. I have also removed the reference to livery use, as I am advised this is not intended by the appellant and furthermore the site would not lend itself to this activity.
28. As the development has already commenced, it is necessary to impose condition 5 to require the submission of a site development scheme to include details of boundary treatments, foul and surface water drainage, external lighting and new planting together with a timetable for their implementation. This is required in order to safeguard the character and appearance of the countryside location. There is a strict timetable for compliance because permission is being granted retrospectively, and it is not possible to use a negatively worded condition to secure the approval and implementation of the site development scheme before the development takes place. The condition will ensure that the development can be enforced against if the requirements are not met. I have slightly reworded the Council's suggested condition in order to meet the tests of the Framework and the PPG.
29. Condition 6 is also necessary to ensure the maintenance and if necessary, replacement of landscaping and condition 8 is needed to remove permitted development rights for temporary buildings and structures. This is to protect the character and appearance of the area.
30. Condition 7 is required to control external lighting to minimise light pollution in the rural environment, protect ecological interests and to protect the character of the countryside area.
31. I do not impose a suggested condition to prevent bonfires and the burning of rubbish as I consider it to be unnecessary. I have no evidence that this would be likely to occur, and, in any event, any air pollution issues would be subject to other environmental protection legislation.
32. There was discussion at the hearing about the imposition of a personal permission. As I have found that the appeal scheme accords with the development plan, I do not consider that such a condition is necessary.

Conclusion

33. For the reasons outlined above and having had regard to all other matters raised, I conclude that the appeal should be allowed.
34. I have had regard to the requirements of Article 8 of the First Protocol to the Convention, as incorporated by the Human Rights Act 1998. I have also considered the Article 8 rights of the child in the context of Article 3 of the United Nations Convention on the Rights of the Child which requires that the best interests of the child shall be a primary consideration. Since I am allowing the appeal, my decision would not lead to a violation of the rights of the appellant or his family in these regards.

Helen Hockenhull

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Kevin Wise BA (Hons) BTP MRTPI	Kevin Wise Town Planning
David Hilden	Appellant
Louanne Dunkley	Appellant's daughter
Gary Dunkley	Appellant's daughters' husband
John Hilden	Appellant's supporter

FOR THE COUNCIL:

Francis Amekor	Planning Officer, Maidstone Borough Council
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ADDITIONAL DOCUMENTS SUMITTED AT THE HEARING

- 1.** Extract from the Maidstone Landscape Study, details of the Loose Greensand Orchards and Pasture Landscape Character Area.
- 2.** Email from the Council dated 10 February 2020 updating pitch supply figures.
- 3.** List of conditions suggested by the Council.

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans: Dwg no. JCA01- Revised Siting and Hardstanding, Dwg no. JCA02 Change of Use - Existing Block Plan and Location Plan.
- 2) The mobile homes hereby approved shall not be occupied by any persons other than gypsies and travellers as defined in Annex 1 of the Planning Policy for Traveller Sites, August 2015 (or any subsequent definition that supersedes that document);
- 3) No more than three caravans, as defined by the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968, shall be stationed on the site at any one time, of which no more than two shall be a static caravan or mobile home, and no further caravans shall be placed at any time anywhere within the site. The static caravans or mobile homes shall be stationed on the site only in the position shown on Drawing No. JCA.01 -Revised Siting and Hardstanding.
- 4) No commercial activities shall take place on the land at any time, including the storage of materials. No vehicles over 3.5 tonnes shall be stationed, stored or parked on the site and not more than four vehicles shall be stationed, stored or permanently parked on the site at any one time.
- 5) 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 for the means of enclosure for the site boundary including gates: means of foul and surface water drainage of the site; proposed and existing external lighting on the boundary of and within the site; new hedgerow planting including details of species, plant sizes and proposed numbers and densities; measures to enhance biodiversity at the site 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 maintained and retained in use.

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.

- 6) At the same time as the Site Development Scheme required by condition 5 above is submitted to the local planning authority, there shall be submitted a schedule of maintenance for the proposed hedgerow planting along the site boundaries for a period of 5 years beginning on the date of the completion of the implementation of the planting 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.
- 7) No external lighting shall be put in place or operated on the site at any time other than that which has been previously submitted to and approved in writing by the local planning authority.
- 8) Notwithstanding the provisions of Schedule 2 Part 4 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no temporary buildings or structures shall be stationed on the land other than those expressly authorised by this permission.