
Appeal Decisions

Hearing Held on 26 February 2020

Site visit made on 26 February 2020

by Paul Freer BA (Hons) LLM PhD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 June 2020

Appeal A Ref: APP/X2220/C/18/3199973

Land on the south side of Ferne Lane, Alkham, Dover

- 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 D Beaney against an enforcement notice issued by Dover District Council.
 - The enforcement notice, numbered ENF/ALK/12/00038, was issued on 4 April 2018.
 - The breach of planning control as alleged in the notice is, without planning permission, the material change of use of the land to a caravan site involving the residential occupation and stationing of caravans and parking of commercial vehicles and for facilitating operational development involving the erection of sheds, terracing/balcony, hardsurface, fencing, entrance gates, storage and associated paraphernalia.
 - The requirements of the notice are:
 1. Cease the use of the land as a caravan site for residential purposes and for the stationing of caravans for any use or purpose.
 2. Cease the use of the land for the stationing of commercial vehicles.
 3. Cease the residential use of the land and remove all caravans from the land and disconnect all services and remove all associated connecting apparatus from the land.
 4. Demolish and remove the terracing/balcony, three sheds, hardstanding, fencing, entrance gates and remove from the land any other residential paraphernalia identified by photographs A, B, C, D, E and F and all associated fixtures, fixings and foundations from the land.
 5. Make good the land and reseed with grass seed.
 6. Return the access and entrance to the site to its former condition and appearance.
 - The period for compliance with the requirements is 12 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Appeal B Ref: APP/X2220/W/18/3199968

The Paddock, Ferne Lane, Ewell Minnis, CT15 7FF

- 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 D Beaney against the decision of Dover District Council.
 - The application Ref DOV/15/00770, dated 28 July 2015, was refused by notice dated 14 March 2018.
 - The development proposed is described as the retrospective change of use of land to caravan site comprising two caravans for residential Gypsy occupation both with terracing/balcony, one tourer, three sheds, hardstanding, fencing, entrance gates and other residential paraphernalia (amended details).
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Summary Decisions: Appeal A is allowed subject to conditions set out in the Formal Decision below. Appeal B is dismissed.

Procedural Matters

1. Although the address is differently stated, these appeals both relate to the same site on the south side of Ferne Lane, Alkham, known as The Paddock.
2. As originally submitted, the appeal against the enforcement notice (Appeal A) included an appeal on ground (f): namely, that the requirements of the notice exceed what is necessary. Specifically, the ground of appeal was that the requirement to cease the use of the land for the stationing of caravans *for any use or purpose* (my emphasis) was unreasonable. However, given that I intend to delete the words 'for any use or purpose' from of the breach of planning control alleged, the appellant is content that his appeal on ground (f) falls away.
3. I am satisfied that the appellant, Mr D Beaney, and other occupiers of the site have Traveller status as defined in Annex 1 of Planning Policy for Traveller Sites (PPTS). The personal circumstances of all these occupiers must be taken into account in the overall planning balance.

The Enforcement Notice

4. It is agreed in the Statement of Common Ground that the site has a lawful planning use for the keeping of horses, a use that still continues. I shall therefore correct the breach of planning control to refer to a material change of use from the keeping of horses to a mixed use comprising the keeping of horses and use as a caravan site involving the residential occupation and stationing of caravans.
5. It is also common ground that the parking of commercial vehicles is solely in association with the use as a caravan site and is not a primary use of the land. I shall therefore delete reference to the parking of commercial vehicles from the breach of planning control alleged in the notice.
6. The breach of planning control includes the erection of fencing. It was confirmed in the Statement of Common Ground that the Council's sole intention in this respect was to attack the close boarded timber panel fencing and solid wooden gates on the northern boundary of the site that front onto Ferne Lane, and no other fencing within the body of the site. I shall correct the breach of planning control alleged in the notice to make this clear.
7. The breach of planning control alleged in the notice refers to various elements of operational development to facilitate the use alleged, including 'associated paraphernalia'. It was clarified at the Hearing that the 'associated paraphernalia' comprise an oil tank, washing line, hot tub, gas bottles and children's play equipment. In the interest of precision and clarity, I shall correct the notice to refer to these elements individually.
8. All the above corrections were set out in the Statement of Common Ground and/or discussed at the Hearing. I am satisfied that I can correct the notice in these respects without causing injustice.
9. In addition to the requirement to cease the use of the land for the stationing of caravans for any use or purpose, the appellant considers that the requirements

of the notice are unreasonable in some other respects. Following discussion at the Hearing, I consider that the requirements to comply with the notice are unreasonable in those respects. However, given that I am minded to allow Appeal A, it is not necessary for me to vary the notice in these or any other respects.

Appeal A: the appeal on ground (a) and Appeal B

10. Both appeals relate to the same area of land. The breach of planning control alleged in the notice, as I propose to correct it, is for a mixed use comprising the keeping of horses and use as a caravan site involving the residential occupation and stationing of caravans. The development proposed in the application may be summarised as the material change of use of the land to a caravan site comprising two caravans for residential Gypsy occupation. My consideration of these appeals must reflect the differences between the two developments. Nevertheless, the main issues raised in the enforcement appeal (Appeal A) and the section 78 appeal (Appeal B) are essentially the same and can be taken together. Those main issues are:
- the effect of the development on the character and appearance of the Kent Downs Area of Outstanding Natural Beauty, and
 - whether the development constitutes a sustainable form of development in this location.

Character and appearance

11. The appeal site is entirely within the Kent Downs Area of Outstanding Natural Beauty (KDAONB). The KDAONB comprises a swathe of land extending inland from the coastal cliffs either side of Dover. The Kent Downs Area of Outstanding Natural Beauty Management Plan (Management Plan) explains that the special qualities of the KDAONB derive from its diverse characteristics, including the dramatic landform and views, woodland, biodiversity-rich habitats and the farmed landscape.
12. The appeal site is located on a plateau above the north slope of the Alkham Valley, to the west of and separated from the settlement of Ewell Minnis. This plateau features a mixture of open farmland and areas of woodland, with relatively few built structures in evidence. Longer views are typically interrupted by woodland and tall hedgerows, but nonetheless some views across the plateau and into the Alkham Valley are possible from the vicinity of the appeal site. As such, the character of this plateau exhibits many of the diverse characteristics that form the special qualities of the KDAONB, as described in the Management Plan.
13. The use taking place on the appeal site, and structures associated with that use, are clearly visible from several places within this attractive landscape. Approaching westwards from Ewell Minnis along Ferne Lane, views of one of the mobile homes are obtained through the open entrance gates, together with the associated parking area. The mobile home features a pitched roof with bay windows in the elevation facing onto Ferne Lane, and from outside of the site has the appearance of a permanent building. The balcony/terrace to the side reinforces that impression. The bungalow-like appearance of the mobile home adds to the visual intrusion that it causes. The entrance gates, whether open or closed, are also visually dominant from Ferne Lane.

14. Moving further westwards along Ferne Lane, the close boarded timber panel fencing is visually dominant. The top of the second mobile home can be glimpsed above that fence. Whilst this second mobile home is not visible in its entirety from this position, the glimpsed view that is obtained is sufficient to betray the stationing of the mobile home from outside of the site.
15. Views of the mobile homes stationed on the appeal site are also possible from a gate located on Warren Lane, just to the south of its junction with Ferne Lane. Although at a distance, the use of the appeal site is very apparent from that position. Moreover, to use the shorthand, much of residential paraphernalia associated with the use of the appeal site becomes apparent in this view.
16. Just to the south of this gate is the entrance to a public footpath. The line of this footpath is not clearly defined but there is no dispute that the footpath passes through the appeal site, there being various stiles in place to provide public access. The use of the appeal site is apparent from the start of this footpath and, although I did not walk the footpath during my site visit, photographs provided by the appellant clearly show that the use becomes even more so as the site is approached. Indeed, the entirety of the use, together with the structures and the residential paraphernalia associated with it, are clearly visible from this public footpath and therefore to people seeking to enjoy the special quality of the landscape by walking through it.
17. The combination of the mobile homes stationed on the land, the paraphernalia associated with the residential occupation of those mobile homes and the erection of the entrance gates/close boarded timber panel fencing on the Ferne Lane frontage, results in a marked change in the character and appearance of the site. Specifically, the use intrudes into the established farmed landscape and erodes the openness of the landscape on this part of the plateau. The use also introduces caravans with an overt residential appearance into a landscape largely devoid of built structures, and compounds that harm with the introduction of fencing and gates of a character more typically associated with a residential environment.
18. It is at this point that the differences between the breach of planning control alleged in the notice and the development proposed in the planning application have some effect. The mixed use includes the keeping of horses, a use that complements the use as a caravan site and especially a caravan site occupied by Travellers. The Management Plan indicates that the keeping of the horses is not inconsistent with the special qualities of the KDAONB. Furthermore, the keeping of the horses dictates that a significant proportion of the land is given over to paddocks and grazing for horses. This in turn restricts the amount of land that may be occupied for domestic purposes and taken up with residential paraphernalia.
19. I have taken all of these factors into account. However, whilst the keeping of horses element of the mixed use reduces the overall impact on the KDAONB, it does not overcome the harm caused by the stationing of the mobile homes on the land, the paraphernalia associated with the residential occupation of those mobile homes and the erection of the entrance gates/close boarded timber panel fencing on the Ferne Lane frontage.
20. By contrast, the use proposed in the planning application does not include an element of horse keeping. The site plan submitted with the planning application shows the approximate position of the mobile homes and sheds, but

does not show any part of the land specifically allocated as paddocks or land for the grazing of horses. Consequently, in the absence of a plan showing land specifically devoted to the keeping of horses, granting planning permission could result in all the site being covered with domestic gardens and/or residential paraphernalia. This would be wholly out of character with the surrounding area and harmful to the special qualities of the KDAONB.

21. As a consequence of the above, the use detracts from some of the special qualities of the KDAONB as defined in the Management Plan and harms the scenic beauty of this landscape. Moreover, because the use and structures associated with it are clearly visible from the highway and the public footpath, the harm caused is readily apparent to those seeking to enjoy this valued landscape.
22. I have given careful consideration as to whether this harm could be mitigated to an acceptable level by landscaping or be re-siting the mobile homes to avoid that harm. However, the mobile homes and the associated residential paraphernalia are plainly visible from the public realm, including from the footpath that passes through the site. The harm caused in this respect could not be overcome by additional landscaping or by re-siting the mobile homes. Similarly, the close boarded timber panel fencing on the frontage of Ferne Lane could not be softened by landscaping, at least to the point where it would cease to exert a strong visual influence on the landscape. Accordingly, I consider that the harm caused by the use and associated structures could not be mitigated or avoided.
23. In a decision dated 11 February 2016, a previous Inspector reached a similar conclusion in dismissing an appeal for the change of use of this same site to a caravan site (APP/X2220/W/15/3132484). I am mindful that the proposal then before the Inspector was for the siting of just one caravan for residential occupation, plus the stationing of a touring caravan. The Inspector found the harm to the character and appearance of that one caravan to be unacceptably harmful to the KDAONB. It follows that the harm to the character and appearance of the site identified then can only be exacerbated by the introduction of the second caravan for residential occupation in the proposals now before me. There have been no material changes in circumstances regarding the surroundings of the site since the previous decision was issued. The findings of the Inspector in that appeal reinforce my own conclusions in terms of the harm caused to the special qualities of the KDAONB.
24. The appellant accepts that the use causes some harm to the KDAONB but considers that the use does not cause undue harm. I do not agree. In my view, for the reasons set out above, the harm is significant. Neither do I attach much weight to the example of Gypsy and Traveller development granted planning permission referred to by the appellant. That site, known as The Meadows, is in open countryside at the bottom of the valley close to Alkham and in a very different context than the appeal site. The Council accepted the view advanced by the Kent Downs AONB Unit that the use detracted from the landscape character of the locality. Nevertheless, it is clear from the officer report for that application that the visual harm could be satisfactorily overcome by landscaping and by the imposition of other conditions. That approach is not possible in this case.

25. I accept entirely the appellant's point that the PPTS establishes that Traveller sites are not unacceptable in rural settings as a matter of principle. There are examples where a Traveller site will be acceptable in a rural setting, and the example near Alkham cited by the appellant has been accepted as one of those examples. The converse is that there will be cases where Traveller sites are harmful in a given rural setting. The proposal before me is one of those situations.
26. I conclude that the use unacceptably harms the character and appearance of the KDAONB. The development is therefore contrary to Policies DM7, DM15 and DM16 of the Dover District Council Core Strategy (Core Strategy). These policies provide, amongst other things, that development that would harm the character of the landscape will only be permitted where it can be sited to avoid that harm or that the harm could be mitigated to an acceptable level. For the reasons stated above, that is not possible in this case.
27. The National Planning Policy Framework (Framework) indicates that great weight should be given to conserving and enhancing landscape and scenic beauty in Areas of Outstanding Natural Beauty. In accordance with the Framework, I therefore attach great weight to the failure of the development to conserve and enhance the landscape and scenic beauty in Areas of the KDAONB.

Sustainability of the development

28. Policy DM1 of the Core Strategy indicates that development will not be permitted on land outside the urban boundaries and rural settlement confines subject to certain exceptions specified in that policy. The use of the appeal site does not fall within any of those exceptions. The appeal site is in an isolated position beyond the hamlet of Ewell Minnis, and some distance from the larger settlement of Alkham. On a straightforward reading of Policy DM1, the use of the appeal site as a caravan site for residential occupation is contrary to that policy.
29. Policy DM7 of the Core Strategy, which relates specifically to the provision for Gypsies, Travellers and Travelling Showpeople, provides that sites should be accessible to local services and facilities and by *public transport* (my emphasis). Policy DM7 does not specifically preclude development in the countryside and outside of settlement boundaries, but neither does it explicitly justify a departure from the approach adopted in Policy DM1.
30. Policy DM11 of the Core Strategy indicates, amongst other things, that development that would generate travel will not be permitted outside the urban boundaries and rural settlement confines unless justified by development plan policies. This policy does not set a threshold level of travel beyond which the policy is triggered: the supporting text to this policy indicates how this issue should be addressed according to the travel demand generated by developments proposals. The corollary must be that the policy is triggered if any level of travel is generated by a development proposal. In this case, there is no dispute that the use of the appeal site does generate travel, both in terms of travelling for work and for day-to-day living. Again, on a straightforward reading of Policy DM11, the use of the appeal site as a caravan site for residential occupation is contrary to that policy.

31. There is, therefore, a suite of policies in the development plan that seek to direct development away from the countryside and sites outside of settlement boundaries. The underlying objective of all these policies is, on my reading, to promote sustainable patterns of development. For the reasons set out above, I consider that the use of the appeal site as a caravan site for residential occupation, and/or a mixed use comprising the keeping of horses and a caravan site for residential occupation, are contrary to all three of these policies.
32. I am nevertheless mindful that the Core Strategy was adopted in 2010, and consequently pre-dates the publication of the Framework. At the heart of the Framework is a presumption in favour of sustainable development. The suite of policies in the development plan (Policies DM1, DM7 and DM11) seek to direct development towards sustainable location, and accordingly there is nothing to suggest that those policies should be considered out of date or inconsistent with the Framework. I therefore consider that full weight should be afforded to those policies for the purposes of section 38(6) of the Planning and Compulsory Purchase Act 2004.
33. Because the Core Strategy does pre-date the publication of the Framework, it is incumbent upon me to assess the development in relation to the three dimensions of sustainable development as defined in the Framework: specifically, an economic role, a social role and an environmental role.
34. There is no economic activity taking place on the appeal site itself, and none is proposed. I recognise that the use as a caravan site, and/or a mixed use comprising the keeping of horses and a caravan site for residential occupation, do not come at any expense to the public purse: but in my view that does not qualify as a benefit to the wider economy, it is simply not a cost to the public purse. I therefore consider that the use of the appeal does not and would not have an economic role.
35. I recognise that the appellant, Mr Beaney Snr, has lived in the area all of his life and has family connections in Ewell Minnis. Mr Neve, a resident of Ewell Minnis, confirms that the hamlet has a close-knit community and that Mr Beaney Snr is well integrated into that community. Two letters from local residents submitted at the Hearing also testify to Mr Beaney Snr's good character and the contribution that he makes to the local community. The developments also provide or would provide a home for this traveller family. In addition, having a secure base from which to travel for work enables Mr Beaney Snr and Mr Beaney Jnr to support themselves and their families. To that extent, I accept that the use of the appeal site fulfils a social role.
36. I have already found that the use of the appeal site unacceptably harms the character and appearance of the KDAONB. In terms of any environmental role, the use of the appeal site therefore has a negative influence.
37. In addition to the above, Policy H of the PPTS indicates that new traveller site development in open countryside, away from existing settlements or outside areas allocated in the development plan, should be very strictly limited¹. It seems to me that the location of the appeal site, being in the open countryside and by some margin outside of any settlement boundary, is one where the development subject of these appeals is not supported by Policy H of the PPTS.

¹ Paragraph 25 of the PPTS.

38. Furthermore, there is nothing about the particular facts in this case that suggest that these policies in the development plan are complied with or should be afforded lesser weight. The nearest settlement, Ewell Minnis, is a hamlet with no community services or facilities. The closest supermarket is in River, some 3 miles away, where there is also pharmacy. The closest doctor's surgery is in Lydden, some 4 miles away. The nearest post-office is in Temple Yewell, nearly 3 miles away. The children residing on the site attend a primary school is Selstead, which is some 3.5 miles away. Bus stops for services to Dover and Folkestone are located in Alkham. The nearest railway station is Kearsney, some 3 miles away, providing services to Dover and Canterbury.
39. None of those services are easily accessible on foot. Even if local bus services from Alkham could be used for part of the journey, access to the bus stops is reached by way of a narrow, steep rural lane down the valley side. For the majority of this route to and from the bus stops, there is no pavement or street lighting, and few places for a vehicle to pass a pedestrian. The return journey up the valley slope would be even more arduous, particularly carrying heavy shopping.
40. The practical reality is that day-to-day living on the appeal site requires the use of a car (albeit I understand that the children are collected by a school bus). The appellant contends that this situation is no different to any other Traveller site in Ewell Minnis which, whilst true, misses the point: that the location of the appeals site is not compliant with the suite of policies in the development plan. In particular, I am mindful that Policy DM7 requires that sites should be accessible by public transport, and this site clearly is not.
41. I am also mindful that this same argument was rehearsed before the Inspector in the previous appeal relating to this site (APP/X2220/W/15/3132484). The Inspector concluded, on the same set of facts and against essentially the same policy background, that the use of this site as a caravan site for residential occupation should not be regarded as sustainable development. I see no reason to depart from the conclusions of that Inspector now.
42. In that context, this site can be distinguished from that at Hay Hill, in Eastry, in relation to which planning permission was granted on appeal in January 2015 for the change of use to a residential development of four static caravans (APP/X2220/A/14/2220315). The Inspector in that case was satisfied that residents of the site could walk safely and relatively easily into Eastry, a settlement that offers a range of services and facilities including a primary school, a doctor's surgery, a post office and shops. This led the Inspector to conclude that, whilst the location of the site did not comply with some aspects of the development plan, it did comply with criterion i/ of Policy DM7 of the Core Strategy. The Inspector's findings in relation to a range of other issues, such as character and appearance, also pointed to a conditional planning permission being appropriate in that case. The circumstances of that case are therefore different to those before me, and accordingly for present purposes I attach very limited weight to the Inspector's decision in that case.
43. Having regard to the above, I conclude in relation to Appeal A that the development does not constitute a sustainable form of development in this location. I therefore conclude that the development is contrary to Policies DM1, DM7 and DM11 of the Core Strategy. I also conclude that the

development does not accord with Policy H of the PPTS, or with the objective of achieving sustainable development set out in the Framework.

44. Similarly, and for the same reasons, I conclude that the development proposed in Appeal B does not constitute a sustainable form of development in this location. I therefore conclude that the development is also contrary to Policies DM1, DM7 and DM11 of the Core Strategy, and does not accord with Policy H of the PPTS or with the objective of achieving sustainable development set out in the Framework.

Other considerations

45. Section 38(6) of the Planning and Compulsory Purchase Act 2004 indicates that if regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be in accordance with the plan unless material considerations indicate otherwise. I have found that the development fails to accord with the development plan. It is therefore necessary for me to consider whether there are any material considerations of sufficient weight to indicate that determination should be made otherwise than in accordance with the development plan.

Personal circumstances of the appellant and other occupants of the site

46. In terms of the adults residing on the appeal site, both Mr Beaney Snr and Mr Beaney Jnr travel for work from the appeal site. I understand both to be in reasonably good health at the present time and, whilst I acknowledge that both suffer from various ailments, this does not appear to prevent them from living active lives.
47. I understand that Mrs Beaney suffers from a debilitating medical condition, for which she receives treatment at specialist clinics in Kent and in London, as well as at a hospital in London. The nature of Mrs Beaney's condition is such that she requires regular assistance from her husband when at home, which affects the extent to which Mr Beaney Jnr is able to travel for work. However, it seems to me that the specialist treatment and regular assistance that Mrs Beaney requires is not in any way dependent upon her residing at the appeal site: these could just as easily be obtained when residing at other sites. For that reason, whilst sympathetic to Mrs Beaney's condition, it does not provide justification for remaining at the appeal site.
48. The situation in relation to Mr & Mrs Beaney's son is, however, somewhat different. I understand that their son suffers from a serious medical condition. It is neither necessary nor appropriate to rehearse the details here. It is sufficient to say that full details were given at the Hearing, and in a letter from his doctor. The child has been referred to a specialist but my understanding is that the child is presently at an age whereby it is too soon for his condition to be accurately diagnosed and assessed. It is again my understanding that the child must reach at least six years of age before a full diagnosis can be made. In the interim, his doctor advises that the child requires stability, order and continuity, and that any stress, anxiety or conflict is likely to make his condition worse. The child attends a nearby primary school and, according to the Headteacher there, is now settled at the school and is making progress. However, the Headteacher is concerned that disruption to the child's routine could harm his development and affect the progress he is currently making.

49. The obvious corollary is that is in the best interests of that child to remain living at the appeal site and attending his present school, at least until such time as a full diagnosis of his condition can be made and his future needs assessed. The best interest of the child is a primary consideration and no other consideration can be inherently more important. This is therefore a consideration to which I attach great weight.

Availability of alternative sites

50. The Council is unable to suggest any suitable alternative site for this family. The Council seeks to meet the need for Gypsy and Traveller sites via windfall sites but accepts that it is unable to demonstrate a 5-year allocation of such sites. The current Gypsy and Traveller Accommodation Assessment (GTAA) for this area, produced by the Council in 2014, identified a need for 17 pitches by 2026. A total of 9/10 pitches have been granted planning permission to date, with additional provision through the subdivision of plots at the Hay Hill site in Eastry.
51. The Council is in the process of adopting a new District Local Plan, albeit adoption of that plan is not envisaged until early 2022 at the earliest. In order to inform the preparation of the new District Plan, the Council commissioned consultants to produce a new GTAA. This new GTAA has provisionally identified a total need for 48 pitches over the full plan period of 2017-2037, with an immediate need for of 30.5 pitches for the period 2017 to 2022.
52. Paragraph 27 of the PPTS makes it clear that, if a local planning authority cannot demonstrate an up-to-date 5 year supply of deliverable sites, this should be significant material consideration when considering applications for the grant of temporary planning permission. However, one of specific exemptions to this is where, as in this case, the site is within an Area of Outstanding Natural Beauty. In other circumstances and looked at in isolation, I would therefore afford only limited weight to the inability of the Council to demonstrate an up-to-date 5 year supply of deliverable sites, either in relation to the total need identified in the current GTAA or that in the new GTAA being produced to inform the emerging District Local Plan.
53. I recognise that the appellant is seeking a permanent planning permission in the first instance. Nevertheless, should I conclude that a temporary permission is appropriate in this case, it seems to me that the inability of the Council to demonstrate an up-to-date 5 year supply of deliverable sites should not be viewed in isolation, but should be viewed in conjunction with other material considerations that I set out below. For that reason, and notwithstanding the exception set out in the PPTS, this would a situation where I consider that the lack of an up-to-date 5 year supply of deliverable sites should be regarded as a material consideration and should attract significant weight.

Intentional Unauthorised Development

54. The site was first occupied in or around August 2012. The appellant maintains that, at that time, Mr Beaney Snr occupied a mobile home on the site whereas Mr Beaney Jnr and his wife lived in a converted lorry. I have seen a copy of Mr & Mrs Beaney's marriage certificate which, on the face of it, appears to confirm that they were residing on the appeal site as of March 2014.

55. In his decision dated 11 February 2016, which followed a Hearing and site visit both held on 13 January 2016, the Inspector describes just one mobile home being on the site together with a lorry, which he was given to understand was used as a touring vehicle. At no point was the Inspector advised that Mr Beaney Jnr and his wife were living in that lorry: indeed, there is no reference whatsoever in the Inspector's decision to Mr Beaney Jnr and his wife residing on the site. All of the considerations relating to the personal circumstances and rights of the appellant under the Human Rights Act relate only to Mr Beaney Snr.
56. The evidence before me is that Mr Beaney Jnr and his wife bought a single unit mobile home when the children were born. The eldest child is now nearly 5 years old, which would place the purchase of the mobile home by Mr Beaney Jnr and his wife as occurring in or around 2015. This is clearly inconsistent with there being only one mobile home on the site at the time of the Inspector's visit in January 2016: if they had brought a second mobile home onto the site in 2015 it would have been there at the time of the Inspector's site visit, and clearly it was not.
57. It therefore appears to me that the breach of planning control alleged in the enforcement notice, being in part the material change of use of the land to a caravan site involving the residential occupation and stationing of caravans, began in or around August 2012. It is not clear to me whether Mr Beaney Snr was aware that planning permission was required for that use of his land: from what I heard at the Hearing, he was poorly advised by the agent acting on his behalf at that time. I am therefore prepared to give Mr Beaney Snr the benefit of the doubt and accept that the stationing of the original act was not an intentional act of unauthorised development.
58. On the other hand, by the time that Mr Beaney Jnr and his wife stationed their mobile home on the land, which in all probability was after the Inspector's decision had been issued, it should have been abundantly clear to them that the use of the land as a caravan site did not have the benefit of planning permission. But by that time the unauthorised use of the land as a caravan site had already commenced and the addition of the second mobile home did not then constitute a further act of development requiring planning permission. That is a consideration which weighs against the developments and to which I attach great weight.

Conditions

59. The Council has suggested a number of conditions should I be minded to grant a permanent planning permission. All of those suggested conditions, as well as others proposed at the Hearing, contemplate the use as existing and as proposed in the planning application. None of those conditions overcome the harm to the character and appearance of the KDAONB that I have identified above, or the unsustainable location of the appeal site. In contrast to other sites in the area where harm has been mitigated by the imposition of conditions, that approach would not overcome the harm in this case.

Conclusion on Appeal A: the appeal on ground (a) and Appeal B

60. The appellant points out that, since the enforcement notice was issued, the guidance in the Framework in relation to development within Areas of Outstanding Natural Beauty has changed. Specifically, paragraph 172 of the

Framework now indicates that the scale and extent of development within these designated areas should be limited. The appellant is of the view that the use on this site is limited development for the purposes of paragraph 172 of the Framework, and is therefore acceptable in this Area of Outstanding Natural Beauty.

61. The Framework indicates in a footnote to paragraph 172 that whether a proposal is 'major development' is a matter for the decision maker, taking into account its nature, scale and setting, and whether it could have a significant adverse impact on the purposes for which the area has been designated or defined². Although limited in scale and extent, by reason of its setting the use of the appeal site nevertheless has a significant adverse impact on the some of the special qualities that define the KDAONB, as set out in the Management Plan. The purpose of the KDAONB, as set out in the Management Plan, is primarily to conserve and enhance its natural beauty. It follows from the above that the use taking place on the appeal site (Appeal A), and as proposed (Appeal B), does have and would have a significant adverse impact on the purposes for which the area has been designated or defined. For all these reasons, I consider that the use qualifies as major development for the purposes of paragraph 172 of the Framework.
62. The Framework goes on to indicate that planning permission should be refused for major development other than in exceptional circumstances, and where it can be demonstrated that the development is in the public interest. The Framework sets out three considerations (a to c inclusive) against which proposals for major development within Areas of Outstanding Natural Beauty should be assessed.
63. In relation to the three considerations set out in the Framework, the Council accepts that it is unable to demonstrate a 5-year allocation of Gypsy and Traveller sites. There is, therefore, a need for the development (a). The use has, and would have, limited impact on the local economy, either positive or negative (a). The lack of availability of suitable sites indicates that there is limited scope for developing outside of the KDAONB, and the need cannot be met in any other way (b). For the reasons set out above, I find that the use unacceptably harms the character and appearance of the KDAONB, and that this harm cannot be mitigated to an acceptable level (c).
64. Assessing these considerations in the round, considerations (a) and (b) generally weigh in support of the development. In addition, I am mindful that one potential result should the appeals not succeed could be unauthorised roadside camping. That would not be in the public interest because of the probable associated environmental harm and economic costs of securing removal. Consideration (c) weighs against the development, and even more so in relation to the proposal in Appeal B. Balancing these considerations, I conclude that they do not amount to the exceptional circumstances indicated in the Framework as being necessary to justify allowing the development in this Area of Outstanding Natural Beauty. I make that judgment both in relation to the existing use (Appeal A) and the proposed use (Appeal B).
65. In other circumstances, the combination of the unacceptable harm to the character and appearance of the KDAONB; the unsustainable form of the development in this location; and the previous appeal decision would have

² Footnote 55, page 50 of the National Planning Policy Framework, February 2019.

inexorably led me to the dismissal of both appeals as being contrary to the development plan when read as a whole, the Framework and the principle of consistency in decision making. For those reasons, it is still my view that a permanent planning permission would not be acceptable, either for the existing use (Appeal A) or the proposed use (Appeal B).

66. It is also my view that, having regard to the harm caused by the proposed use of all the land as a caravan site for residential Gypsy occupation, a temporary planning permission would not be appropriate. Appeal B will therefore be dismissed. This leaves consideration as to whether a temporary permission for the mixed use comprising the keeping of horses and use as a caravan site involving the residential occupation and stationing of caravans would be appropriate.
67. In this context, I am mindful that Mr Beaney Jnr's son is still at an age whereby his medical condition cannot be properly diagnosed and assessed. As indicated above, it would in my view be in that child's best interest to remain in a stable home environment and at his present school until the age at which his medical condition can be properly diagnosed and assessed, and at which time a more informed judgment might be made about that child's ongoing needs. I am mindful that the child needs to reach an age of around six years old before a full diagnosis and assessment can be made, and that sufficient time then needs to be allowed for that diagnosis to be made and the effectiveness of any subsequent actions to become known.
68. Given the present age of the child, a period of three years would be sufficient to encompass the above and would be justifiable. The identified harm would then be for a limited period. I therefore conclude that a temporary permission of three years would be an appropriate response in the circumstances.
69. There is an additional benefit to a temporary period of that length being granted. A three-year temporary period would encompass the likely adoption of the Council's new District Local Plan in early 2022, with an allowance for some slippage in that timescale. This would in turn allow for the possibility that the Council is then able to identify a site(s) suitable for this family to move onto. In view of the exception set out in the PPTS for sites within Areas of Outstanding Natural Beauty, this is not in itself a consideration that justifies a temporary planning permission. Nevertheless, it provides further justification for a three-year period for the temporary planning permission warranted in the best interest of Mr Beaney Jnr's son.
70. I am also mindful that the justification for a temporary permission in this case is based solely on the personal circumstances of Mr Beaney Jnr's son. I would not be contemplating a temporary planning permission in the absence of those particular circumstances. The Planning Practice Guidance indicates that it will rarely be appropriate that a planning permission does not run with the land. However, in this case, I am satisfied that Mr Beaney Jnr's son would benefit from a temporary planning permission and that his circumstances are exceptional, such that a permission that did not run with the land would be justified in this case. Clearly, as a minor, the permission could not be made personal to Mr Beaney Jnr's son but as the site is occupied as a family unit a temporary permission could be made personal to Mr Beaney Snr as the appellant/applicant, and to Mr Beaney Jnr and Mrs Beaney as the child's parents.

71. At the Hearing, Mr Beaney Snr indicated that he would accept a permission that was both temporary and personal to him. For the reasons set out above, I am satisfied that a temporary and personal permission would be appropriate in this case. I am also satisfied that temporary and personal permission would be appropriate in terms of the Public Sector Equality Duty, and would be a proportionate response in terms of the rights of all those residing at the site held under the European Convention of Human Rights, as incorporated into domestic law by the Human Rights Act 1998.
72. I recognise that, on the facts then before him, the previous Inspector considered but rejected the possibility of a temporary and/or personal permission. However, in that respect, the facts now before me have changed sufficiently since that time to justify a departure from the decision reached in that appeal. In particular, the proposal then before the Inspector was for use for all of the land as caravan site for residential occupation rather than for a mixed use comprising, in part, the keeping of horses. In addition, the other new factor not before the previous Inspector is the occupation of the site by Mr and Mrs Beaney Jnr with their son.
73. Since I am minded to grant a temporary/personal planning permission, it is appropriate to consider what other conditions might be necessary to make that temporary use acceptable in planning terms. A condition limiting the number of caravans on the site is necessary, as is a condition limiting the number and weight of commercial vehicles kept on the land. A condition preventing commercial uses taking place on the site is also necessary. Other conditions advanced by the Council in relation to a permanent permission, such as external lighting, the external colour of the mobile homes and a landscaping scheme, would not be reasonable in the context of a temporary permission.

Conclusion

74. For the reasons given above, I conclude that the Appeal A should succeed and a temporary planning permission will be granted. In these circumstances, in relation to Appeal A, the appellant's appeal on ground (g) does not fall to be considered. I conclude that Appeal B should fail and that planning permission ought not be granted for the development proposed.

Formal Decisions

Appeal A Ref: APP/X2220/C/18/3199973

75. It is directed that the enforcement notice be corrected by:
- deleting the breach of control alleged in paragraph 3 of the notice in its entirety, and replacing it with: *without planning permission, the material change of use of the land from the keeping of horses to a mixed use comprising the keeping of horses and use as a caravan site involving the residential occupation and stationing of caravans, and for operational development facilitating the mixed use involving the erection of sheds, terracing/balcony, hardsurface, fencing and entrance gates along the boundary with Ferne Lane, an oil tank, washing line, hot tub, gas bottles and children's play equipment.*
76. Subject to that correction, the appeal is allowed, the enforcement notice is quashed and 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 from the keeping of horses to a mixed use comprising the keeping of horses and caravan site involving the residential occupation and stationing of caravans, and for facilitating operational development involving the erection of sheds, terracing/balcony, hardsurface, fencing and entrance gates along the boundary with Ferne Lane, an oil tank, washing line, hot tub, gas bottles and children's play equipment at Land on the south side of Ferne Lane, Alkham, Dover, subject to the following conditions:

- 1) The use hereby permitted shall be carried on only by the following: Mr D Beaney Snr, and Mr D Beaney Jnr, Mrs Beaney and their resident dependants, and shall be for a limited period being the period of 3 years from the date of this decision, or the period during which the premises are occupied by them, whichever is the shorter.
- 2) When the premises cease to be occupied by those named in condition 1 above, or at the end of 3 years, whichever shall first occur, the use as a caravan site involving the residential occupation and stationing of caravans hereby permitted shall cease and all caravans, buildings, structures, materials and equipment brought on to the land, or works undertaken to it in connection with the use, shall be removed and the land restored to its condition before the development took place.
- 3) No more than 4 caravan(s), 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 2 shall be [a] static caravan(s)) shall be stationed on the site at any time.
- 4) No more than two commercial vehicles in total, neither exceeding 3.5 tonnes in weight, shall be kept on the land and shall be used only by the occupiers of the caravans hereby permitted.
- 5) No commercial activities shall take place on the land, including the storage of materials.

Appeal B Ref: APP/X2220/W/18/3199968

76. The appeal is dismissed.

Paul Freer

INSPECTOR

APPEARANCES

For the appellant:

Mr Derek Beaney Snr	Appellant
Mr Derek Beaney Jnr	
Mrs Alison Heine B.Sc M.Sc MRTPI	Heine Planning

For the Local Planning Authority:

Mr Jim McKewen BA (Hons) MRTPI	Principal Planning Officer
Mr Stuart Watson BA MA	Senior Policy Planner, Regeneration & Delivery

Interested persons:

Mr E.M.Neve
Mrs Caroline Ward

DOCUMENTS SUBMITTED AT THE HEARING

- 1/ Statement of Common Ground
- 2/ Bundle of documents submitted by the appellant, including letters from doctors/consultants; a letter from the Headteacher at the school attended by Mr Beaney Jnr's son; a Marriage Certificate; and two letters from local residents.
- 3/ Copy of Policy LA1 of the Dover District Council Land Allocations Local Plan, 2015.
- 4/ List of conditions favoured by the Council in the event that the appeals are allowed.
- 5/ Kent Downs Area of Outstanding Natural Beauty Management Plan 2014-2019 (submitted electronically after the Hearing).