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## Appeal Decision

Site visit made on 10 August 2021

**by David Smith BA(Hons) DMS MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 17 August 2021**

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**Appeal Ref: APP/X2220/W/20/3264942**

**Lawson Park, Moat Lane, Ash, CT3 2DG**

- 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 Ms Esther Thomas against the decision of Dover District Council.
  - The application Ref 20/00789, dated 20 July 2020, was refused by notice dated 27 November 2020.
  - The development proposed is erection of three replacement dwellings.
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### Decision

1. The appeal is dismissed.

### Applications for costs

2. An application for costs has been made by the appellant against the Council and this is the subject of a separate decision.

### Main Issues

3. Whether the proposed development would be in a suitable location and the effect on the character and appearance of the area and on the provision of caravan sites for gypsies and travellers.

### Reasons

#### *Location of development*

4. The appeal site is on the western side of Moat Lane. There are mobile homes and outbuildings on the land which is outside the settlement boundary of Ash. Policy DM1 of the Core Strategy of 2010 establishes that development will not be permitted in such locations unless specifically justified by other development plan policies. Policy DM8 allows for replacement dwellings in the countryside in certain circumstances.
5. Planning permission was originally given for the stationing of three caravans on the site in 1981. This permission was for a temporary period of 5 years and was limited to Maurice John Thomas and his immediate family. A site license was issued at the same time. This permission was renewed in 1986 for a further 5 years. Permission was then given in 1992 for the permanent retention of the caravans, subject again to a personal condition.
6. The 1992 permission makes no reference to a residential use. However, evidence has been provided by local residents to the effect that the permanent stationing and residential occupation of up to 3 caravans/mobile homes has taken place for at least ten years. This is not disputed by the Council but

occupation is restricted by condition to members of the Thomas family. Mr Thomas is now deceased.

7. Consequently the evidence is that there is a lawful residential use at the site. However, caravans are not buildings. There are therefore no permanent structures in lawful residential use which is one of the requirements of Policy DM8. There is also no indication that the mobile homes on the land are, in fact, buildings. Therefore the provisions of Policy DM8 do not apply and it does not form an exception to the restrictive policy in DM1 in this case.
8. That said, the Council's position is that Policy DM1 is out of date when judged against the National Planning Policy Framework because of its limiting effect on the supply of housing. Whilst Policy DM8 does not justify the proposal, the reality is that there is a long-standing residential use of the site. Therefore, notwithstanding the policy conflict, there is no objection to the location of the proposed dwellings.

#### *Character and appearance of the area*

9. Development along Moat Lane is generally sporadic although there is a large complex of farm buildings to the south. Permissions have been given for dwellings adjoining Three Chimneys to the north but these would be more closely associated with the village. Overall there is a clear sense of development petering out as part of the transition from the agglomeration of village development to the wider countryside beyond.
10. The mobile home parallel to the lane is visible above the frontage hedge but otherwise the mobile homes and incidental buildings are well-contained. The scale of the houses on Plots 1 and 2 has been kept down by providing accommodation in the roof space lit by dormers. Plot 3 would be single storey. However, even if the footprint would be similar, the proposed dwellings along Moat Lane would be of a greater magnitude than what is there at present.
11. From Moat Lane itself the impact of the proposal would be mitigated by the front boundary vegetation. However, the side elevation of Plot 1 would be clearly visible through the site entrance. The wider views would mainly be from the east across intervening open land – both from The Street and from a public footpath. Due to their size and proximity to one another the houses on Plots 1 and 2 would lead to a significant consolidation of buildings. This would give rise to a marked linear form of development that would be at odds with the more haphazard pattern that characterises the lane. Even compared to the mobile homes, the proposed dwellings would appear to protrude into the countryside in a manner at odds with its inherent character.
12. Therefore the proposal would harm the character and appearance of the countryside contrary to Core Strategy Policy DM15 which seeks to protect it.

#### *Provision of caravan sites for gypsies and travellers*

13. The main matter in contention is whether the site should be counted as part of the existing supply of gypsy and traveller sites. None of the permissions make specific reference to use as a gypsy and traveller site and no conditions to that effect have ever been imposed. However, the report relating to the 1992 permission states that Mr Thomas and his family spend about half of the year travelling generally returning to the site for the winter months. Furthermore, correspondence from an application in 1992 describes the family as travellers.

14. This evidence is not conclusive but it is strongly suggestive that the family had a travelling lifestyle and this would presumably have formed part of the justification for the permissions granted. In my experience conditions limiting development to gypsies and travellers were not universally imposed at that time. Moving to the present, the limited information provided is that the applicant no longer travels but there is nothing about the other site occupiers.
15. The Council's Gypsy and Traveller Accommodation Assessment was published in September 2018 and includes Lawson Park as part of the existing supply of sites for one household. This Assessment is based on a review of existing secondary data, an online survey of key stakeholders and interviews with gypsy and traveller households. In its own words "*The findings of the study provide an up-to-date, robust and defensible evidence base for policy development.*"
16. The study includes those who meet the definition of gypsy and traveller in the Planning Policy for Traveller Sites (PPTS) and also 'cultural' gypsies who do not meet the PPTS definition but who identify themselves as gypsies and travellers. In addition, there may be others who reside in or resort to the District who may need sites to be provided on which caravans can be stationed under section 124 of the Housing and Planning Act 2016. The Framework expects that the needs of groups with specific housing requirements are addressed. Therefore, it is reasonable to have regard to all of these groups in this appeal.
17. The detailed methodology and approach of the Assessment was thorough and there is no better source of evidence about existing gypsy and traveller sites. Furthermore, Table 4.4 indicates that a response was received regarding Lawson Park. Whilst details of this are not available it is most likely that if the occupiers wished to question the inclusion of the site in such a study then they would have done so. In turn, this would have informed the review of existing sites. More to the point there is no clear evidence that the appeal site was incorrectly included as part of the supply of gypsy and traveller sites. The Assessment's findings are therefore highly instructive.
18. Applying the results of the Assessment over the new local plan period to 2040 there is a need for 26 pitches for cultural gypsies and for 16 pitches for those complying with the PPTS definition. Amongst other things, the PPTS expects that specific deliverable and developable sites are identified in local plans and also promotes more private traveller site provision. It stands to reason that the achievement of these aims should not, in general terms, be undermined by the loss of existing sites.
19. The loss of a site counted as a single pitch might appear unimportant. But compared to the identified need and the existing total stock of 44 pitches this would be significant. Moreover, the findings of the Assessment establish that site provision needs to almost double and it has long been the case that identifying suitable sites is no easy task. A further consideration is that Lawson Park is well-suited to a residential caravan site given its closeness to the village and the consequent prospects of integration with those living nearby.
20. In practice, if the current occupiers were to leave the site then there is no planning requirement for any incomers to be gypsies and travellers. However, the occupancy condition would remain and could be re-imposed to allow others to live on the land who either comply with the PPTS definition or on a personal

basis. Therefore the site could in future serve a useful purpose in meeting the needs of gypsies and travellers or others who require caravan accommodation.

21. There is no first-hand evidence about the intentions and aspirations of those now residing at Lawson Park. However, it would make no sense to permit 3 houses only to find that the current occupiers required caravan accommodation elsewhere. Alternatively the proposed dwellings might be occupied by existing family members living on the site. But there is no way of ensuring this and it would be unreasonable to impose a condition to this effect as any planning permission usually runs with the land. In both scenarios the existing caravan site would be lost.
22. Bringing these strands together the lack of specific planning controls does not prevent the site being counted as part of the supply of traveller sites – whether for those meeting the PPTS definition or for ‘cultural’ gypsies and travellers. Notwithstanding the planning history, the evidence points to Lawson Park forming, in practice, part of the current stock of sites. Therefore the proposal for permanent built development should be assessed accordingly.
23. There are no specific local or national policies that safeguard existing caravan sites. However, in the circumstances found in Dover, the loss of this pitch would be a retrograde step and harm overall provision by reducing it. This is a material consideration that weighs against the proposed development.

### **Other considerations**

24. The permissions around Three Chimneys indicate that settlement boundaries are not always sacrosanct. If the appellant’s caravan needs major repairs then it could simply be replaced so that she could stay at the site. On the face of it this does not appear to be a major obstacle. Indeed, neither of these considerations warrants permitting development that would harm the character and appearance of the area and lead to the loss of a residential caravan site.
25. The Council does not consider that a contribution towards the Thanet Coast and Sandwich Bay Special Protection Area and Ramsar Mitigation Strategy is necessary. Given that the appeal is to be dismissed, there is no need for further consideration to be given to the provisions of the Conservation of Habitats and Species Regulations 2017.

### **Conclusion**

26. The proposal would conflict with Core Strategy Policies DM1 and DM15. These are the most important policies for determining the appeal. Whilst the Council accepts that Policy DM1 is out-of-date, the Framework confirms that planning decisions should recognise the intrinsic character and beauty of the countryside. This is reflected by Policy DM15. Given that this is the critical policy on which this decision turns, the most important policies are collectively not out-of-date and therefore paragraph 11 d) of the Framework does not apply. The proposed development would also not accord with the development plan as a whole. There are no material considerations to outweigh that finding. Therefore, for the reasons given, the appeal should not succeed.

*David Smith*

INSPECTOR