



Appeal Decision

Hearing Held on 13 July 2021

Site visit made on 15 July 2021

by N Thomas MA MRTPI

An Inspector appointed by the Secretary of State

Decision date: 23 September 2021

Appeal Ref: APP/G2245/C/20/3261584

Land at Little Trees, Redmans Lane, Shoreham, Kent TN14 7UB

- 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 Ms Ann Marie Andrews against an enforcement notice issued by Sevenoaks District Council.
 - The enforcement notice was issued on 23 September 2020.
 - The breach of planning control as alleged in the notice is without planning permission, material change of use of the land to use as a residential caravan site by:
 - the stationing of touring caravans for residential use,
 - erection of day room and other outbuildings,
 - creation of driveway and hardstanding.
 - The requirements of the notice are:
 - Cease use of the land as a residential caravan site,
 - Remove all touring caravans for residential use,
 - Remove day room and other outbuildings on site,
 - Remove hardstanding, including driveway.
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Decision

1. It is directed that the enforcement notice is corrected by:
 - 1) Substituting the site plan attached to the issued enforcement notice with the one attached to this decision, and;
 - 2) adding the following words "except the building shown shaded in red on the attached plan" to the second bullet point of the alleged breach of planning control.
2. Subject to the corrections, 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 to use as a residential caravan site and facilitating development as shown on the plan attached to the notice, and subject to the conditions in the attached schedule.

Preliminary Matters

3. A revised version of the National Planning Policy Framework (NPPF) was published on 20 July 2021. I have invited the main parties to comment on the implications for the case and I have taken account of their response in my determination of the appeal.

Gypsy/traveller status

4. The definition of 'gypsies and travellers' to whom the Government's Planning Policy for Traveller Sites 2015 (PPTS) applies is set out in Annex 1: Glossary. The Council does not dispute the gypsy/traveller status of those occupying the site. Information was provided by the appellant's agent giving personal details for the appellant and their family living on the site, and this was supplemented in oral evidence at the hearing. Based on the details, including the regularity and purpose of travel and the stated intention to continue to do so, I have no reason to doubt that the appellant and their family are persons of nomadic habit of life who meet the definition within the PPTS.

Background

5. The land has an established equestrian use for the keeping of horses, and planning permission¹ has previously been granted for the erection of stables and feed store. The parties agreed that this building has been re-sited from its original position and is in a field outside the red line of the enforcement notice plan.
6. The appellant and their family moved onto the site in 2017 and made an application for planning permission² for the change of use of the land for the stationing of three static mobile homes and three touring caravans for Gypsy/Traveller occupation; confirmation of existing building for day room; associated hard and soft landscaping. The application was submitted in August 2019 and refused in July 2020.

Matters Concerning the Notice

7. The parties agreed that a pole barn has been present on the site for at least four years. It is shown on aerial photographs provided by the Council dating back to December 2009. I am therefore satisfied that it is immune from enforcement action and should be specifically identified on the enforcement notice plan and excluded from the alleged breach of planning control. This would not cause injustice.

The appeal on ground (a) and the deemed application

8. The site is within the Green Belt and the Kent Downs Area of Outstanding Natural Beauty.
9. Having regard to the reasons for issuing the notice, the main issues are:
 - Whether the development is inappropriate development in the Green Belt,
 - The effect of the development on the purposes of including land in the Green Belt,

¹ Ref 06/00038/FUL

² Ref 19/02418/FUL

- The effect of the development on the character and appearance of the area including the Kent Downs Area of Outstanding Natural Beauty (AONB),
- The general need for and supply of gypsy and traveller sites in the area,
- The accommodation needs of the appellant and their family and their personal circumstances,
- The weight to be given to other identified considerations,
- Green Belt balance.

Inappropriate development

10. The NPPF identifies that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. Sevenoaks Core Strategy 2011 (CS) Policy LO1 seeks to direct development to existing settlements, and to protect the rural character of the District, with development only taking place where it is compatible with policies for protecting the Green Belt.
11. The PPTS in Policy E states that traveller sites, whether temporary or permanent, are inappropriate development in the Green Belt. Paragraphs 147 and 148 of the NPPF set out that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Substantial weight should be given to any harm to the Green Belt. Very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations.
12. The appellant has argued that the development falls within the exception set out in paragraph 149g of the NPPF, relating to the limited infilling or partial or complete redevelopment of previously developed land, where the development would not have a greater impact on the openness of the Green Belt than the existing development.
13. It is clear from the submitted aerial photographs that the northernmost part of the site has contained an element of built form for some considerable period of time, associated with the use of the land for the keeping of horses, although much of the site was previously laid to grass. I am satisfied at least part of the site falls within the definition of previously developed land, as set out in Annex 2: Glossary of the NPPF, as land which is or was occupied by a permanent structure, including the curtilage of the developed land. However, the development that has taken place has not involved the redevelopment of the site but has introduced new development, and it does not therefore constitute partial or complete redevelopment. Moreover, it has a greater impact on openness than the existing development. The development is therefore inappropriate development in the Green Belt.

Openness and Green Belt purposes

14. Prior to the development taking place, the submitted evidence indicates that the site contained limited development associated with the keeping of horses, with the pole barn being the largest building. The access track consisted of two strips of hard surfacing with a central grass strip. I saw on my site visit touring caravans, a fully surfaced access track with an area of hardstanding for parking, parked cars, external lighting and general domestic paraphernalia

such as outdoor seating. The single storey dayroom/amenity block has also added additional built form. These all impinge upon openness. The impact on openness has a visual dimension, as the site is visually exposed to the west and north where there are long views across open fields. There is little scope to mitigate the effect on openness, which I therefore find to be moderately harmful, in view of the relatively small size of the site.

15. The development represents an encroachment of built form into open countryside and it conflicts with the related Green Belt purpose. Despite the District being on the boundary with Greater London, the site itself is not close to any towns and therefore it does not conflict with the purposes related to urban sprawl and the prevention of neighbouring towns from merging into one another.

Character and appearance

16. The site is within the Eynsford and Shoreham Downs area of the AONB, which is characterised by rolling downland with large arable fields, small isolated woodlands and hedgerow corridors, large and medium scale rectangular and irregularly shaped fields, with few isolated settlements and farms. The appeal site is to the side of an area of large open fields, divided by fences, and forms part of the distinctive open rolling landscape characteristic of the AONB. It is screened from Redmans Lane and from the east by mature hedgerows. The land slopes steeply down to a valley, before rising again to the north and west, allowing long views towards the site across open fields. Great weight should be given to conserving and enhancing the landscape and scenic beauty of the AONB.
17. The parties identified that there are large scale visual detractors in the vicinity of the site. However, while traffic noise is clearly audible, the M25 is largely screened by a significant tree belt which encloses the west side of the open fields, and the pylons are some distance away to the south. With the exception of some overhead powerlines, and existing development at Drummers Field, the area around the site is largely free from visual intrusion. The previously existing buildings on the site are finished in dark materials and are set against the backdrop of mature vegetation, so that their visual impact is limited. The evidence indicates that in its pre-existing state the site made a positive contribution to the distinctive character and qualities of the rural area and the AONB, and due to its openness, it is sensitive to change.
18. The touring caravans, car parking, day room, hardstanding and other structures and paraphernalia associated with a residential use are conspicuous in this setting, and appear out of keeping with the agricultural character of the area. It would be reasonable to assume that a residential use results in a level of regular and frequent activity and movement to and from the site which contrasts with the quiet rural character of the area. The light colour of the caravans makes them particularly conspicuous against the wooded backdrop to the site. While the site is between the pre-existing buildings and the lane, it does not appear as an 'infill' development as suggested by the appellant, but rather as a significant line of development along the site boundary that has a suburbanising impact on the site. There is also a cumulative impact on the rural character due to other small scale development in the area, such as Drummers Field.

19. While there is space to provide landscape planting, the parties agreed that it would not be desirable to fully screen the site as this could physically isolate the land and the occupiers from the surrounding area. However, a well-designed landscaping scheme with appropriate planting would mitigate the effect on the landscape to some extent, although the suburbanising effect of the development would still be apparent.
20. I therefore conclude that the development is harmful to the character and appearance of the area, and fails to conserve or enhance the landscape and scenic beauty of the AONB. It is therefore in conflict with CS Policies SP1, SP6 and LO8 and policies EN1, EN5 and GB6 of the Sevenoaks Allocations and Development Management Plan 2015 (ADMP), insofar as they seek to ensure that the countryside and the AONB are conserved and enhanced. It is also in conflict with the guidance in the NPPF.

Need for and supply of gypsy and traveller sites

21. CS Policy SP6 states that sites for gypsies and travellers will be provided through allocations in the ADMP, which will also set out the overall level of future provision taking account of relevant planning guidance. However, I have not been advised that the level of need has been established through the ADMP, nor that any sites for gypsies and travellers were allocated. I understand that sites were proposed to be allocated in the emerging Sevenoaks Local Plan, but this Local Plan is now on hold and no weight can be given to its policies. The Council considers a new Local Plan is likely to be adopted within the next 3-5 years.
22. The appellant refers to the Gypsy and Traveller and Travelling Showpeople Accommodation Assessment: 2017 (GTAA) for the District. It identified that there was a supply of 106 authorised pitches, of which 6 were vacant. The need for the period 2017/18 to 2021/2022 was estimated to be 167 pitches, giving a shortfall of 61 pitches. It is also identified that for the period 2022-2035 there is a need for an additional 44 pitches. Taking account of plot turnover, the target was to deliver 51 pitches over the period to 2035.
23. The Council stated that since 2017 a total of 43 new pitches have been provided. Some of the provision has been on existing sites that have been extended, or by making permanent some sites that had temporary permissions. On this basis there is a shortfall of 8 pitches. It was also confirmed that the GTAA did not take into account the needs of the appellant and their family, who were not present on the site or in the District at the time.
24. As a result of the shortfall, and in the absence of allocations in a local plan or a clear timeframe for its provision, the Council acknowledged that it was likely that the additional sites would come forward through the development management process rather than through allocations. Paragraph 27 of the PPTS makes clear that if a local planning authority cannot demonstrate an up-to-date five year supply of deliverable sites, this should be a significant material consideration in any subsequent planning decision when considering applications for the grant of temporary planning permission. There are exceptions to this and they include development on land designated as Green Belt and AONB. Policy E of the PPTS makes it clear that unmet need is unlikely to clearly outweigh the harm to the Green Belt and any other harm so as to establish very special circumstances, subject to the best interests of the child.

25. Nonetheless, it is for the decision-maker to attribute such weight as is considered appropriate in the given circumstances. In this particular case, the absence of a five year supply warrants significant weight in the light of the appreciable deficit in supply and with the shortfall unlikely to be remedied until the new Local Plan is in place, estimated to be within the next 3-5 years. I also note that 93% of the District is designated as Green Belt. As an alternative site would likely to be rural or semi-rural, it is more likely than not that it would also be in the Green Belt. However, the AONB covers approximately two thirds of the District, and it seems likely that sites could come forward in a less sensitive landscape area.

Accommodation needs and personal circumstances

26. The extended family occupying the site includes children, the youngest of whom is at school. Details have been provided of the child's educational needs, which will be met by the family staying in the area and having a settled base. Details have also provided of the healthcare needs of the occupying members of the family, some of whom are registered with a local GP and others registered at a GP surgery out of the District. The effect of moving from the site would be to disrupt the continuity of medical care and there is a dependence within the family for transport to hospital appointments, so that there are benefits for them to continue to stay together as a group.
27. The family previously lived on a caravan site but had to leave for personal reasons. They then lived in conventional housing for a time as they had no other option, but they have an aversion to bricks and mortar. They left the housing and moved onto the appeal site in order to have a settled base and a quiet environment in which to bring up their children and for better physical and mental health. They have other family members in the wider area in Dartford and Sittingbourne.
28. The family is not on a waiting list for a council owned site due to the lack of spaces and low rate of turnover of pitches. They are not aware of any privately owned pitches available to people who are not family members as sites are not usually shared by other families. It is difficult to find suitable and affordable land to buy in the area.
29. Dismissal of the appeal would give the family no option but to resort to a roadside existence, with welfare and safety issues for all the family. This is likely to either involve staying on other sites in breach of planning controls, or stopping illegally on roadsides. This would be particularly disruptive for education and healthcare. The appeal site provides stability and consistent access to medical and education services. It would be in the best interests of the child to remain on the site, which is a primary consideration.

Other considerations

Intentional unauthorised development

30. The Written Ministerial Statement (WMS) issued on 17 December 2015 confirmed the introduction of a national planning policy that intentional unauthorised development is a material consideration to be weighed in the determination of planning applications and appeals.
31. The appellant was not aware of the WMS but was aware of the need for planning permission and that none had been applied for. The application was

made following contact from the Council's enforcement officer. It was submitted in August 2019, and the appellant's agent explained that there had been delays in preparation due to the shortcomings of a previous agent. There was therefore a significant delay between occupying the site and applying for permission, and it is clear that the appellant intended to occupy the site without first seeking to gain planning permission. It is not the case that the appellant and their family had nowhere else to live, but they left bricks and mortar due to their aversion to it and I have seen no evidence that there was any alternative site for them to move onto.

32. The appellant has not undertaken additional works to those that are necessary to create a habitable environment for their family. The driveway and hardstanding are required to give all weather access and parking.
33. I give some weight to the fact that the appellant intentionally occupied the site without first seeking planning permission, and did not apply until some time after the Council's enforcement officer made contact. However, the 1990 Act makes provision through s73A for a grant of retrospective permission and through enforcement appeals on ground (a), and I note that planning enforcement is intended to be remedial not punitive.

Previously developed land

34. I have already found that the site falls within the definition of previously developed land. While this is a consideration in favour of the application as set out in paragraph 26 of the PPTS, I have seen no evidence that the land was untidy or in a derelict state. The buildings had little impact on the appearance of the site and I give this consideration limited weight.

Other Matters

35. Various other matters have been raised which I have taken into consideration. I am aware that there are other unauthorised developments in the area, but I have seen no evidence that they are connected with this case, which I have considered on its own merits. The development does not affect the agricultural use of other land in the area.
36. There is a large metal gate and close boarded fencing at the entrance to the site from Redmans Lane, which prevents views into the site and across open countryside. However, this is not the subject of the enforcement notice and does not therefore form part of the deemed application.
37. The site is not well connected to nearby settlements, and occupiers are dependent on private vehicles to access facilities and services as it is not served by public transport. Paragraph 13 of the PPTS sets out criteria for traveller sites to ensure that they are sustainable, while paragraphs 14 and 25 of the PPTS implicitly accept that sites may be located in rural areas which will lessen opportunities for sustainable travel. The PPTS does not require that sites are accessible by foot or public transport, but in paragraph 4j states that the Government's aim is to enable the provision of suitable accommodation from which travellers can access education, health, welfare and employment infrastructure. Moreover, providing a settled base can reduce the need for long distance travelling. The appellant's evidence indicates that the site enables the occupiers to access education, health and employment. This is therefore a neutral factor that weighs neither for nor against the case.

Green Belt Balance

38. The development is inappropriate and is therefore harmful to the Green Belt by definition. There is also moderate harm to openness and the purpose of including land in the Green Belt to assist in safeguarding the countryside from encroachment. I give substantial weight to the Green Belt harm. There is harm to the character and appearance of the area and it fails to conserve or enhance the landscape of the AONB, to which I give great weight, although there is some limited scope for mitigation through an appropriate landscape planting scheme. There has been intentional unauthorised development to which I give limited weight.
39. To be weighed against the harm is the unmet need for gypsy and traveller sites and the failure to provide for them through allocations to which I give significant weight. I also give significant weight to the likelihood that allocations will involve designated Green Belt land. I give moderate weight to the personal circumstances of the extended family unit and their wish to remain together in order to provide stability and care for the appellant's parents. I give significant weight to the best interests of the child who is still in education, which would be best served by remaining on the site with their family. I give limited weight to the use of previously developed land. Taken together, these considerations do not clearly outweigh the harm to the Green Belt by reason of inappropriateness, and the other harm resulting from the development, so as to comprise very special circumstances. I therefore find that a grant of permanent planning permission is not justified.
40. However, it is necessary to consider whether a temporary or personal planning permission would be appropriate. In this case, it is likely that a new local plan will be in place within the next 3-5 years, and that it will allocate sites for gypsies and travellers. A temporary permission would allow the local authority time to reconsider the development at the end of the temporary period in the light of any change in circumstances, in particular with regard to the supply of potential alternative sites through the local plan. I consider that this is an exceptional occasion where granting planning permission for development that would not normally be permitted on the site could be justified, because of who would benefit from the permission. A personal permission would ensure that the site is available for the family in view of the best interests of the child and the benefits of having a stable base for education and healthcare needs.
41. If planning permission were to be refused, the outcome would be that the appellant and their family would lose their home. This would represent a serious interference with the family's right to respect for private and family life and the home. In addition, a child's education would be likely to be adversely affected. The Council has the intention of addressing the need for gypsy and traveller sites, and there is no reason to suppose that an adequate number of sites for gypsies and travellers could not be identified and delivered within the next five years. It would accord with national policy as set out in the PPTS for sites to be allocated through the development plan process, rather than on an ad hoc basis.
42. If I grant planning permission for a temporary period of five years it would avoid the family unit becoming homeless, and give them the opportunity to pursue a site through the local plan allocation process. This would be a proportionate approach to the legitimate aim of protecting the environment,

and granting a personal permission for a limited period would have no greater impact on the appellant and their family than would be necessary to address the wider public interest.

43. As the harm to the Green Belt and the AONB would therefore be temporary, the personal circumstances of the appellant and other considerations are sufficient to clearly outweigh the harm to the Green Belt and the other harms. Taking account of the positive obligation to facilitate the gypsy way of life, there are very special circumstances to justify a temporary permission. As such, the development complies with the development plan when read as a whole, and is not in conflict with the NPPF. For these reasons, and having regard to all matters raised, I conclude that the appeal on ground (a) should succeed, and personal planning permission should be granted for a temporary period of five years, subject to appropriate conditions.

Conditions

44. A schedule of suggested conditions has been provided which I have considered in the light of the advice in the Planning Practice Guidance (PPG). A personal condition is required for the reasons set out above, and it is not therefore necessary to restrict the occupation by gypsies or travellers. A temporary condition was discussed at the hearing, although no wording was suggested. A five year temporary permission would be appropriate so that there is a realistic prospect that by the end of the period the circumstances will have changed.
45. Since the grant of planning permission will be for the use of the land as a residential caravan site, it is necessary to control the maximum of number of caravans and the type of caravan. The appellant has requested that the condition set an upper limit of three touring and three static caravans. However, at the time of my site visit there were only touring caravans present and to add three static caravans would result in a different character of development to that existing. It is therefore appropriate to limit the number to three touring caravans as suggested by the Council.
46. It is appropriate to require details of landscaping. Although a temporary permission is being granted, an appropriate landscaping scheme would assist in mitigating the impact on the rural character of the AONB and Green Belt for the temporary period, whilst bringing ecological benefits. Conditions controlling the means of enclosure, external lighting, commercial uses and the storage of commercial vehicles over 3.5 tonnes, are necessary in the interests of protecting the rural character and landscape. The appellant has advised that a cesspit has been installed. Due to the large area of hardstanding a condition relating to surface water drainage is necessary.
47. The Council has suggested a condition removing permitted development rights for development required by the conditions of a site licence under Schedule 2, Part 5 of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended. However, I have seen no evidence that a licence is likely to require additional buildings on the site and therefore such a condition is not justified.

Conclusion

48. For the reasons given above, I conclude that the appeal succeeds on ground (a). I shall grant planning permission for the use as described in the notice as corrected. The appeal on ground (g) does not therefore fall to be considered.

N Thomas

INSPECTOR

APPEARANCES

FOR THE APPELLANT

Simon McKay BSc MA MRTPI of SJM Planning - Agent

Ms Ann Marie Andrews

Sam Andrews

FOR THE COUNCIL

Mike Holmes MA LRTPI - Principal Planning Officer

INTERESTED PERSONS

John Saynor – Co Chair of Shoreham Society and representing Shoreham Parish Council

William Alexander – Local farmer

DOCUMENTS SUBMITTED AT THE HEARING

Document 1 – Google Street View Image captured April 2012 and extract from SDC map showing AONB boundary submitted by John Saynor

Document 2 – Suggested conditions submitted by the Council

SCHEDULE OF CONDITIONS

1. The use hereby permitted shall be carried on only by the following: Ann Marie Andrews, Kevin and Tina Andrews, Sam Andrews, his partner and their resident dependants, and shall be for a limited period, being the period of 5 years from the date of this decision, or the period during which the site is occupied by them, whichever is the shorter.
2. When the site ceases to be occupied by those named in condition 1 above, or at the end of 5 years, whichever shall first occur, the use hereby permitted shall cease and all caravans, buildings, structures, materials and equipment brought onto 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 three caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 as amended shall be stationed on the site at any time. The caravans shall be touring caravans only.
4. No commercial vehicles over 3.5 tonnes shall be stored on site and no business shall be carried out from the site.
5. Within three months of the date of this decision, full details of landscape works, including boundary treatment and ecological enhancements, to be retained and proposed for the site, shall be submitted to the local planning authority. The approved details shall be completed within the next available planting season following approval of the landscape works and if within a period of five years from the date of this decision any of the trees or plants that form part of the approved details die, are removed or become seriously damaged or diseased then they shall be replaced in the next planting season with others of similar size and species.
6. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (or any other order revoking and re-enacting that order with or without modifications), no walls, fences or other means of enclosures other than those approved under condition 5 shall be erected on the site unless details of their size, materials and location shall have previously been submitted to and approved in writing by the local planning authority. Development shall be carried out and retained in accordance with the approved details.
7. No external lighting shall be installed on the site or affixed to any buildings on the site unless the local planning authority has first approved in writing details of the position, height, design, measures to control light spillage and intensity of illumination. Only the external lighting in accordance with the approved details shall be installed.
8. Within three months of the date of this decision, details of the surface water drainage of the site shall be submitted to the local planning authority. The approved drainage system shall be installed within 6 months of the approval of the details.



Plan

This is the plan referred to in my decision dated: 23 September 2021

by **N Thomas MA MRTPI**

Land at: Little Trees, Redmans Lane, Shoreham, Kent TN14 7UB

Reference: APP/G2245/C/20/3261584

Scale: Not to scale

