



Appeal Decision

Hearing Held on 21 September 2021

Site visit made on 21 September 2021

by Hilary Orr MSc, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20th January 2022

Appeal Ref: APP/V2255/C/20/3263577

**Land situated at The Old Bindery, Butchers Field, Throwley Forstal,
Faversham, Kent ME13 0PJ**

- 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 Nelson Scamp against an enforcement notice issued by Swale Borough Council.
- The enforcement notice, numbered 21/500009/ENF, was issued on 23 October 2020.
- The breach of planning control alleged in the notice is failure to comply with conditions Nos 1, 2, 3 and 4 of a planning permission Ref APP/V2255/W/15/3131746 granted on 10 February 2016
- The development to which the permission relates is for the material change of use of land to a mixed use as a caravan site for the stationing of caravans used residentially, use for horse keeping and use of a building as stables, as originally approved by appeal decision APP/V2255/C/11/2151258. The conditions in question are Nos 1, 2, 3 and 4 which state that:
 - 1) The use hereby permitted shall be carried out only by Mr Nelson Scamp and shall be for a limited period, being the period of 2 years from the date of this Appeal Decision, or the period during which the premises are occupied by Mr Nelson Scamp, whichever is the shorter.
 - 2) When the land ceases to be occupied by Mr Nelson Scamp, or at the end of 2 years from the date of this Appeal Decision, whichever shall occur first, the use hereby permitted shall cease and all caravans, structures, materials and equipment brought onto it in connection with the use shall be removed. At that time any laurel, photinia or eucalyptus or coniferous plants on the land shall also be removed.
 - 3) Other than the bow-topped, vardo caravan that was on the land on 30 November 2011, no more than 2 caravans as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968, as amended, of which no more than one shall be a static caravan, shall be stationed on the site at any time.
 - 4) No commercial activities shall take place on the land, including the storage of vehicles, plant, products or waste. No vehicle over 3.5t shall be stationed, parked or stored on the land.
- The notice alleges that the conditions have not been complied with in that:
The mixed use approved should have ceased by 10 February 2018 but is continuing and conditions 1) and 2) above have not being (sic) complied with, which represents a further breach of planning control.

Condition 3) requires that no more than one caravan stationed on the Site shall be a static caravan and there are currently two static caravans on the site, which represents a further breach of planning control.

- The requirements of the notice are:
 - (1)-Cease the use of the Land for a mixed use as a caravan site for the stationing of caravans used residentially, use for horse keeping and use of a building as stables.
 - (2)-Remove from the Land all caravans, structures, materials and equipment brought onto the Land in connection with the mixed use.
 - (3)-Remove all laurel, photinia or eucalyptus or coniferous plants from Land.
 - The period for compliance with the requirements is 12 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a) 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.
-

Decision

1. The appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Background

2. The site has been the subject of a number of planning applications and appeals since 2009. The latest appeal decision was dated 10 February 2016 (appeal ref: APP/V2255/W/15/3131746). This granted a conditional, personal permission to Mr Scamp for a temporary period, expiring on 10 February 2018.
3. In essence, since the site continued to be occupied after the above expiry date with an additional caravan introduced, the Council served the enforcement notice against the continued occupation of the site without complying with conditions 1), 2) and 3) of that permission. In contrast, it is the appellant's case that the conditions should be varied to delete reference to any temporary period.
4. The appeal was originally submitted on grounds (a), (d) and (f) and in the appellant's evidence there is reference to his caravan being a dwellinghouse. However, grounds (d) and (f) were both withdrawn in March 2021. The appellant clarified at the hearing that only the ground (a) appeal and the deemed application, for the continued siting of two mobile homes and one touring caravan, for occupation by gypsies and travellers, was being pursued. Accordingly, the deemed application essentially seeks to vary conditions 1, 2 and 3 by removal of any reference to the duration of the permission and the number of caravans. I have considered the appeal on this basis.

Main Issues

5. The main issues are whether the conditions, in so far as they limit the duration of the permission to two years and restrict the number of caravans, remain reasonable and necessary, having regard to:
 - The location of the development.
 - The suitability of the site with regard to its effect on the character and appearance of the area, the Kent Downs Area of Outstanding Natural Beauty (the AONB) and the Throwley Forstal Conservation Area (TFCA); and
 - The personal circumstances of the appellant and his extended family.

Reasons

6. Planning Policy for Traveller sites 2015 (PPTS) provides national policy guidance

for considering matters of need and the supply of traveller sites. Accordingly, PPTS is a material consideration in the determination of this appeal. There was no dispute between the parties that the appellant and his family, who are occupying the site, meet the definition of gypsies and travellers set out in the PPTS. From the evidence, the appellant's son, who occupies the second caravan, is working more locally to assist with the medical needs of the appellant. Nonetheless, it was confirmed that he continues to breed and sell horses and attends various annual horse fairs including Appleby and the Epsom Derby, the appellant's daughter in law, remains on site to assist the appellant.

Location

7. Paragraph 25 of the PPTS makes it clear that new traveller sites in the open countryside, away from existing settlements should be very strictly limited. The parties agree that the site lies outside any settlement identified by the Council's adopted Local Plan. It lies within a remote small hamlet of cottages set around a central communal green. The site is bounded by roads, with public footpath (no. ZR432) to the south.
8. The surrounding residential properties mean that the site is not completely isolated. However, there are no day to day facilities available within Throwley Forstal, with Faversham providing medical and other day to day facilities some 7km away.
9. From my site visit it was clear that the surrounding roads, including those leading to Throwley Forstal, generally do not have pedestrian footpaths, are very narrow and are unlit. This would make walking and cycling, especially in the winter months or after dark, a less attractive alternative to the private car.
10. I acknowledge that over the years there have been changes in the way people shop, with greater emphasis on home delivery. The appellant's son is able to pick up provisions for both his own family and the appellant, when travelling to and from local work. The appellant also made reference to the use of a pony and trap to secure provisions from 'Grow at Brogdale' which is approximately 5.5km away. However, whilst this is an alternative to the use of motor vehicles, from the evidence, such trips are at best sporadic and I have little information about the range of goods that can be bought there.
11. The increased scale of the development has resulted in an increase in car movements from occupiers of the site in addition to those attending the site to give professional assistance and medical support to the appellant. Accordingly, in the context of this rural location, where I accept that accessibility is not normally as good as that of urban areas, I find that the development fails to provide a viable alternative to the use of private cars for its residents and visitors. In my judgement, the appeal site is therefore not in a suitable location for permanent occupation. The development is therefore contrary to policies ST1, ST3 and DM10, of the Bearing Fruits 2031 The Swale Borough Local Plan (2017) (LP). These policies seek to ensure that new development is provided in accordance with the settlement hierarchy.

Character and appearance

12. Turning to the effect of the development on the local area. Paragraph 176 the NPPF confirms that great weight should be given to conserving and enhancing landscape and scenic beauty in National Parks, the Broads and Areas of

Outstanding Natural Beauty, which have the highest status of protection in relation to these issues.

13. Whilst the site is not within the TFCA, it is located immediately adjacent to it and therefore capable of affecting its setting. Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that in the exercise of planning powers in conservation areas, "special attention shall be paid to the desirability of preserving or enhancing the character and appearance of that area".
14. The prevailing character of the wider area is rural, with open fields and some sporadic farms and agricultural buildings. The appeal site comprises some 2.2 hectares, with a yard and various out-buildings. The appellant's caravan is sited next to the workshop within the yard, with the remaining land subdivided into two areas by residential style close boarded fencing and bamboo screening. The central area is where his son's caravan has been sited, with the residual land laid to grass and at the time of my visit used for the grazing of horses.
15. If allowed the development before me would result in, the permanent siting of two large static caravans, additional hardstanding, a touring caravan, decking with hot tub and other associated domestic paraphernalia, into this predominantly rural location. I acknowledge that planting has been carried out to the frontage and this provides screening to the appellants caravan from the road. However, the overly ornamental nature of the planting itself, draws attention to the site's existence within the landscape.
16. From my site visit, further planting has also been carried out along the public footpath. His son's caravan, the decking and residential paraphernalia, can nevertheless, be clearly seen from the footpath, and irrespective of any new planting, from the more elevated public footpath to the east of the site. The permanent siting of the residential caravans in this formerly open land, appears as an incongruous form of development in this predominately rural area, failing to respect the designation objectives of the Area of Outstanding Natural Beauty, which are the conservation and enhancement of the area's natural beauty.
17. I note that there has been no character appraisal carried out for the TFCA. Nonetheless, as confirmed by my site visit, the significance of the conservation area is the central green, bounded by the surviving form of the generally attractive dwellings and buildings of various ages and design. These form a discrete but striking settlement set within the countryside. Views from the TFCA into the appeal site, are largely screened by buildings and boundary planting. Nonetheless, the second caravan is clearly visible from the surrounding public footpaths and roads, interrupting the long views from the countryside into the TFCA. Consequently, to my mind it fails to enhance the character and appearance of the TFCA with its incongruous appearance, causing harm to its setting.
18. Drawing all of the above points together, I find that the appeal site is not in a suitable location for permanent occupation. The siting of the caravans and the associated domestic paraphernalia is significantly at odds with existing development and the prevailing rural character of the AONB. Accordingly, it causes significant harm to the character and appearance of the AONB and fails to preserve or enhance the setting of the TFCA. Consequently, the development is contrary to policies ST1, ST3, DM10, DM14 and DM24 of the LP. These policies in summary seek to sustain, conserve and enhance, natural and valued

landscapes and the significance of heritage assets.

Other considerations and personal circumstances

19. It is the appellant's case that he and his extended family currently meet the definition of Gypsies and Travellers, as set out in Annex 1 of the PPTS. The Council have raised no objection to this, and I have no reason to come to a different view, albeit the appellant's health temporarily prevents him from travelling.
20. The Council explained at the hearing that they have adopted a windfall approach to the provision of pitches. Policy DM10 of the LP has criteria for assessing the acceptability of new windfall gypsy and traveller sites. The Council confirmed that the supply of sites currently exceeds that anticipated. From the evidence this approach seems to be working well and there is nothing before me to suggest that this is likely to change over the next few years and this positive position was not contested by the appellant. Accordingly, I consider that policy DM10 is not inconsistent with national policy.
21. Turning to the appellant's personal circumstances. A considerable amount of evidence has been submitted regarding his ongoing and complex medical problems. I have no doubt that there is a continuing need for medical intervention and personal assistance. It is also clear that the extended family, and in the appellant's daughter in law, provides some help and support to the appellant. This is in addition to the more specialist help from various health professionals who make regular visits to the site. Whilst not essential, the second caravan provides a convenient base to facilitate the help from the family.
22. Article 3(1) of the United Nations Convention on the Rights of the Child provides that the best interests of the child shall be a primary consideration in all actions by public authorities concerning children. I am mindful that the appellant has provided evidence that his granddaughter presently attends Ospringe CE Primary School in Faversham and is currently on the waiting list for a medical assessment.
23. The appellant also confirmed at the Hearing, that they have not taken any steps to identify vacancies on existing, or alternative sites in a more appropriate location. Although not a requirement, this is despite the generally positive approach to site provision by the Council. I acknowledge that it may be desirable to keep the extended family unit together. However, I have no evidence to suggest that the assistance they give to the appellant needs to be provided at this particular site.
24. For the above reasons, the appellant's personal circumstances, those of his extended family and the advantages of keeping the extended family together, weigh moderately in favour of the development.

Other matters

25. Intentional unauthorised development has been a material consideration since 2015. The site has been subject to temporary planning permissions and thus it is the period since the site should have been vacated that is relevant in this regard. From the evidence, the additional caravan moved onto the site after the latest permission had expired. Nonetheless the appellant sought to regularise the position through a planning application 20/502873/FULL. Accordingly, I have

given this limited weight in my considerations.

Overall balance

26. Paragraph 176 of the National Planning Policy Framework (the NPPF) makes it clear that great weight should be given to conserving and enhancing landscape and scenic beauty in National Parks, the Broads and Areas of Outstanding Natural Beauty, which have the highest status of protection in relation to these issues. The scale and extent of development within all these designated areas should be limited, while development within their setting should be sensitively located and designed to avoid or minimise adverse impacts on the designated areas.
27. In finding harm to the location and the setting of the TFCA, due to the moderate nature of the proposal, I would quantify the extent of this harm to be less than substantial. Nonetheless, I attach considerable importance and weight to that harm, and in applying the test set out in paragraph 134 of the NPPF, I note that the public benefits in favour of the development are the provision of two additional permanent pitches for the gypsy and traveller community and achieving the sites optimum viable use.
28. I acknowledge that if the appeal does not succeed, there will be a need for the family to leave the site which provides a settled base and is their home. Whilst the Council is not able to direct me to a suitable, affordable and available site for the family now, given the positive approach of the Council to granting planning permission, it is clear that the current policy approach is addressing provision which weighs against the grant of planning permission for a site that is harmful and contrary to policy. The period for compliance is 12 months which the Council consider proportionate to enable the appellant to explore alternative locations and enter discussions with the Council.
29. I am very mindful of the appellant's personal circumstances and the effect that this decision is likely to have. I have carefully considered the Human Rights issues that may be pertinent to this appeal. Consequently, the protection of the public interest cannot be achieved by means which are less interfering of the appellant's rights.
30. As set out above, the appellant's evidence makes a reference to the appellant's medical condition and I have had due regard to the Public Sector Equality Duty (PSED), contained in section 149 of the Equality Act 2010, which sets out the need to eliminate unlawful discrimination, harassment and victimisation, and to advance equality of opportunity and foster good relations between people who share a protected characteristic and people who do not share it. Nonetheless, for the above reasons, I consider that the decision is proportionate and necessary in the circumstances.
31. I have had regard to the previous appeal decisions where Inspectors have granted temporary planning permissions. The reasons for this seem to be in respect of the uncertainty about the provision of additional sites, and the appellant's ongoing health issues. At the time these factors weighed in favour of a temporary permission. Planning policy guidance makes clear that a temporary condition is only likely to be appropriate in certain circumstances, including where a trial run is needed to assess the effect of the development on an area, or it is expected that the planning circumstances will have changed in a

particular way by the end of the temporary period.

32. In terms of conditions 1 and 2 I find that the uncertainty about the wider provision of sites no longer persists. I heard at the hearing, that the health concerns of the appellant remain and there seems to be little certainty whether this will change significantly in the foreseeable future.
33. As set out above, following the previous temporary permissions, the development has expanded, increasing the detrimental effect to the character and appearance of the area and this weighs against a further temporary planning permission.
34. I have also considered whether I should vary just the restriction in condition 3 relating to the number of caravans, to allow only the appellant to remain on the site. However, I recognise the appellant's ongoing need for assistance and support, and I am not persuaded that he would be able to reasonably remain on the site unaided.
35. I have already found that the development results in significant harm to the AONB, despite attempts to screen with planting. The need for a settled base is a consideration weighing in favour, but I have nothing before me to suggest that assistance has to be provided from this particular site or cannot be provided in a different way. I have therefore attributed only moderate weight in favour of the development to the personal circumstances of the appellant, the desirability of keeping the family unit together and the best interests of the child. I have afforded limited weight to the public benefits outlined above. Consequently, I find that the other considerations I have identified and those put forward by the appellant in favour of the development, are insufficient to outweigh the identified harm to the AONB, the TFCA and the conflict with LP policies.
36. I have considered the remaining conditions that were imposed and consider that, notwithstanding my findings, they remain both relevant and necessary.

Conclusion

37. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Hilary Orr

INSPECTOR

Appearances

FOR THE APPELLANT:

Robert Tutton, BSc MRTPI 23 Romsey Ave Fareham Agent
Nelson Scamp, Butchers Field Throwley Forstal Appellant
David Smith, PHD BA 44 Cambridge Road Strood Kent
Niall Tutton, MSc BA 293 Havant Road, Farlington, Portsmouth
Stephen Scamp, Butchers Field Throwley Forstal
Nichole Thomas, Butchers Field Throwley Forstal
Maryanne Hilden, 9 Park Drive Hothfield Ashford Kent

FOR THE LOCAL PLANNING AUTHORITY:

Graham Thomas, BSc (Hons) Dip TP MRTPI Area planning officer
Heather Murton, BA(Hons) Dip TP MRTPI Snr Planning officer

INTERESTED PERSONS:

David Elvin, Valley Farm, Workhouse Road, Throwley ME13 0NR (Joined online)
Sarah Jane Tormey, Forstal Cottage, Main Road (Joined online)
Caroline Burr, Walnut Tree Cottage, Throwley Forstal
Jeff Monk, The Cabin, Throwley Forstal
Mr Garabedian 1 Tree Cottage, Throwley Forstal