



Appeal Decision

Site visit made on 1 March 2022

by AJ Steen BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 06 May 2022

Appeal Ref: APP/X2220/C/21/3269950

Land to The South of Summerfield House, Barnsole Road, Staple, Kent CT3 1LD

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Jamie Ransley against an enforcement notice issued by Dover District Council.
- The notice was issued on 2 February 2021.
- The breach of planning control as alleged in the notice is without the benefit of planning permission the unauthorised change of use of land to a caravan site for the siting of caravans and touring caravans for residential use; the siting of a washroom trailer, alterations to the vehicle access, the erection of a boundary fencing and gate, the erection of play equipment, the laying of hard surfacing for parking to facilitate the use of the land and the installation of a septic tank.
- The requirements of the notice are to:
 1. Permanently cease the use of the land as a caravan site and the occupation of the caravans for residential occupation and use of the land for the siting of play equipment.
 2. Remove from the land all caravans, vehicles, trailers, means of enclosure, equipment, domestic paraphernalia, play equipment and any other items associated with the unauthorised use as indicated in the approximate locations shown on the attached plan.
 3. Return the access to its former condition and appearance
 4. Excavate and remove all hard surface, resultant materials and rubble from the land and return the land to its former condition and appearance
 5. Empty the septic tank using a certified contractor, then remove the tank and any associated pipework from the site, backfill the resultant cavity with inert material to surrounding ground level and return the land to its former condition and appearance.
- The period for compliance with the requirements is: twelve months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (f) 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.

Summary Decision: The appeal is dismissed and the enforcement notice is upheld in the terms set out below in the Formal Decision.

Preliminary Matter

1. The National Planning Policy Framework (the Framework) was published during the course of the appeal. The Council and appellant had the opportunity to comment and I have taken its contents into account in coming to my decision.

The Appeal on Ground (a) and the Deemed Planning Application

Main issues

2. The main issues are:

- whether the development affects ecology and biodiversity in the area;
- the effect of the caravan site and supporting development on the intrinsic character and beauty of the landscape and adjacent rural lane; and
- the effect of the development on pollution, in particular relating to ground water.

Reasons

Ecology and biodiversity

3. Turtle doves are a Royal Society for the Protection of Birds (RSPB) priority species and the RSPB say that they are the fastest declining breeding bird, threatened with extinction. It is a migratory species threatened on its migration route and wintering grounds, but the biggest threat is on the loss and changes to habitat on its breeding grounds. The village of Staple is a particular stronghold for the turtle dove in East Kent. The appeal site was used by breeding birds prior to being cleared of trees, although I understand that clearance took place prior to ownership by the appellant. The RSPB suggest that if tree cover were allowed to recover on the site it is likely to be able to support a breeding pair of turtle doves.
4. Planning policy provided by the Framework requires that my decision should enhance the natural and local environment, including by minimising the impacts on and providing net gains for biodiversity.
5. It is unclear how the use of the site as a residentially occupied caravan site with provision of hard surfacing and play equipment would co-exist in close proximity with provision of habitat for breeding turtle doves. Limited evidence has been provided to set out how habitat could be provided such that it would mitigate the effect on the priority species of turtle doves. Without such evidence, I must conclude that the development has resulted in the loss of the site in providing habitat for turtle doves. That has resulted in harm to ecology and biodiversity in the locality.
6. For these reasons, I conclude that the development has not minimised impact on or provided net gains for biodiversity and that it has resulted in harm to ecology and biodiversity. As a result, it is contrary to Policy DM15, which states that development should not result in the loss of ecological habitats, and the Framework.

Landscape

7. Barnsole comprises a small settlement within an open and largely flat rural landscape, close to the neighbouring village of Staple. Barnsole Road is to the front of the appeal site and comprises a narrow rural lane with hedges adjacent on much of its length with glimpsed views through gaps to the houses or fields behind. Houses are located opposite and to one side of the appeal site.

8. The development comprises a substantial area of hardstanding used for the stationing of caravans and parking, with a lawned area including children's play equipment. A close boarded fence is located on the roadside, with a hedge behind. The opening to the site has been widened, which allows greater views into the site to the hardstanding and caravans. The area of hardstanding has been reduced near the entrance since the enforcement notice was issued but remains substantial.
9. The close boarded fence, hardstanding and use as a residentially occupied caravan site appear incongruous within the surrounding countryside and harm the character of the rural lane to the front.
10. My attention has been drawn to other caravans in the grounds of surrounding dwellings. These appear to be kept ancillary to the main use of the properties and are subservient to them. As such, they have a different effect on the character of the landscape.
11. I understand that the former nursery site is currently being redeveloped to provide a number of houses. However, that is a short distance along the road and on the opposite side. It is a redevelopment of a previously developed site that contained a number of buildings. As a result, it differs from the development in this case, such that it does not affect my conclusions.
12. I note that the Council has suggested a condition requiring provision of a landscaping scheme and I note that the appellant has carried out some planting to soften the appearance of the site. Such a condition would seek to reduce the impact on the landscape and, in particular, the character of the rural lane. I will take that into account in coming to my conclusion.
13. For these reasons, I conclude that the fence, hardstanding and use of the land do not reflect the intrinsic character and beauty of the landscape and the rural lane. As such, the development is contrary to Policy DM15 of the Core Strategy and the Framework that state that development should recognise the intrinsic character and beauty of the countryside and seek to reduce harmful effects on countryside character.

Pollution

14. I note that the Environment Agency has suggested that the development on the site could mobilise previous contamination on the site. Such contamination could pollute controlled waters. The site is located within source protection zone 3, on a principal aquifer and in an area of high groundwater vulnerability.
15. It is unclear what previous development or contamination may have been present on the site and, as such, whether there is any risk of contamination. I note that the Environment Agency suggest that further information could be submitted to demonstrate the risk could be addressed through appropriate measures. Such information could be required by condition.
16. I note that Policy DM17 of the Core Strategy seeks to ensure safeguards against possible contamination of groundwater source protection zones 1 and 2 is provided. As the site is within source protection zone 3, there is no conflict with the relevant development plan policy.
17. Nevertheless, in the absence of information demonstrating the risk of ground water pollution has been addressed, I conclude that there is an unacceptable

risk of pollution. As such, it conflicts with the Framework that seeks to minimise pollution and prevent unacceptable levels of water pollution.

Other matters

18. My attention has been drawn to Policy DM1 of the Core Strategy that resists development outside urban boundaries and rural settlement confines. The development conflicts with that policy. However, it is unclear what material harm has resulted from that conflict beyond that set out in the main issues and, consequently, this adds limited weight to my conclusions.
19. Policy DM7 of the Core Strategy provides criteria against which applications for gypsy and traveller accommodation should be assessed. In this case, I have concluded that the development does not reflect the intrinsic character and beauty of the landscape and the rural lane. However, I consider that it could be screened from wider view subject to an appropriate landscaping scheme that could be provided by condition. That would overcome the relevant criteria of the policy. The reasons given for issuing the enforcement notice do not suggest that the development conflicts with the other criteria in the policy, such as the site should be accessible to local services and facilities. I see no reason to disagree. For these reasons, the proposal does not conflict with Policy DM7 of the Core Strategy.
20. I have found that the development does conflict with Policies DM1 and DM15 of the Core Strategy. On that basis, although there is no conflict with Policy DM7 of the Core Strategy, on balance I consider that the development conflicts with the development plan as a whole.
21. I note that the Council state that they can identify a five year supply of pitches for gypsies and travellers as required by the Planning Policy for Traveller Sites. Consequently, the contribution of this site to the need for pitches for gypsies and travellers is limited.
22. I have been provided with limited information as to the circumstances of the occupiers of the site, including children. I understand that they are gypsies and fall within the definition in the PPTS. It is unclear what would happen to them were I to dismiss the appeal. They suggest that they would become homeless without an alternative site. No alternative site has been suggested. However, given that the Council can demonstrate a supply of pitches to meet their needs, this can only carry modest weight in favour of allowing the appeal.
23. I need to take account of the provisions of the Human Rights Act 1998. This includes the protection of property and a right to respect for the private and family life, home and correspondence of the appellant and that this should not be subject to interference by a public authority. I also need to take account of the best interests of children, which is a primary consideration, and the public sector equality duty. Nevertheless, these matters need to be weighed against the public interest, in particular those matters I have identified as main issues.
24. I have also considered whether planning permission could be granted for a limited period or restricted to the appellant and his family. I note that the enforcement notice allows 12 months for compliance, which is a substantial period to find alternative accommodation. On the basis of the evidence submitted, a longer period would not be necessary. I have not found any

reasons that would suggest restricting occupancy to the appellant and his family would be necessary in this instance.

25. If I were to dismiss the appeal the appellant suggests they would need to find an alternative use of the site. However, it is unclear what that would be or whether it would require planning permission. As a result, this carries limited weight in my decision.

Conclusion

26. I consider that the conflict with the development plan arising from the effect of the development on ecology and biodiversity and on the character of the landscape and rural lane, as well as the effect on pollution, carries considerable weight. I note that the effect on the landscape and rural lane could be substantially reduced, and the effect on pollution be overcome, by condition. I have also taken account of human rights considerations, including the best interests of children. On balance I consider the harms I have identified under the main issues outweigh the other matters I have identified in this case.
27. For the reasons set out above, I conclude that the development does not accord with the development plan as a whole and no material circumstances have been identified that would outweigh that conflict. The appeal on ground (a) therefore fails.

The Appeal on Ground (f)

28. An appeal on this ground is that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach. In this case, the requirements seek to cease the use as a caravan site and remove hard surface, septic tank and other items associated with the unauthorised use, in order to restore the land to its condition before the breach took place. Clearly, therefore, the purpose of the notice requirements is to remedy the breach of planning control.
29. My attention has not been drawn to any lesser requirements than those set out on the enforcement notice. I have not identified lesser requirements that would remedy the breach of planning control. As a result, the appeal must fail on ground (f).
30. For these reasons, I conclude that the appeal under ground (f) should fail.

Formal Decision

31. 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.

AJ Steen

INSPECTOR

