



Appeal Decisions

Hearing held on 30 March 2022

Site visit made on 30 March 2022

by Paul Dignan MSc PhD

an Inspector appointed by the Secretary of State

Decision date: 20 May 2022

Appeal A Ref: APP/G2245/C/19/3219578

Appeal B Ref: APP/G2245/C/19/3219579

Woodcroft, Ash Road, Hartley, LONGFIELD, Kent, DA3 8EY

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended. The appeals are made by Mr M Dennard (Appeal A) and Mrs K Dennard (Appeal B) against an enforcement notice issued by Sevenoaks District Council.
 - The notice, numbered 18/00155/OPDEV, was issued on 19 December 2018.
 - The breach of planning control as alleged in the notice is Change of use of land for the stationing a mobile home.
 - The requirements of the notice are: Cease the use of land for stationing a mobile home; and Remove the mobile home from the land edged red on the attached plan (currently in the position shaded blue on the attached plan) and dispose of all resultant materials.
 - The period for compliance with the requirements is 2 months.
 - **Appeal A** is proceeding on the grounds set out in section 174(2)(a), (c), (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.
 - **Appeal B** is proceeding on grounds (c) and (g).
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Appeal C Ref: APP/G2245/C/19/3219580

Appeal D Ref: APP/G2245/C/19/3219581

Woodcroft, Ash Road, Hartley, LONGFIELD, Kent, DA3 8EY

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended. The appeals are made by Mr M Dennard (Appeal C) and Mrs K Dennard (Appeal D) against an enforcement notice issued by Sevenoaks District Council.
 - The notice, numbered 18/00155/OPDEV, was issued on 19 December 2018.
 - The breach of planning control as alleged in the notice is without planning permission the erection of a building.
 - The requirements of the notice are: Removal of outbuilding (in the area shaded yellow on the attached plan) and dispose of all resultant materials.
 - The period for compliance with the requirements is 2 months.
 - **Appeal C** is proceeding on the grounds set out in section 174(2)(a) and (c) 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.
 - **Appeal D** is proceeding on ground (c).
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Appeal E Ref: APP/G2245/W/18/3217646

Woodcroft, Ash Road, Hartley, LONGFIELD, DA3 8EY

- 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 & Mrs M & K Dennard against the decision of Sevenoaks District Council.

- The application Ref 18/02635/FUL, dated 16 August 2018, was refused by notice dated 19 October 2018.
 - The development proposed is Stationing of mobile home for residential occupation.
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Decisions

Appeals A and B

1. It is directed that the notice be corrected by the deletion in Section 3 of the description of the breach alleged and its replacement with the words "Without planning permission the material change of use of the land to use for the stationing of a mobile home for residential purposes." Subject to the correction, the appeals are allowed and the enforcement notice is quashed.

Appeal C

2. 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 erection of a building at Woodcroft, Ash Road, Hartley, Longfield, DA3 8EY, as shown on the plan attached to the notice.

Appeal D

3. Since the enforcement notice is quashed as a consequence of Appeal C above, no further action will be taken in connection with this appeal.

Appeal E

4. The appeal is allowed and planning permission is granted for the use of the property as a whole for a mixed use as a dwellinghouse and for the stationing of caravans for residential purposes, both ancillary to the dwellinghouse use and for independent residential purposes as a gypsy/traveller site at Woodcroft, Ash Road, LONGFIELD, DA3 8EY in accordance with the terms of the application, Ref 18/02635/FUL, dated 16 August 2018, and the plans submitted with it, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
 - 2) The site shall not be occupied by any persons other than gypsies and travellers as defined in Annex 1: Glossary of Planning Policy for Traveller Sites (or its equivalent in replacement national policy).
 - 3) No more than 3 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 1 shall be a static caravan) shall be stationed on the site at any time.
 - 4) No caravan shall be brought onto the site for residential purposes until details of site layout, foul drainage and external lighting, including a timetable for their implementation, shall have been submitted to and approved in writing by the local planning authority. The caravans shall only be positioned in the approved locations and drainage and lighting details shall be implemented as approved and retained as such thereafter.

- 5) No commercial activities shall take place on the land, including the storage of materials.

Preliminary Matters

5. Woodcroft is a detached dwelling to the west of Ash Road on the edge of Hartley. It was originally part of a residential institution which now comprises 2 separate dwellings, the other being the neighbouring property to the north. The land owned with Woodcroft extends further west and behind that of that neighbour, essentially forming an L-shape. At present the land is laid to lawn immediately behind the dwelling to about the mid-way point of the property, after which it is laid to hardstanding. The hardstanding can be accessed via a gateway level with the end of the lawn. The outbuilding is just beyond the lawn, opposite the gateway.
6. The land is within the Metropolitan Green Belt.

The Notice

7. The allegation in the notice requires correction. The mere stationing of a mobile home is not in itself development by way of the making of a material change of use, it is necessary to specify the purpose for which the mobile home is stationed, in this case for residential purposes. The notice could be corrected in those terms without injustice.

Appeals A and B – ground (c)

8. This ground is that the matters alleged are not a breach of planning control. In this case this depends on the planning status of the land and its use when the enforcement notice was issued. However, some of the arguments raised under this ground also require consideration of whether the specific matter enforced against has actually occurred, the basis of an appeal on ground (b).
9. These appeals concern a material change of use, which requires consideration of the planning unit, a concept which has developed as a means of determining the most appropriate physical area against which to assess the materiality of change, to ensure consistency in assessing material changes of use. It represents an area of land or property within which a primary use or a mix of primary uses is identified and any other uses within that same unit are ancillary or incidental to that primary use or uses. The starting point is the land owned and occupied by the appellants, which in this case is the whole property. I shall deal briefly with the apparent uses of that land before their ownership.
10. Prior to the sub-division, the Council's aerial imagery dated August 2009 shows what appears to be a small area of garden behind the adjoined buildings, beyond which is a grassed paddock with its own access along its southern boundary. The Council's aerial imagery dated May 2012 shows the land after the sub-division. Garden areas for both properties are clearly distinguishable, extending west into part of what was the paddock land. These gardens are laid to lawn and appear to be enclosed.
11. The owner of the appeal property from 2011 to 2014 when it was sold to the appellants, lived at the property, but not in the dwelling. He was a Romany gypsy and lived in a mobile home behind the house. Although he had intended to renovate the dwelling, and made related planning applications, he never got

around to it. He kept horses and related paraphernalia in the rest of the former paddock land. It is shown as partly laid to hardstanding, along with what appears to be a sand school and two stable buildings or structures. There appears at that time to have been a clear distinction, in terms of the character of the land, between the garden land immediately behind the dwelling and the land to the west, which appears as land used for equestrian purposes. However, given the early stage of development of the property following subdivision and prior to the renovation and occupation of the dwelling, it is not possible to conclude on the basis of aerial photography alone that the land in single ownership comprised two physically separate and distinct areas that were occupied for substantially different and unrelated purposes.

12. When the appellants bought the property they also lived in a caravan, but renovated and extended the dwelling and eventually moved in. However, the appellants are also Romany gypsies. They and their adult children regularly travel for work, living in their caravans, and to fairs, where they trade in horses. The appellants keep their touring caravan on the hardstanding when not travelling, as does their youngest adult child, who formerly lived in the house but now sleeps in his caravan on the hardstanding but takes meals in the house. They also park their work vehicles there. Their other adult children and their families regularly live for periods in caravans on the yard, their children sleeping in the house when possible and all taking meals in the house. Three of their adult children, two with family, are currently living there, using the house and the three caravans stationed on the site as needs be.
13. The area of hardstanding, although enclosed with the dwellinghouse and lawn, can be viewed as a physically separate and distinct area on the basis of the surface treatment. But the way it is being used, and has been for the whole of the appellants' ownership, indicates that the yard or hardstanding area is not being used for a substantially different and unrelated purpose to the dwelling, rather it is being used in concert with the dwellinghouse use for accommodating an extended Romany family in a fluid way, as well as for ancillary residential uses such as parking. As such it is appropriate to consider the whole of the property as a single planning unit.
14. When the enforcement notice was issued there was a mobile home on the site, though this is now gone. The youngest son, now an adult, had been living in the house, but moved to a mobile home on the hardstanding, while continuing to take meals in the house, do laundry etc. This arrangement should be considered as the stationing of a caravan/mobile home for purposes ancillary to the dwellinghouse use, as a matter of fact and degree. Indeed, this is the view of the Council.
15. Among the arguments raised on this ground by the appellant is that the hardstanding lies within the curtilage of the dwelling and hence stationing the mobile home for this purpose would not be development by virtue of section 55(2)(d) of the 1990 Act, which excludes from the definition of development the use of any buildings or other land within the curtilage of a dwellinghouse for any purpose incidental to the enjoyment of the dwellinghouse as such. However, while the terms 'incidental' and 'ancillary' are often used interchangeably in planning, here the purpose of the mobile home was ancillary and not incidental since the residential purpose, providing additional living accommodation, is integral to a dwellinghouse use rather than uses such as the

parking or storage of a caravan while not in use, which would be incidental. The ancillary use of the mobile home hence would not fall under the section 55(2)(d) exception.

16. Nonetheless, a mobile home, or any caravan, used to provide additional primary residential accommodation would not be development if it did not involve a material change of use of the land. That raises the question of the lawful use of the land, which requires resort to the planning history. Three planning permissions are relevant. First, planning permission was granted in March 2009 for "change of use from residential children's home into residential dwelling". Planning permission was then granted in August 2009 for "Change of use from residential children's home into two residential dwellings including demolition of small link and rear outbuilding and altered vehicle crossover". This latter permission has been implemented, on the balance of probabilities.
17. The approved plans in each case showed, at 1:500, the whole of the residential children's home property, which extended a considerable distance to the west and included paddocks and woodland or scrubland. The plans also showed, at 1:200 a much smaller area around the proposed dwellings. Neither plan had the area outlined in red, so it is not absolutely clear from the plans, or indeed from the officer's report, which area was being granted planning permission for residential use. However, the application form for the August 2009 permission indicated a site area of 0.812 ha, which would equate to the whole of the property, as shown on the 1:500 site plan.
18. Permission was subsequently sought, and granted in August 2011, to carry out the August 2009 permission without compliance with one of the conditions, concerning the demolition of an outbuilding. This is a stand-alone permission. The application included a site location plan, showing, outlined in red, approximately the property as it currently stands, well within the site area shown in the 1:500 site plan for the August 2009 permission. Where a planning permission is not clear on its face, regard may be had to extraneous material. In this case I consider that the matters set out above provide a firm basis for a conclusion, on the balance of probabilities, that the whole of the planning unit in this case has a lawful residential use by virtue of the 2011 permission, construed in the context of the earlier permissions and applications. Since the mobile home on the site when the notice was issued was being used for purposes ancillary to the use of the property as a dwellinghouse, it did not involve a material change of use of the land and hence was not development requiring planning permission.
19. The appeal on ground (c) therefore succeeds and the notice will be quashed. Had the notice been appealed on ground (b), I would have found that the alleged breach of planning control had not occurred, as a matter of fact, since the mobile home was not being used for separate residential purposes. Accordingly, the appeals on grounds (a) and (g) do not fall to be considered.

Appeals C and D – ground (c)

20. Both the August 2009 and August 2011 permissions removed, by condition, permitted development rights for the erection of new buildings in the curtilage of the dwelling. I am satisfied that the relevant condition attached to the August 2011 permission is enforceable. Hence whether or not the outbuilding the subject of the notice lies within the curtilage is not relevant, and express

planning permission was required for its erection. The appeal on ground (c) cannot therefore succeed.

Appeal C – ground (a)

21. New buildings in the Green Belt are inappropriate development except in circumstances which do not apply here. Inappropriate development is, by definition harmful to the Green Belt and should not be approved except in very special circumstances. The outbuilding in this case is of very moderate scale, finished in appropriate materials, appropriately sited in relation to the dwelling and not visually prominent from outside of the property. It does not, in my view, materially diminish the openness of the Green Belt. It is used, in the main, to store garden tools and equipment and residential paraphernalia, The dwelling does not benefit from any other such building, so it has a role in reducing clutter and sustaining the maintenance of the property.
22. The removal of permitted development rights was not to prevent such ordinary domestic buildings entirely, merely to allow control of their construction in view of the aims and purposes of the Green Belt. Indeed, the development plan policy concerning residential outbuildings in the Green Belt, Policy GB3 of the Allocations and Development Management Plan (ADMP), is permissive of ancillary outbuildings within the curtilage of existing dwellings. Curtilage is an area of land that serves a building in some necessary or useful manner. The curtilage of a dwellinghouse may be the same as the planning unit, and generally will be in the case of properties in urban areas. However, it does not always follow that the two are the same. In this case, although all of the land is used for residential purposes, I consider that it is only the land around the dwelling itself, that is the front parking area, the rear lawn and the land on which the outbuilding has been built that essentially serves the dwelling's use as a dwellinghouse. I include the outbuilding because of its close proximity, being just beside the lawned area used for gardening, recreation, sitting out and so on, and its use, generally, for the storage of domestic paraphernalia closely associated with the dwellinghouse use. Historically also, it appears that the land on which the outbuilding stands had been part of the lawn area prior to re-configuration of the side entrance.
23. Taken together, I consider that these considerations are sufficient to clearly outweigh the harm to the Green Belt by reason of inappropriateness. Accordingly, I find that the very special circumstances necessary to justify development in the Green Belt apply. As such there is no conflict with the development plan.
24. The appeal succeeds on ground (a) and I shall grant planning permission for the outbuilding.

Appeal E

25. On this appeal, the description of the development for which planning permission is sought is the stationing of a mobile home for residential occupation, and the application site, indicated by a red line on the plan submitted with the application, is the entire property, including the dwellinghouse. However, the appellant explained at the hearing that what he was seeking was to be able to use the property in the way that his family has been using it in the past, that is using the dwellinghouse as such, and the yard

to the rear for stationing caravans for residential purposes for family members as needs be. From the above, it will be evident that such use will not always amount to a material change of use of the land, and hence development requiring planning permission. However, it seems that part of the use of the yard in the past has been, to some extent at least, independent of the use of the dwellinghouse, one of his sons having lived in a caravan on the hardstanding with his family for 2 years, paying Council Tax separately. Furthermore, it is possible also that the use of the caravans, even for ancillary purposes, could lead to a material change of use by intensification.

26. It is clear therefore that what is actually sought by the application and appeal is permission for the use of the property as a whole for a mixed use as a dwellinghouse and for the stationing of caravans for residential purposes, both ancillary to the dwellinghouse use and for independent residential purposes as a gypsy/traveller site. I am satisfied that adopting that description of development can be done without causing prejudice by depriving anyone who should have been consulted on the development of the opportunity to make representations, and I have proceeded on that basis.
27. Use of the land as a gypsy/traveller site is inappropriate development in the Green Belt and can only be approved where approved in very special circumstances. Definitional harm aside, however, I consider that there is no other harm to the Green Belt since there will not be a material effect on openness, having regard to the current lawful use of the land, as discussed above, which can include the stationing of caravans for ancillary residential purposes, and there is no conflict with the purposes of including land in the Green Belt. Nor, again having regard to how the land may lawfully be used, the compatibility of that use with surrounding uses, and the proposed siting of any caravans to the rear of the site which is screened from public view, would there be any harm to the character and appearance of the area.
28. A number of matters have been put forward as other considerations that might favour a grant of planning permission. First, the site is previously developed land, a matter to which Planning Policy for Traveller Sites directs that local planning authorities should attach weight. There is also a need for additional traveller sites in the District, and the Council accepts that any such provision is likely to be on land that is currently in the Green Belt in any case. Further, there are no available alternative sites to provide the Dennard families with a permanent base from which they can access education, health, welfare and other services. It is clearly in the interests of the appellants' grandchildren that they have the benefits of a settled base, and this is a primary consideration to which I attach considerable weight. The site is well located in that way, and the proposed living arrangements, whereby the extended family live together for mutual support, is characteristic of the gypsy way of life, such that the proposal would be consistent with the Government's aim of facilitating the traditional and nomadic way of life of travellers.
29. Taken as a whole, I am satisfied that these other considerations should be given very substantial weight. Overall, while the inappropriate nature of the development in the Green Belt must be accorded substantial weight, in this case there is no other harm and I consider that the considerations in favour of the appeal are sufficient to clearly outweigh the definitional harm. Accordingly, I conclude that very special circumstances to justify this development in the

Green Belt exist. I find that the proposal complies with national Green Belt policy, and with the most relevant development plan policies, Policy SP6 of the adopted Core Strategy (CS), which aims to make adequate provision for gypsies and travellers, with CS Policy LO8 insofar as it avoids harm to the countryside and local character, and with the relevant design criteria set out in ADMP Policy EN1, subject to appropriate conditions.

30. The standard commencement condition is necessary in the interests of good planning as the use has not commenced. In view of the planning policy context underlying the decision, and the nature of the development proposed, it is necessary to restrict the occupation of residential caravans to persons meeting the PPTS definition of travellers, but since my decision has not turned on personal circumstances a personal condition is not necessary or appropriate. I shall limit the number and type of caravans on the site and require the approval of details of layout, drainage and external lighting before the use commences, in the interests of local character and the environment. For the same reasons, I shall also preclude the use of the land for commercial activities.
31. In conclusion, the proposed development accords with the development plan read as a whole, and there are not material considerations to indicate that the appeal should be determined other than in accordance with the development plan. The appeal succeeds accordingly, and I shall grant planning permission for the development proposed, as clarified above.

Paul Dignan

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Alison Heine
Mark Dennard

Planning Consultant
Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Jim Sperryn
Helen French
Louise Cane

Principal Planning Officer
Principal Planning Officer
Planning Officer