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# Appeal Decision

Hearing held on 24 May 2022

Site visit made on 24 May 2022

**by AJ Steen BA(Hons) DipTP MRTPI**

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

**Decision date: 14 June 2022**

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**Appeal Ref: APP/U2235/C/20/3264812**

**Land South of Benover Road, Yalding, Kent, ME18 6AZ**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr A Harris against an enforcement notice issued by Maidstone Borough Council.
- The notice, numbered 'B', was issued on 6 November 2020.
- The breach of planning control as alleged in the notice is without planning permission the material change of use of the Land for a residential use including the stationing of caravans and associated operational works including the laying of hardsurfacing.
- The requirements of the notice are to:
  - (1) Cease the residential use of the Land.
  - (2) Remove the caravans from the Land.
  - (3) Dismantle and remove the hard surfacing from the Land.
  - (4) Return the Land to its previous condition/levels by ripping the ground in two directions, re-spreading topsoil over that land to a depth of 150mm (or more where necessary) to fill in any depression and grading.
  - (5) Remove all materials, rubble, rubbish and debris as a result of compliance with steps (1) to (4) above from the Land.
- The period for compliance with the requirement is: 6 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (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.

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

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## Preliminary Matters

1. The land subject of this enforcement notice fronts Benover Road. To the rear is another site on which an enforcement notice was issued and an appeal made relating to the storage of caravans and operational development to facilitate a residential use of the land. Although discussed at the same hearing as this appeal, that is subject of a separate decision<sup>1</sup>.
2. I note that, since issue of the enforcement notice, the Council have accepted that the appellant and other prospective site occupiers fall within the definition of gypsies and travellers as set out in the glossary to the planning policy for traveller sites. I see no reason to disagree and will deal with the appeal on that basis.

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<sup>1</sup> Appeal reference APP/U2235/C/20/3264813

3. 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.
4. I understand that a draft Local Plan is at Regulation 19 of the Town and Country Planning (Local Planning) (England) Regulations 2012 stage but I am not aware of the exact stage it has reached and the extent of outstanding objections or whether the policies concerned will be considered as consistent with the Framework. Consequently, in accordance with paragraph 48 of the Framework I give it limited weight.

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

#### *Background and main issues*

5. Policy DM15 of the Maidstone Borough Local Plan (LP) states that permission would be granted for gypsy and traveller accommodation where it meets a number of criteria. These include that the development would not result in significant harm to the landscape and rural character of the area and that the site should not be located in an area at risk from flooding, being flood zone 3 as identified by the Environment Agency. This policy forms part of the development plan. However, it needs to be considered in conjunction with other policies in the LP in order to determine whether the proposal is in accordance with the development plan as a whole.
6. This policy was not referred to in the enforcement notice as that was based on the reasons for refusal on a separate planning application for the development<sup>2</sup>, at which point the Council had not realised the applicant was a gypsy or traveller.
7. The main issues are:
  - The effect of the development on flood risk;
  - The effect of the development on the landscape and rural character of the area; and
  - Whether other material considerations would outweigh any harm arising from those main issues, including any that could outweigh any conflict with development plan policies, such as the need for gypsy and traveller accommodation within the District and the personal circumstances of the appellant and other site occupiers.

#### *Reasons*

##### **Flood risk**

8. The hardstanding on which the caravans are located is within an area identified as Flood Zone 3 by the Environment Agency. This area is at the highest risk of flooding. Caravans for permanent residential use, such as these, fall within the highly vulnerable category as defined in the Framework. This means there is a significant risk of flooding of the site and that the welfare of the occupants are highly likely to be affected should the area flood. This is of particular concern if the area floods at night, when the occupants are asleep.

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<sup>2</sup> Planning application reference 20/503640/FULL

9. A part of the site closest to the entrance is within the identified Flood Zone 2, such that it is less at risk of flooding. It was suggested at the hearing that this area may have slightly lower natural ground levels than the area on which the caravans are located, which may mean that the risk of flooding is lower in the present location of the caravan. However, I understand that flood maps are based on previous experience of flooding and no topographical survey data has been provided to demonstrate land levels. On balance, I consider the flood maps are likely to be accurate. I need to consider the appeal based on the layout of the site as existing, with the caravans located on the hardstanding.
10. I note that the hardstanding has been built up above ground level. Given the construction, it would not significantly affect the flow of water. Nevertheless, it means that the hardstanding removes a modest amount of flood storage capacity from the site that leads to a slightly increased risk of flooding elsewhere. Whilst this effect is limited in this case, it nevertheless counts against the proposal.
11. A number of mitigation measures have been suggested. Caravans are likely to float in floodwater. Devices can be used to tether them to the ground such that they remain in place and floatation devices could be fitted to ensure living accommodation remains above the floodwater. An evacuation plan could set out how residents would leave the site should they be alerted to flooding, and it is only a short distance to areas at lower risk of flooding. However, I have limited information as to how this would work in practice.
12. I note that the Council, in accordance with advice from the Environment Agency, have recently issued a prior approval for the conversion of a barn to a residential dwelling in the floodplain subject to conditions<sup>3</sup>. That conversion was designed such that the living accommodation would be raised above flood levels to protect residents and provide a void to minimise the effect of the development on flood storage capacity of the area. Residents were required to sign up to the Environment Agency's Flood Warning Service. A flood evacuation plan was also required to be submitted, and I understand that the route of evacuation would pass this site along Benover Road.
13. It is suggested that this development could be subject of a similar condition, especially as the site is closer to safe ground accessed along Benover Road. However, dwellings such as proposed in that case are defined in the Framework within a category that is less vulnerable to the effects of flooding than residentially occupied caravans. Although it is likely to be possible to devise an appropriate evacuation plan, it is unclear how the floatation devices and tethers would operate. I consider that both would be required to ensure the safety of occupants. On that basis, the effectiveness of the mitigation measures suggested is not clear and, as a result, a condition requiring further information would not be precise.
14. The Council raised concerns that floatation devices and tethers could mean that the structures on the site would no longer fall within the definition of caravans. This would depend on the resulting structure's size, permanence and physical attachment. It is likely that this would depend on the nature of the tethers and floatation devices used. This information is not presently available. My attention has been drawn to the systems used at another site at Little Venice where the Council consider the structures no longer fall within the definition of caravans,

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<sup>3</sup> Prior notification reference 22/501196/PNQCLA

so have become buildings for the purposes of planning control. For the purposes of this appeal, I have to assume that any devices installed would not remove the caravans from the definition set out in the Caravan Sites and Control of Development Act 1960. Nevertheless, this does add to my concerns that a condition would not be precise.

15. An appeal decision was provided for similar development at Three Sons, Hampstead Lane, Nettlestead, Maidstone<sup>4</sup>. That was subject to a condition requiring raised floor levels, which appears to have been supported by the Environment Agency. The suggested mitigation measures in this case appear to differ from those proposed in that instance and it is unclear whether the nature and depth of flooding would be comparable. Consequently, this does not alter my conclusions on this matter.
16. For these reasons, I conclude that the development is at risk of flooding and increases the risk of flooding elsewhere. As such, it is contrary to Policies DM1 and DM15 of the LP and the Framework that seek to avoid inappropriate new development within areas at risk from flooding and avoid gypsy and traveller accommodation within areas at risk of flooding.

### Landscape

17. The land south of Benover Road is a relatively flat site. It has been developed with an access drive leading to the land at the rear and to a large area of hardstanding to one side of the site. A static caravan is located on the hardstanding with space for parking, including for a touring caravan. Post and rail fences delineate the boundaries of two paddocks and there are close boarded fences on the frontage to the road and rear boundary with the neighbouring site, subject of the other appeal referred to above. It previously formed part of a field that has been subdivided into the two caravan sites and the remainder comprising a large paddock with dilapidated building including stables.
18. The surrounding area is a largely flat landscape with fields interspersed with woodlands and tree belts. There is sporadic development with more linear development close to nearby settlements. To the other side of the original field is another plot with residentially occupied caravans.
19. The hedge to the front of the site has been substantially reduced in height but is growing back. In time, this will screen the site to a large extent from the road. The close boarded fences appear domestic and somewhat incongruous in this rural location. The open nature of the paddocks with post and rail fences does not affect the character of the surrounding landscape. The hardstanding covers a substantial portion of the site, but is at ground level so, in visual terms, has a limited effect. The static caravan is in line with an open fronted building on the neighbouring site and woodland forms its backdrop. Taking all those factors into account, the development has caused some harm to the landscape and rural character of the area.
20. The woodland to the rear of the static caravan is subject of a tree preservation order and the Council are concerned that development on this land could result in harm to the trees or pressure for them to be reduced or removed.

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<sup>4</sup> Appeal Decision reference: APP/U2235/C/15/3138039

21. I note that a condition has been suggested, should I allow the appeal, that would require submission of further details of layout of the site and replacement of the close boarded fences with post and rail fences. It would be possible to move the caravans slightly further from the trees to overcome any effect on the woodland, without altering the effect on landscape and rural character. The amount of hardstanding may be reduced to the area necessary to provide for the use. Replacement of the incongruous close boarded fences with post and rail fences would better reflect the rural character of the area. As such, the suggested condition would overcome the modest harm I have found relating to these matters.
22. For these reasons, subject to an appropriate condition requiring more details of landscaping, I conclude that the development would not cause significant harm to the landscape and rural character of the area. As such, it would comply with Policy DM15 of the LP in this regard. On balance, it would also not conflict with Policies SS1, SP17, DM1 and DM30 of the LP or the Framework that seek development to recognise the intrinsic character and beauty of the landscape, to protect the rural character of the borough and not harm the character and appearance of the area.

#### Other material considerations

23. Policy SS1 of the LP seeks the provision of 187 gypsy and traveller pitches in the period 2011 to 2031. I understand that 247 pitches have been granted permanent planning permission within that period so far. In addition, a further 26 pitches have been granted permission with a condition limiting them to occupiers and resident dependents. There have been further permissions for temporary pitches. This indicates a substantial over-provision of pitches to meet the need identified in the LP.
24. I understand that need was based on a Gypsy and Traveller Accommodation Assessment (GTAA) carried out in 2012. However, that is somewhat dated. I understand that a GTAA is currently being prepared to support the draft LP and proposed Gypsy and Traveller Development Plan Document (DPD). That DPD is intended to allocate sites and set out the policies to ensure provision of gypsy and traveller sites to meet the needs identified in the GTAA. The results of that assessment are not yet available.
25. Consequently, the Council are exceeding their targets set out in the LP. Given the lack of an up-to-date assessment of need, it is unclear whether they are meeting those needs or whether their targets are up-to-date. However, I note that Kent County Council has a waiting list of some 70 families for gypsy and traveller pitches, which suggests that needs are not being met in the county and that existing targets are out-of-date. As a result, it is not possible to conclude that the Council are able to provide a supply of specific deliverable sites sufficient to provide five years' worth of sites against their locally set targets.
26. The appellant lives on the site with one member of his family. The remainder of the family continue to live in their previous location in Greenwich, where the children attend school. However, that caravan site is marked for closure, albeit there is nothing official yet, such that they will need to move from that location at some stage. I understand it is a troubled site, including having been raided by the police. The family member living with the appellant suffers from anxiety and is unwilling to leave the caravan when at their previous site. However, they

are happier when staying at the appeal site and work and travel with the appellant. The family would like to re-unite at the appeal site and I am aware that they would need to find new health care and education provision, potentially including a specialist school for one of the children.

27. I am aware that I need to take account of the Human Rights Act 1998 and the public sector equality duty. I also need to consider the best interests of children as no other consideration is inherently more important than safeguarding and promoting their welfare.

28. Should this appeal be dismissed, the appellant and his family would have to either re-unite at their previous location until it is closed or travel, including possibly staying on the roadside. From the evidence I heard at the hearing, there is a strong possibility that they would choose to travel rather than returning to the previous location. In this regard, I note the provisions of the Police, Crime, Sentencing and Courts Act 2022. However, this would not affect the children of school age in the short term given that they have not yet moved onto this site.

29. I have considered whether planning permission could be granted for a limited period or restricted to the appellant and his family. The reasons for that would be to allow time for the provision of alternative sites through the Local Plan or DPD process. It was suggested a period of three years may be sufficient to allow that process to complete. However, there is no certainty that a plan that would enable other sites to come forward would be prepared and adopted within that timescale. In the meantime, the occupants would remain at risk of flooding. Consequently, a temporary or personal consent would not be appropriate.

## Conclusion

30. I have concluded that the development would not conflict with the development plan or the Framework in relation to the landscape and rural character of the area. However, the site is at considerable risk of flood, and this would put the welfare of the occupants at risk. The development also increases the risk of flooding elsewhere. I note the need for accommodation for gypsies and travellers in the locality and the personal circumstances of the appellant and his family, along with their human rights and the best interests of the children. In this instance, the material considerations in favour of the development are outweighed by the impact on the occupants' welfare from the risk of flooding and the increased risk of flooding elsewhere.

31. For the reasons set out above, I conclude that on balance the development does not accord with the development plan. The appeal on ground (a) therefore fails.

## **The Appeal on Ground (g)**

32. An appeal on this ground is that the period specified in the notice for compliance falls short of what should reasonably be allowed. The enforcement notice requires compliance with the requirements of the notice within six months. The appellant has suggested that a period of 12 months would be more appropriate to allow time to find an alternative place to live.

33. I note that the appellant has alternative accommodation available. However, I understand the reasons why they may conclude that is not suitable or appropriate to return to. As I have set out above, there is a reasonable

probability that they will decide to live on the roadside, in which case they would effectively be homeless.

34. However, residentially occupied caravans are a highly vulnerable use within an area at high risk of flooding. The longer the period for compliance, the greater the likelihood of them being affected by flooding. On balance, in this instance I consider that the risk of flooding outweighs the personal circumstances set out and, for that reason, a six month period for compliance is adequate.

35. For these reasons, I conclude that the appeal under ground (g) should fail.

### **Formal Decision**

36. 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

### **APPEARANCES**

#### **FOR THE APPELLANT:**

|              |              |
|--------------|--------------|
| Simon McKay  | SJM Planning |
| Alfie Harris | Appellant    |

#### **FOR THE LOCAL PLANNING AUTHORITY:**

|                   |                                                                     |
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| Sue King BA(Hons) | Senior Planning Officer (Enforcement),<br>Maidstone Borough Council |
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#### **INTERESTED PARTIES:**

|               |                                                             |
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| Jack Highwood | Local Resident<br>Councillor, Collier Street Parish Council |
| Roger Hart    | Local Resident                                              |

#### **DOCUMENTS SUBMITTED AT THE HEARING/INQUIRY:**

Document 1: Updated supply of gypsy and traveller pitches

Document 2: Details of prior notification application reference  
22/501196/PNQCLA