



Appeal Decision

Hearing held on 14 June 2022

Site visit made on 14 June 2022

by David Cliff BA Hons MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19th July 2022

Appeal Ref: APP/V2255/W/20/3254657

Land west of Greyhound Road, Minster on Sea, Kent, ME12 3SP

- 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 Levi Cooper against the decision of Swale Borough Council.
 - The application Ref 19/502204/FULL, dated 18 April 2019, was refused by notice dated 24 January 2020.
 - The development proposed is Change of use of land to use as a residential caravan site for one gypsy family with 2 No. caravans, including laying of hardstanding and erection of ancillary amenity building.
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Decision

1. The appeal is allowed and planning permission is granted for change of use of land to use as a residential caravan site for one gypsy family with 2 No. caravans, including laying of hardstanding and erection of ancillary amenity building at land west of Greyhound Road, Minster on Sea, ME12 3SP in accordance with the terms of the application, Ref 19/502204/FULL, dated 18 April 2019, and the plans submitted with it, subject to the conditions set out in the attached schedule.

Preliminary Matters

2. The appellant already occupies the site, residing in a static caravan. The ancillary amenity building shown on the application drawings has not been constructed, although a smaller amenity building has been erected. There was also discussion at the hearing as to whether the overall extent of the site matches that on the plans. However and for the avoidance of doubt I have determined the appeal based on the application plans before me.
3. As set out within the Statement of Common Ground, the appellant and the Council agree that the appeal site, though in the countryside, is not remote from settlements in locational terms in the context of Policy H (paragraph 23) of the Government's Planning policy for traveller sites of August 2015 (PPTS).
4. Although not included in the Council's reasons for refusal, it remains necessary for me, as the competent authority, to consider the effects upon the integrity of the Medway Estuary and Marshes Special Protection Area in accordance with the Conservation of Habitats and Species Regulations 2017 (Habitats Regulations). I have therefore included this within the main issues below.

Main Issues

5. The main issues are:

i) Whether the appeal scheme would be acceptable taking account of (a) the effect upon the character and appearance of the area and (b) the effect in combination with other gypsy and traveller sites, upon the nearest settled community?

ii) The effect upon the integrity of the Medway Estuary and Marshes Special Protection Areas (SPA) and Ramsar sites.

Reasons

The effect on the character and appearance of the area and upon the nearest settled community

6. Policy DM10 of the Swale Borough Local Plan July 2017 contains a number of criteria setting out the Council's policy approach for considering gypsy and traveller sites. It includes the need to ensure that proposals do not introduce a scale of development that causes significant harm to the character of an area and its landscape.
7. The site is located at the northern end of Greyhound Road, close to its junction with Lower Road (the A2500). Greyhound Road is characterised by several other gypsy/traveller sites, including three sites granted permanent permission at appeal in 2017, along with others permitted by the Council on a permanent basis.
8. The area to the north of Lower Road is of an open rural character up to the boundary with Scocles Road to the northwest, beyond which lies the recently expanded suburban development of Minster on Sea. To the south of Lower Road, further to the east and west of development on Greyhound Road, the area's character is predominantly rural, though not devoid of other intermittent development including an area of commercial development to the east and a disused public house to the west, with further mixed development along Elmley Road.
9. Caravans are by their nature of a limited height and the proposed amenity building would also be of a modest height and scale. The location of the amenity building would ensure that its visual impact is able to be restricted by existing and proposed landscaping and vegetation.
10. Taking account of the flat topography south of Lower Road and existing screening, including the retained wooded and scrubland area to the north and west of the appeal site, the development would not be conspicuous or prominent in surrounding views including from Lower Road. Whilst the scheme extends the existing area of development further to the north, and has led to the loss of a further area of woodland, given that it is located between existing permitted sites and the road, it does not lead to any significant encroachment of development into the open countryside in this location.
11. The retained woodland is sufficient in its extent to effectively mitigate the visual impacts of both the appeal site and existing adjacent sites. In views from Lower Road to the east, the presence of existing roadside hedging, although intermittent in places, along with the existing screening directly adjacent to the site, is sufficient to ensure that the scheme would not be unacceptably prominent or visually intrusive from such vantage points. The fact that the site is parallel to Greyhound Road does not alter this to any significant degree.

12. Furthermore, given the apparently limited viewpoints where the site would be clearly visible, the development would not be unduly prominent or result in unacceptable visual impacts from views to the north including from the higher vantage points along Elm Lane. The recent development of Thistle Hill on the opposite side of Scocles Road also has the effect of altering the overall character of the area around the appeal site, reducing any perception that it is within an area of undisturbed open countryside. Like the Inspector concluded within the 2017 appeal decision, having regard to the findings of the Swale Landscape Character and Biodiversity Appraisal that the site lies within an area of moderate sensitivity that is in poor condition, I find that the effect on the wider area is limited.
13. Furthermore, the existing landscaping provided on the boundary of the site also demonstrates how the development is capable of being amalgamated within its immediate surroundings without any unacceptable visual effect, whilst not isolating or excluding it from the surrounding community.
14. Criteria 4 of Part B of Policy DM10 includes the requirement that new gypsy and traveller sites do not singly or cumulatively dominate the nearest settlement. This is also reflected in the PPTS.
15. The development would add to the existing group of gypsy and traveller sites on Greyhound Road. These sites are the predominant form of development on the road, although taking account of their overall consolidated form, they have limited overall impact beyond the immediate area. Greyhound Road also contains one permanent dwellinghouse, although this, being a single place of residence, does not amount to what could be considered a settled community in the context of the policy.
16. There is loose knit development on Lower Road, including the area known as Brambledown, including approximately 35 dwellings, stretching east of the appeal site. Although the approval of this scheme would lead to Greyhound Road having ten of the total of approximately 60 gypsy and traveller sites in the Borough of Swale, this, by itself, is a crude measurement to determine whether there would be cumulative adverse impacts on the nearest settled community.
17. The appeal site and existing adjacent development maintains good separation distances to the built development of Brambledown and is not of such a substantial scale and size, both in terms of the cumulative number of pitches and the overall extent, to dominate or harmfully impact upon that community being the nearest settled community.
18. For the above reasons, the development would not result in significant harm to the character and appearance of the area including the intrinsic beauty of the countryside. Nor, in combination with other existing gypsy and traveller sites, would it have an adverse effect on the amenity of or dominate the nearest settled community. It would therefore satisfactorily accord with the relevant design, landscaping protection and amenity aims of Policies ST1, ST3, CP4, DM10 and DM14 of the Local Plan and the PPTS. Furthermore, as the proposal would accord with national planning policy concerning gypsy and traveller sites, it conforms with the Council's settlement strategy contained within Policy ST3 of the Local Plan.

Medway Estuary and Marshes SPA

19. The site is located within the 6km buffer zone of the SPA and Ramsar sites. Regulation 63 of the Habitat Regulations requires the decision maker to consider whether the development is likely to have significant effects on any European protected sites.
20. The protected areas provide protection for the significant numbers of wildfowl, waders and terns that overwinter or breed within them. The Medway Estuary includes mudflats, reedbeds, saltmarsh and grazing marsh that are rich and diverse ecosystems providing food and high tide roosts for the waders and wildfowl.
21. The development, along with other residential developments expected to come forward in the area, has the potential to increase recreational pressure, including dog walking, on the SPA and Ramsar habitats. This would contribute to the disturbance of the protected habitats including the key bird species, contrary to the relevant conservation objectives of the European sites. The development therefore has the potential to result, in the absence of mitigation, in likely significant effects on the SPA and Ramsar. An appropriate assessment is consequently required.
22. Due to the significant pressure from development in north Kent to accommodate new homes, a strategic approach has been established to protect the SPA and Ramsar sites from the effects of development and to mitigate the resulting impacts of additional recreational visitors upon these protected coastal sites. The approach is set out in the Bird Wise Strategy to manage and mitigate impacts. This has been produced by the North Kent Strategic Access Management and Monitoring Scheme (SAMMS) Board, comprising the local Kent authorities, Natural England, the Kent Wildlife Trust and the Royal Society for the Protection of Birds. It includes a series of specific mitigation measures and costings to manage the impacts of increased recreational use of the coast and particularly bird disturbance. A tariff is applicable to contribute towards the necessary mitigation. The Bird Wise Steering Group has agreed additional guidelines including the requirement that the full tariff (£253.83) is paid per new gypsy and traveller pitch.
23. The Council has produced a SAMMS Mitigation Contribution Agreement in accordance with Section 111 of the Local Government Act 1972 for smaller developments such as the appeal scheme. An agreement has been completed, signed and submitted for this scheme and the Council has confirmed that the necessary payment has already been made by the appellant.
24. Although the payment towards mitigation has been paid by the appellant and confirmed through the SAMMS Agreement, this does include a legally secure obligation for the local planning authority to spend the contribution on the required mitigation. Nevertheless, the following is relevant to my consideration of whether the required mitigation would be effectively carried out in a timely manner.
25. Bird Wise is overseen by a Project Board which governs the development, implementation and commissioning of the strategy. This includes membership by the Council. The Bird Wise Steering Group, that supports the Board, also comprises representation from the Council. An Accountable Body has also been appointed, the duties of which includes the administration of collected funds,

the commissioning of projects and survey work, the collation of monitoring information and a financial protocol including procedures for approving expenditure and financial accounting. The governance arrangements are captured in a Memorandum of Understanding and an annual report is produced detailing measures implemented and progress made. Therefore, on the basis of the information provided as part of this appeal, with the measures in place as described above, I am satisfied that the contribution already made by the appellant would be spent in a timely fashion on the necessary mitigation.

26. Natural England has also been consulted and has confirmed that, subject to the appropriate financial contribution, the scheme is able to mitigate against the potential recreational impacts on the SPA and Ramsar.
27. I am satisfied that the proposed development, either alone or in combination with other plans or projects, would not adversely affect the integrity of the SPA and Ramsar site. It would accord with the habitat protection aims of Policies CP7 and DM28 of the Local Plan.

Other Matters

28. The Council referred to a recent appeal decision¹ granting permission for an eight pitch gypsy and traveller site at Hartlip elsewhere within the borough. Whilst this increases the supply of pitches, it was only granted for a temporary period of three years due to the harm in that case that would result upon character and appearance and the loss of agricultural land. In the current appeal, no significant harm results and the scheme provides for an additional pitch which accords with the approach for new gypsy and traveller sites set out in both Policy DM10 and the PPPTS. The Hartlip appeal decision therefore has little bearing on the outcome of this appeal. Given the lack of any significant harm and overall compliance with development plan, the issues discussed at the hearing regarding the need for and supply of sites, and the associated appeal decisions provided, are not central to the acceptability of this appeal.
29. For similar reasons, the other recent appeal decision² referred to by the Council at The Old Bindery, Faversham has little bearing on the current appeal, noting that in that case the Inspector found harm both to a conservation area and the Kent Downs Area of Outstanding Natural Beauty.
30. The Council has confirmed that the development does not fall within the catchment area that would be likely to impact upon the Stodmarsh Special Area of Conservation and Ramsar Site with regard to wastewater nitrogen and phosphorus impacts. Therefore there is no need to consider this matter any further as part of this appeal.

Conditions

31. I have considered the conditions suggested by the Council and discussed at the hearing, taking account of the advice and tests set out in paragraph 56 of the National Planning Policy Framework. Other than as described below, I have made some amendments to the wording of the suggested conditions for precision and clarity, but without changing the essence of any condition.

¹ APP/V2255/W/20//3244340

² APP/V2255/C/20/3263577

32. Condition 1 is required to provide certainty on what has been approved. Conditions 2, 4, 5 and 6 are necessary in the interests of visual amenity and to safeguard the character and appearance of the area. In the case of conditions 5 and 6, these would also safeguard the living conditions of the occupants of neighbouring sites. In view of the particular circumstances of the appeal, Condition 3 is necessary to restrict future occupiers of the site to gypsies and travellers.
33. Condition 7 requires the submission and approval of a Site Development Scheme, including hard/soft landscaping, external lighting and surface water drainage details. This is necessary to safeguard the character and appearance of the area and to provide for appropriate surface water drainage of the site. The wording of this condition reflects the current position that the use has already commenced on the site. Both main parties have agreed to my proposed wording of this condition. The inclusion of lighting and drainage details within this condition means that separate conditions on such matters are not required. Condition 8, requiring replacement planting where necessary, is necessary in the interests of the character and appearance of the area.
34. The Council's suggested condition seeking to prevent the erection of any building or structure within 8 metres of the drainage ditch to the west of the site is unnecessary given that the said drainage ditch is located well over 8 metres from the site boundary.

Conclusion

35. The proposed development would accord with the development plan considered as a whole. Taking all matters into account, I conclude that the appeal should be allowed.

David Cliff

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Phillip Brown	Managing Director of Philip Brown Associates Ltd
Levi Cooper	Appellant
Karl Barton	Friend of appellant

FOR THE LOCAL PLANNING AUTHORITY

Andrew Byrne	Area Planning Officer
Jill Peet	Planning Policy Manager

DOCUMENTS SUBMITTED AT THE HEARING

1. Appeal Decision APP/V2255/W/20/3254539 (New Acres, Spade Lane, Hartlip, Kent)
2. Aerial photograph of site and surrounding area
3. Signed Statement of Common Ground
4. SAMMs Mitigation Contribution Agreement for ten units or less

DOCUMENTS SUBMITTED FOLLOWING THE HEARING

1. Signed SAMMS Mitigation Contribution Agreement for ten units or less (dated 12 May 2022)
2. Email from Council (dated 30 June 2022) agreeing amendments to suggested conditions

Schedule of Conditions

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans: Site Plan 'Travellers Site', Site Layout Plan, PBA2 and 'Amenity Block' plan.
- 2) No development beyond the foundations of the amenity building shall take place until details of the external materials of that building have been submitted to and approved in writing by the local planning authority. The amenity building shall be carried out in accordance with the approval details.
- 3) 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).
- 4) No more than two caravans, of which no more than one shall be a static caravan, shall be stationed on the land at any time.
- 5) No commercial activities shall take place on the land, including the storage of materials.
- 6) No vehicle over 3.5 tonnes shall be stationed, parked or stored on the site.
- 7) The use hereby permitted shall cease and all caravans, structures, equipment and materials brought onto the land for the purposes of such use shall be removed within 30 days of the date of failure to meet any one of the requirements set out in i) to iv) below:
 - i) Within 3 months of the date of this decision a scheme for the means of surface water drainage of the site, the hard and soft landscaping of the site, including details of existing trees, shrubs and other features, planting schedule, species, plant sizes and numbers, means of enclosure, hard surfacing materials, proposed and existing external lighting and a timetable for implementation (thereafter referred to as the Site Development Scheme) shall have been submitted for the approval of the local planning authority.
 - ii) If within 11 months of the date of this decision, the local planning authority refuse to approve the Site Development Scheme or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made, by the Secretary of State.
 - iii) If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted Site Development Scheme shall have been approved by the Secretary of State.
 - iv) The approved Site Development Scheme shall have been carried out and completed in accordance with the approved timetable.

Upon implementation of the approved Site Development Scheme specified in this condition, that Scheme shall thereafter be retained.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

- 8) Upon completion of the approved soft landscaping details under condition 7 (i) above, any trees or shrubs that are uprooted or destroyed or die within five years of planting shall be replaced with trees or shrubs of the same species and size as that originally planted.

End of conditions