



Appeal Decisions

Site visit made on 18 January 2022

by Timothy C King BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 July 2022

Appeals A & B: APP/A2280/C/19/3230873 & 3234902

Land known as The Chestnuts, Matts Hill Road, Rainham, Kent ME9 7XA

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeals are made by Mr Stephen Ball (Appeal A) and Mrs Ball (Appeal B) against an enforcement notice issued by Medway Council.
 - The enforcement notice was issued on 10 June 2019.
 - The breach of planning control as alleged in the notice is 'Without the benefit of planning permission the unauthorised material change of use of the Land to a residential caravan site by the stationing of two mobile homes and one touring caravan for use for residential purposes, and the carrying out of operational development to facilitate that use, comprising the erection of a utility block, brick pillars, entrance gate, fencing, the laying of hardstanding and the installation of a cess pool'.
 - The requirements of the notice are:
 - (i) Cease the use of the Land for residential purposes
 - (ii) Remove from the Land all mobile homes and caravans
 - (iii) Demolish the timber building/utility block
 - (iv) Remove the cess pool
 - (v) Remove all hardstanding, the brick skirt and steps around the mobile from the Land
 - (vi) Remove all close board fencing including the concrete kickboards and posts from the Land
 - (vii) Remove the entrance gates and brick pillars
 - (viii) Remove all resultant debris, rubbish and associated materials arising from the requirements (iii), (iv), (v), (vi) & (vii) from the Land
 - (ix) Restore the Land to its condition prior to the commencement of the use of the Land for residential purposes.
 - The period for compliance with the requirements is, for (i) and (ii), within six calendar months from the date when the notice takes effect; for (iii), (iv), (v), (vi), (vii) and (viii), within seven calendar months from the date when the notice takes effect; and for (ix), within eight calendar months from the date when the notice takes effect.
 - The appeals are proceeding on the grounds set out in section 174(2) (a) and (g) of the Town and Country Planning Act 1990 as amended.
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Appeal C: APP/A2280/W/19/3228470

The Chestnuts, Matts Hill Road, Hartlip, Sittingbourne, Kent, ME9 7XA

- 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 S Ball against the decision of Medway Council.
- The application Ref MC/19/0624, dated 7 March 2019, was refused by notice dated 3 May 2019.
- The development proposed is described as '*resubmission of application MC/18/3588 refused 12.2.2019. Material change of use land for Gypsy site for the stationing of*

caravans for residential use with facilitating development (hard standing, entrance gate, fencing, utility block and cess pool) – retrospective’.

Formal Decisions

Appeals A & B

1. It is directed that the enforcement notice be corrected by the deletion of the text under ‘The matters that appear to the local planning authority constitute the breach of planning control’ and its substitution with the following:

‘Without planning permission, the breach of conditions 1 and 2 of planning permission ref. MC/13/3164, dated 19 June 2014, relating to a temporary permission which expired on 31 December 2018 for change of use for caravan site for residential purposes, stationing of one mobile home, one touring caravan, one small portacabin with associated hardstanding and cess pool.’

2. Subject to this correction the appeals are allowed, the enforcement notice is quashed, and planning permission is granted on the application deemed to have been made under s177(5) of the Act for the development already carried out, as specified above, at land known as The Chestnuts, Matts Hill Road, Rainham, Kent ME9 7XA, subject to the conditions set out in the attached Schedule.

Appeal C

3. The appeal is allowed and planning permission is granted for use of the land for the stationing of caravans for residential use, with facilitating development including hardstanding, entrance gate, fencing, utility block and cess pool at The Chestnuts, Matts Hill Road, Hartlip, Sittingbourne, Kent ME9 7XA in accordance with the terms of the application Ref MC/19/0624, dated 7 March 2019, and subject to the conditions set out in the attached Schedule.

Matters concerning the enforcement notice

4. With regard to Appeals A and B, during the course of the appeal the appellants, who had originally lodged their appeals which included a ground (b) submission (ie that the alleged breach had not occurred as a matter of fact), withdrew this particular ground.
5. The appellants’ initial representations had indicated that the breach did not fall within the parameters of s171A(1)(a) as the allegation related to a breach of conditions on a planning permission granted in 2014 (MC/13/3164) rather than an unauthorised material change of use. The said planning permission had allowed the use of land as a caravan site, involving the stationing of one mobile home and one touring caravan on the site. Condition 1 thereto made the duration of the planning permission time limited and personal to the applicant, and condition 2 required that, when occupation ceases, the land be restored to its former state.
6. Despite this withdrawal I am required to ensure that the enforcement notice is on a correct footing. An enforcement notice is required to specify whether, in the opinion of the local planning authority, the breach of planning control is within s171A(1)(a) or s171A(1)(b) of the 1990 Act ie whether the allegation is one of development without planning permission, or a breach of condition or limitation on a planning permission. In this case it is clear that the Council are

- seeking to enforce against the continued use of the site as a caravan site, and has described this as a change of use.
7. However, neither the continuation of a use after the expiry of a temporary planning permission granted for a limited period, nor occupation of the land in breach of a personal permission, which also has the effect of limiting the duration of the planning permission, constitutes development, and this appeal is a case in point. An enforcement notice directed against the continuing use should therefore instead allege a breach of the condition(s) that required the use to cease at a specified time.
 8. A person on whom an enforcement notice is served needs to know the matters which appeared to the local planning authority to constitute the breach of planning control. In this case, whilst the reference in the notice should have been to s171A(1)(b), being the failure to comply with the conditions, and not to s171A(1)(a), the activity which the Council considers to be in breach of planning control, and which is required to cease, is plainly stated. The appellants' statements also make clear that they are well aware what the Council is seeking to achieve, and the deemed planning application which arises from the appeal made on ground (a) confirms this.
 9. The land is no longer occupied by the then applicant and her family, or those persons who benefitted from planning permission ref MC/13/3164. The Council understands that this family vacated the land in 2017. It is indicated that the appellants purchased the site in mid 2018, confirmed by Land Registry documents, and took occupation soon after.
 10. Since s72(1)(b) provides for the imposition of a time limit and reinstatement condition, and a planning permission subject to such a condition is effectively a planning permission granted for a limited period, it is implicit that the condition circumscribes the entire authorisation of the use and must survive for the purposes of enforcement action. As such, where a use of land is continued after the expiry of a temporary planning permission an enforcement notice should be directed against a breach of the condition that required the use to cease at a specified time.
 11. The Courts have given wide powers to the Secretary of State and Inspectors to amend enforcement notices and there is an expectation that, where at all possible, they will do so. I am able to correct any defect or error in an enforcement notice, provided I am satisfied that the correction could be made without injustice to either party. In this particular instance I consider that the necessary correction can be made without being prejudicial to either main party's case as I consider the amendment would do no more than correct a procedural error. In the circumstances I am therefore amending the notice, accordingly.

Preliminary matters and background

12. Planning permission was originally granted for the use of the land as a caravan site following a successful appeal in 2010, subject to a time limitation condition that the use cease within five years. This period was subsequently extended until 31 December 2018 by way of the 2014 planning permission. However, the site has remained occupied for residential purposes regardless.

13. The appellant mentions that one of the mobile homes referred to in the enforcement notice was removed from the site in December 2019, after the appeals had been lodged. Also during the appeal process the Council, in acknowledging that the appellants had paid the appropriate tariff as required by Natural England to contribute towards the funding of strategic measures across the Thames, Medway and Swale Estuaries and, in addition, had also submitted the necessary SAMMs form, withdrew its objection as to any impact therefrom. Accordingly, the Council no longer offers any evidence in respect of Refusal Reason 2 on its decision notice.
14. Although the site's address set down in the enforcement notice differs slightly from that of the application form the postcode is identical and, given that the respective red line site boundaries correspond, I am satisfied that they refer to the same area of land.
15. It is said that Mr Ball has been travelling for work since his late teens along with wider family members, and is currently involved in ground work such as driveways and paving. The Council, in its representations, now says that it accepts, on balance, that both the appellants meet the definition of gypsy/travellers, as set out in the Annex to PPTS. I agree with this assessment. Therefore, the PPTS is a relevant material consideration in this case.

Appeals A & B on ground (a) and Appeal C

Main Issues

16. In allowing the previous appeal in 2010 the Inspector considered the main issues to be the effect on the character and appearance of the surrounding area, noting that the site falls within the Kent Downs Area of Outstanding Natural Beauty (AONB) and also the North Downs Special Landscape Area (SLA). I agree with this approach but also, in the face of more contemporary advice with the publications of both Planning policy for traveller sites (PPTS) and also the National Planning Policy Framework (the Framework), I now consider the main issues to be as follows.
17. In respect of Appeals A and B, whether conditions 1 and 2 of planning permission ref. MC/13/3164 remain reasonable and necessary having regard to:
 - a) the effect of the development on the character and appearance of the surrounding area, with particular regard to the AONB and SLA location; and
 - b) the need and provision of gypsy & traveller sites within the Medway area.
18. In respect of Appeal C, the main issues are as set out in (a) and (b) above.

Reasons

Location, and character and appearance

19. Matts Hill Road is a winding, tree-lined, rural lane along which are several, sporadic residential properties, of varying size, age and design, mainly set back considerably from the lane. The appeal site, a small triangular shaped piece of land, is a case in point with the mobile home positioned to its rear. Relative to other nearby plots the appeal site is of limited size. The site is fenced to its rear and east boundaries by standard height garden fencing beyond which are

- a number of mature trees which provide effective screening. Its front and west boundaries are instead screened by an unbroken mature laurel hedgerow. The majority of the curtilage has been covered with a shingled hardcore, with the access point having been walled and gated. Accordingly, when the gates are shut there can only be very limited views into the site.
20. Policy BNE25 of the Medway Local Plan (LP) is concerned with limiting development in the countryside. Its explanatory text says that the countryside needs to be protected for its own sake. The policy does set out certain circumstances where exceptions may be made including where the development maintains and, where possible, enhances the character, amenity and functioning of the countryside.
 21. LP policy BNE32 permits development within the Kent Downs AONB only when it conserves the natural beauty, wildlife and cultural heritage of the area. As regards the SLA location policy LP policy BNE33 permits development only if it conserves and enhances the natural beauty of the area's landscape or the economic or social benefits outweigh the priority to conserve the natural beauty of the area's landscape.
 22. More specifically, policy H13 sets out criteria as to the suitability of land for occupation by gypsies and travellers which, amongst other things, requires that there is compliance with landscape, nature conservation and countryside policies and that the site can be physically contained and adequately screened from surrounding land.
 23. In this instance the Council considers that the appeal site has been urbanised by the development. In the context paragraph 25 of the PPTS says that Councils should very strictly limit new traveller site development in the open countryside that are away from existing settlements. Here, given the appeal site's proximity to other residential development, particularly on this side of the lane, such a setting means that the use and appearance is not necessarily out of character with this particular stretch of Matts Hill Road. Further, the appeal site's scale and extent is limited and, moreover, I find it has little impact on the countryside location and its wider character.
 24. An interested party has raised an objection commenting that the number of gypsy/traveller sites in Matts Hill Road now significantly outweighs that of the settled community. I have been made aware of one other such local site with planning permission, known as 'Scarlett's Meadow', although the appellants indicate that this allows for a maximum of only three caravans. In this context the objector has not provided illustrative details to qualify the assertion made and my observations when travelling along Matts Hill Road, as mentioned, did not back up the objector's claim or suggest an over-concentration or dominance of sites nearby. Indeed, the small scale nature of the development allows for its integration into the surroundings. This would reflect the guidance in paragraph 25 of the PPTS.
 25. LP policy H13 requires, amongst other things, that the site is close to essential local services, facilities and served by public transport. The Council indicates that the site lies within 800m of some local services including the nearby M2 service station which can also be accessed via the northern end of Matts Hill Road, and also a local primary school. In the main, though, the site is not so accessible as to reasonably satisfy the policy's requirement and although the appellants refer to the site's proximity to Rainham, this town centre is some

- 3.2 kms away. In such circumstances I would expect there to be a heavy reliance on the private vehicle. That said, Mr Ball frequently travels for work related purposes and the PPTS advises at paragraph 13(h) that traditional gypsy lifestyles can contribute to reduced work journeys because of their travelling lifestyle.
26. Such development, though, cannot be said to contribute to and enhance the natural environment and landscape as is required by LP policies BNE25 and BNE33, and to a lesser extent policy BNE31 which, in referring to a 'Strategic Gap', requires that development would not result in a significant expansion of the built confines of existing settlements nor significantly degrade the open character or separating function. That said, this must be weighed against the advice within the Framework. In illustration, paragraph 176 thereto which, although saying that great weight should be given to conserving and enhancing landscape and scenic beauty in AONBs, refers also to limiting the scale and extent of development within. This is indicative of a less restrictive general approach now than was the case when the Medway development plan was adopted in 2003.
 27. Although the development, therefore, is in conflict with the said policies of the development plan to varying degrees, there is some inconsistency with national guidance. I have also taken into account that the site is relatively small and well screened, and that the sporadic residential development in the immediate vicinity which is set back from the lane. Further, I am also satisfied that the guidelines in Chapter 31 of the Medway Landscape Character Assessment as to the management of Matts Hill Farmland has not been compromised by the development.
 28. Given the above I find that although a degree of harm has resulted from the introduction of an additional residential use, particularly apparent from the domestic style wall and gates, the hardcore laid and the stationing of the mobile home itself, it is somewhat limited given the local context. Overall, the site's buildings are modest in size, there is little encroachment into the countryside and I must agree with the previous Inspector that the harm caused is localised.
 29. In allowing that appeal the Inspector also indicated that the harm caused would be temporary. Although this comment would seem to relate directly to the five year temporary permission granted it was qualified by the remark that the mobile home and portacabin like structure were not attractive in appearance, and the landscaping would be unlikely to become fully effective during this period. I have no direct knowledge as to the appearance of the site in 2010 but, in the twelve years that have passed the portacabin has been removed from the land, the residential use has become established with an orderly site arrangement, the mobile home is not unattractive, and the landscaping has matured.
 30. On this main issue, I conclude that the development is to varying degrees at odds with the wording of LP policies BNE25, BNE31, BNE32 and BNE33. However, the policies' overarching thrust of protecting the countryside for its own sake is more restrictive than the current advice set out within the Framework. I afford the Framework's policy directive significant weight, and one which outweighs the conflict with the countryside protection policies of the Medway development plan which was adopted nearly twenty years ago.

Need and provision of sites

31. The existing level of local provision and need for sites along with the availability, or lack of, alternative accommodation are relevant matters under PPTS criteria.
32. The Medway Council Gypsy and Traveller Accommodation Assessment, 2018 (GTAA) at section 8.2 identifies a need for 34 additional pitches within the Council's area over the period 2018 to 2035 for gypsy and traveller households that meet the planning definition; up to 15 additional pitches for gypsy and traveller households who may meet the planning definition; and 8 additional pitches for gypsy and traveller households which do not meet the planning definition.
33. Section 8.3 recommends that the need for households meeting the planning definition should be addressed through new pitch allocations or the expansion or intensification of existing sites. In its representations the Council makes reference to a new local plan which is in the process of being produced but I am not aware of any formal draft having yet been published so it remains unclear how the need is to be met. Nonetheless, there is clearly an existing immediate need for sites to which I afford considerable weight.
34. Paragraph 10 of the PPTS expects Councils, in their local plan, to identify and update annually a supply of specific deliverable sites sufficient to provide 5 years worth of sites against their locally set targets. The Council cannot demonstrate the availability of a 5 year land supply of such sites.
35. The Council has confirmed in its representations that there were no Gypsy and Traveller sites allocated within Medway's LP at the time of its adoption in 2003. In this connection the appellant has supplied a decision letter from January 2020 relating to appeals involving a material change of use to a caravan site (APP/A2280/C/19/3222539 & APP/A2280/W/18/3216244). Here, the Inspector referred to a continuing failure of policy in Medway and commented that no progress has been made towards identifying sites to meet the need, despite the opportunity to do so during successive local plan processes. I have not been provided with any information to suggest that the situation has materially changed over the past two years.
36. No permanent provision has therefore been made to reduce the general need for sites, and there is no indication of any likelihood of such delivery in the near future given that the replacement Local Plan is still at an early stage of preparation. This is seemingly a clear and persistent failure of policy which, as a material consideration, weighs strongly in support of the appellants' case.

Other Considerations

Personal circumstances of the appellants

37. The appellants are in need of a site which they can use as a settled base. It is understood that the appellants have local connections and no available alternative sites have been suggested by the Council which might be suitable. The Council does not accept that there is any justification as to why the personal circumstances of the appellants could not be met by the selection of a site outside the AONB, but it appears no suitable sites have come forward for a long time. Further, in the judgement of *South Cambridgeshire DC v SSCLG & Brown* [2008] EWCA Civ 1010, the Court of Appeal held that, in seeking to

determine the availability of alternative sites for residential Gypsy use, there is no requirement in planning policy, or case law, for an applicant to prove that no other sites are available or that particular needs could not be met from another site. The lack of alternative sites is therefore a consideration that weighs in favour of the appellants.

38. The appellants have two young children, the eldest of whom is of school age. A settled base would be in the best interests of the children, securing access to medical facilities and education which are difficult to achieve by the roadside without a fixed address. The best interests of the children, that is the need to safeguard and promote their welfare, are a primary consideration, particularly as their education would be likely to be interrupted if the family were forced to move from the site. Further, the accessibility to health care that a settled base secures is a benefit to the family as a whole.
39. It is clear that the shortfall of suitable sites is significant. Accommodation by way of a settled base, rather than a roadside existence, can only be beneficial in such circumstances. I consider that the development provides suitable accommodation consistent with this and, as such, the personal circumstances of the appellants including the best interests of the child must be afforded substantial weight.

Other representations

40. I have had regard to the letters of objection from interested parties, the grounds of which have been already largely discussed. On other points raised I see no reason why the development, given its constraints, should cause damage to the nearby ancient woodland nor why it would bring about contamination to land and groundwater. An objection has also been raised on the basis that the issues in the current appeal are identical to the circumstances at another site, known as Harewoods, for which planning permission was apparently refused. I have not been provided with details of this case and, besides, given that each development proposal has its own individual circumstances, merits and impacts, direct parallels are not easily drawn.

Planning Balance

41. With the acceptance that the appellants and their family meet the definition of travellers in the PPTS, the apparent absence of any alternative sites outside the AONB to which the appellants could move, and the significant need for travellers' sites in the Medway area, I am satisfied that the use of the site in providing for settled and stable accommodation represents an acceptable form of development.
42. There is some conflict with the development plan as a whole, but although the aims of the policies cited by the Council remain relevant their wording LP policies BNE25 and BNE32, in particular, are unduly restrictive and out-of-date in the context of the government's more contemporary advice within the Framework. The weight I afford the conflict with policy is therefore reduced. Each case must, of course, be determined on the basis of its particular merits and/or impacts, and also the individual circumstances involved. Not only does the combination of need and personal circumstances indicate that planning permission should be granted, but I also find that the general need is sufficient to outweigh the development plan objection. Accordingly, these findings weigh

heavily in favour of the appellants, and I conclude that the development at issue is acceptable.

Human Rights

43. There is a positive duty by virtue of Article 8 of the Human Rights Act to facilitate the traditional and nomadic way of life of travellers.
44. However, in considering the proportionality of a requirement to leave one's home it is relevant whether or not the home was established unlawfully. Here, two temporary permissions have been previously granted for the stationing of caravans on the land for residential use, and the continued use following its conditional expiry in 2018 does not actually constitute development, let alone intentional unauthorised development, which would have been a material consideration in my determination. Instead, the continued use involves a breach of condition. That said, it is not clear whether the appellants were aware of the restrictive conditions. Further, although the occupation is unlawful, I am mindful that the principle of the use has been previously accepted, firstly by way of an appeal and subsequently by the Council, and when taking into account the various factors and circumstances I have described, I consider that, taken together, these weigh significantly in support of the appellants' case.

Conclusions on Appeals A, B and C

45. I have found in favour of the appellants' case on both main issues. Personal circumstances are not needed to weigh in favour of granting planning permission as, given the site's history, I am not suggesting that a personal condition is now required. Whilst, therefore, conditions 1 and 2 imposed on planning permission MC/13/3164 might have been necessary and reasonable when granted in 2014 I find now, that for the reasons I have mentioned, a temporary and personal permission, with conditions to this effect, no longer serve any planning purpose in restricting the development at issue.
46. In these circumstances, and having regard to all matters, all three appeals succeed.
47. I have considered the need for the conditions put forward by the Council in the light of the advice in the Planning Practice Guidance. As I have said, having regard to the site's planning history and my findings, there is no need to condition that the use be subject to either personal or time limitation conditions. It is, nonetheless, necessary to restrict the occupation of the site to gypsies and travellers meeting the relevant definition.
48. I see no reason to impose the suggested condition that no fencing shall be erected which would enable the sub-division of the site. Any such fencing that may have existed previously has since been removed as has the mobile home which the enforcement notice makes reference to. As the development has already been carried out it is not necessary for me to make reference to the plans submitted for the application the subject of Appeal C. Besides, due to the site's constraints, the existing site arrangement is ensured and the conditions I am imposing sufficiently achieve the Council's objectives.
49. However, in the interests of the appearance of the site it is necessary to limit the number of caravans on the site to no more than a total of two, allowing for one static/mobile home and one tourer. It is also necessary to prevent

commercial activities on the land and the stationing/storage of vehicles over 3.5 tonnes.

Appeals A and B on ground (g)

50. An appeal on this ground relates to instances where it is felt that the specified time limit(s) for compliance with the requirements of the enforcement notice are unreasonably short. However, given my conclusions on the deemed planning application, it is not necessary for me to consider these appeals further.

Timothy C King

INSPECTOR

SCHEDULE OF CONDITIONS

Appeals A, B & C

- 1) The site shall not be occupied by any persons other than gypsies and travellers as defined in Planning Policy for Traveller Sites, August 2015 (or any subsequent definition that supersedes that document).
- 2) No more than two caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 as amended, shall be stationed on the site at any one time, of which no more than one of these caravans shall be a static caravan/mobile home, and no further caravans shall be placed at any time anywhere within the site.
- 3) No vehicles over 3.5 tonnes shall be stationed, parked or stored on this site.
- 4) No commercial activities shall take place on the land, including the storage of materials.