
Appeal Decision

Site visit made on 24 August 2022

by David Smith BA(Hons) DMS MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 September 2022

Appeal Ref: APP/E2205/W/22/3290557

Planesfield, Pot Kiln Lane, High Halden, TN26 3HU

- 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 Ted Perfect against the decision of Ashford Borough Council.
 - The application Ref 20/01473/AS, dated 20 October 2020, was refused by notice dated 22 September 2021.
 - The development proposed is change of use of land for a gypsy traveller site and the stationing of two static caravans, one touring caravan, the erection of stable block, hardstanding parking and turning areas and installation of subterranean sewerage bio-digester (revision to planning permission 15/01374/AS).
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Decision

1. The appeal is allowed and planning permission is granted for change of use of land for a gypsy traveller site and the stationing of two static caravans, one touring caravan, the erection of stable block, hardstanding parking and turning areas and installation of subterranean sewerage bio-digester (revision to planning permission 15/01374/AS) at Planesfield, Pot Kiln Lane, High Halden, TN26 3HU in accordance with the terms of the application, Ref 20/01473/AS, dated 20 October 2020, subject to the conditions in the attached schedule.

Preliminary Matters

2. The description of development is taken from the Council's decision notice and has been adopted in the appeal form. However, the reference to "retrospective" is superfluous and so has been removed.

Background

3. The appeal site was first occupied by a gypsy and traveller family in 2010. A three year temporary permission was given on appeal in 2011 (Ref: APP/E2205/A/10/2142029). A further temporary permission was then given by the Council until 2018. A 2017 appeal decision granted another temporary period until September 2021 (Ref: APP/E2205/W/16/3155433). The site has now been sold to the appellant and is currently occupied. Permission is sought for an additional static caravan compared to the previous permissions and this has been stationed on the land. The proposal also includes a stable block which did not form part of the original permission and an enlarged parking/turning area.
4. Since I determined the first appeal, there have been a number of changes in planning policy. In particular, the Planning Policy for Traveller Sites (PPTS) and the National Planning Policy Framework have been published and revised. Furthermore, the Ashford Local Plan 2030 was adopted in 2019. Therefore, the

policy landscape is different to what it was in the past. Nevertheless, the findings made in both appeal decisions are important material considerations.

5. There is no information about the gypsy status of the appellant although the Council has produced no evidence in this respect either. In any event, the application is expressly made for a gypsy traveller site and a condition could be imposed to the effect that occupation should be limited to those who meet the definition in the Glossary at Annex 1 of the PPTS. Therefore, the policies in the PPTS can be applied when assessing the proposal.

Main Issues

6. These are:

- The effect of the proposed development on the character and appearance of the area; and
- Whether any harm arising would be outweighed by other material considerations including the need for and likely future provision of sites for gypsies and travellers in the Borough.

Reasons

Character and appearance

7. Local Plan Policy SP1 sets strategic objectives for the Borough and Policy SP6 promotes high quality design. Policy ENV3a requires development to demonstrate particular regard to various landscape characteristics, proportionately, and according to the landscape significance of the site. However, these are high level policies. Of most relevance in this case is Policy HOU16 of the Local Plan. This is a 'windfall' policy against which proposals to expand existing sites or for new sites for gypsy and traveller accommodation will be judged. In particular, criteria h), i) and j) are concerned with the visual impact on the landscape.
8. The appeal site is within the Biddenden and High Halden Farmlands Low Weald Landscape Character Area, which is of moderate condition and sensitivity. The objectives of the area are to conserve and improve the landscape. No detail has been provided about its key characteristics. However, in 2011 these were said to include an undulating landscape of mixed farmland with ponds, streams and hedges and frequent scattered farms and manors. There is no reason to suppose that these have materially changed in the interim.
9. There are sporadic dwellings and farms along Pot Kiln Lane but otherwise the land is open and rural with fields and hedgerows. At the appeal site the vegetation along the lane is fairly dense and so the mobile homes are well screened from view. They are likely to be slightly more obvious in winter months when the trees are not in leaf but, even then, the impact would be limited. Glimpses of the caravans and other paraphernalia are possible through the site entrance and along the bridleway that runs along the north-western side of the site. But these are also fleeting and not dissimilar to what is seen of other developments along the lane.
10. Since the assessment made in 2011, the further planting carried out around the boundaries is likely to have matured. Indeed, the use is well integrated into the surroundings and its presence within the wider landscape is discrete,

even though there is now an additional static home. Nevertheless, because the site is separated from other developments the impact of it on the rural character of the locality is magnified. Through the passage of time, the caravans and other manifestations of the use may have become accepted visually into the local scene. But these were only expected to be temporary and the proposal intrudes into undeveloped countryside thereby detracting from it.

11. There is therefore some limited harm to the character of the area. However, in terms of the criteria within Policy HOU16 that visual harm is not "significant". By retaining and supplementing the boundary vegetation the proposal takes account of a key characteristic of the Landscape Character Area. The site is well-contained such that there is no adverse effect on the wider rural landscape. Furthermore, its residential use is consistent with the pattern of scattered development nearby. Additional planting and the retention of the mature trees is shown as part of the application and a landscaping strategy could be required by condition. Therefore the relevant criteria within Policy HOU16 would be complied with.
12. In conclusion there is harm to the character of the area but as that harm is limited it does not trigger a conflict with Policy HOU16. It follows that there is also no conflict with Policies SP1, SP6 and ENV3a.

Other material considerations

13. The gypsy and traveller accommodation assessment of 2018 found a need for 37 pitches over 5 years for those meeting the PPTS definition. For the period of the Local Plan to 2030 it identified a need for 54 pitches. This has been addressed by allocating 3 new pitches in the Local Plan which now have permission. In addition, an unspecified number of new permanent pitches have been granted under the windfall provisions of Policy HOU16. However, it is acknowledged that there is no 5 year supply of sites, as required by the PPTs, and that all of the identified need has not been met.
14. The Council also intends to prepare a separate Gypsy and Traveller Local Plan. This is already behind the original schedule and it was expected that a full draft plan would be published late in 2021. However, there is no indication that this has happened. It is also worth reflecting that in 2011 it was anticipated that a draft Gypsy and Traveller DPD would be produced that year. For whatever reason, it is therefore apparent that the Council has been unable to get to grips with the issue of the need for further traveller sites for over a decade.
15. In summary, whilst the exact level of current need for pitches in Ashford is not clear, the indication is that it is significant. Furthermore, there is no firm timetable for this to be addressed through the plan-making process. Any sites that are identified are also unlikely to become available immediately. In the meantime, the windfall policy may lead to some provision but there is no definite evidence about its effectiveness. These considerations therefore substantially favour the proposal.
16. The second Inspector observed that the traveller site is in open countryside away from any settlement where the PPTS states that this should be very strictly limited. On the other hand, in that appeal it was common ground that the site is previously developed land due to a former airfield use of the site and

wider land. The PPTS indicates that weight should be given to the effective use of such land. These considerations effectively cancel one another out.

17. The Council also acknowledges that it is unable to point to any alternative traveller sites. There is no indication that the appellant has undertaken such an exercise but this is not decisive as a search for other sites is not a necessary pre-requisite before permission can be granted.
18. Little information has been provided about the personal circumstances of the site occupiers. The original description of development explains that the additional static bungalow is to accommodate the landowner's daughter and her new-born child. However, the absence of detail in this respect does not count against the proposal but rather it means it can only be given very little weight in the final balance.
19. Dismissing the appeal would represent an interference with the home of the appellant and his family life such that Article 8 of the Human Rights Act would be engaged. There is also a positive obligation imposed by Article 8 to facilitate the gypsy way of life.
20. The appellant has a relevant protected characteristic and so, as required by section 149(1) of the Equality Act 2010, the public sector equality duty is applicable. There is therefore a need to have due regard to advancing equality of opportunity.

Other Matters

21. There is no mains drainage but on-site facilities are included within the application and are said to have been completed. There is no evidence to indicate that these would not function effectively or that foul water or waste would cause pollution. There are listed buildings along Pot Kiln Lane but the site is not close to any of them. Therefore there is no effect on their setting.

Final balancing

22. By the Council's own admission, specific deliverable sites are not going to be available for the foreseeable future to meet the identified accommodation needs of gypsies and travellers. This position has persisted for some time. Addressing this to a modest degree by permitting a single pitch is therefore a matter of substantial weight in favour of the proposal. In addition, the proposal conforms to the specific development plan policy concerned with gypsies and travellers.
23. On the debit side, there is a small negative effect on the character of the countryside. However, greater importance should be attached to the supply position which outweighs the limited harm that occurs. In all the circumstances, a permanent permission is therefore justified and there is no need to consider another temporary permission. As a consequence, there is no interference with the appellant's human rights and, in exercising the public sector equality duty, the needs of the appellant would be met in so far as they are different to those without a relevant protected characteristic.
24. I appreciate that this outcome is not the same as the earlier appeals. The additional elements within the application have been fully taken into account in the assessment. Whilst the visual impact is similar, the policy backdrop has changed, especially with the introduction of Local Plan Policy HOU16 with which

the development complies. Furthermore, despite the time that has elapsed, the steps intended to deal with the outstanding need for sites have not come to fruition and there is no clear indication of when this might be. It is these factors which justify a different decision to those made in 2011 and 2017.

Conditions

25. Occupation should be limited to gypsies and travellers given the specific policy basis for accepting the use. To limit the visual impact, the number of caravans and the size of vehicles to be kept at the site should be restricted. Given the rural location it is also necessary to remove permitted development rights for means of enclosure and to control external lighting. Any additional buildings would require planning permission. Details of further landscaping should be agreed in advance to secure a satisfactory appearance but as the caravans are in situ there is no need for a separate condition regarding the protection of hedgerows. Commercial activities should be precluded to protect amenity.

Conclusion

26. The development is in accordance with the development plan. Of the material considerations, the limited harm to the character of the area is outweighed by the general need for gypsy and traveller sites, the lack of progress made in meeting them and the uncertainty about any future provision.
27. Therefore, for the reasons given, the proposal is acceptable and the appeal should succeed.

David Smith

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The site shall not be occupied by any persons other than gypsies and travellers as defined in Annex 1 of the Planning Policy for Traveller Sites (DCLG, 2015).
- 2) No more than two static caravans and one touring caravan (as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968) shall be stationed on the site at any time.
- 3) Within 3 months of the date of this permission, a landscaping scheme for the site (which shall include details of a scheme for the strengthening of the roadside hedgerows) shall be submitted to and approved in writing by the local planning authority. The approved landscaping/tree planting scheme shall be carried out fully within 12 months of its approval. Any trees or other plants which within a period of five years from planting die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of a similar size and species.
- 4) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any Order revoking or re-enacting that Order with or without modification), no gates, walls, fences or other means of enclosure shall be erected within the site.
- 5) No commercial activities shall take place on the site, including the storage of materials.
- 6) No vehicle over 3.5 tonnes shall be stationed, parked or stored on the site.
- 7) No external lighting shall be installed on the site.