
Appeal Decision

Site visit made on 4 November 2022

by Grahame Kean, Solicitor HCA

an Inspector appointed by the Secretary of State

Decision date: 14 November 2022

Appeal Ref: APP/X2220/W/20/3262313

Plot 3, Wass Drove, Westmarsh, Canterbury CT3 2LT

- 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 Samuel Waller against the decision of Dover District Council.
 - The application Ref 19/01508 dated 5 December 2019 was refused by notice dated 30 April 2020.
 - The development proposed is change of use of land from agriculture to a mixed use for agriculture, caravan storage and keeping of horses.
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Formal Decision

1. The appeal is allowed and planning permission is granted for change of use from agriculture to a mixed use for agriculture, caravan storage and keeping of horses at Plot 3, Wass Drove, Westmarsh, Canterbury CT3 2LT in accordance with the terms of the application, Ref 19/01508 dated 5 December 2019, subject to the following conditions:
 - 1) The use of the caravan and timber barn structure on the land shall be solely for purposes ancillary to the use of the land as a paddock for the keeping of horses.
 - 2) The land including the use of any structures or buildings thereon shall not be used for residential purposes.
 - 3) No more than one caravan (including a mobile home, static caravan or tourer) shall be stationed on the site at any one time.
 - 4) No more than 2 horses (including ponies) shall be kept on the land at any one time.
 - 5) Except as provided for in Condition 7) the appeal site shall (i) not be sub-divided into separate plots and no form of enclosure shall be erected within the site and (ii) no hardsurfacing shall be laid out on the site.
 - 6) 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 28 days of the date of failure to meet any one of the requirements set out in i) to iv) below:
 - i. Within 1 month of the date of this decision a scheme for the internal layout of the site, including the siting of the caravan, hardstanding, provision of shelter for horses from extreme weather, boundary treatment, surface water drainage, and the restoration of the site to

its condition before the development took place (or as otherwise agreed in writing by the local planning authority) should the use hereby permitted cease to subsist (hereafter referred to as the site development scheme) shall have been submitted for the written approval of the local planning authority and the scheme shall include a timetable for its implementation;

- ii. If within 11 months of the date of this decision the local planning authority refuse to approve the 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 scheme shall have been approved by the Secretary of State;
- iv. The approved scheme shall have been carried out and completed in accordance with the approved timetable; and

Upon implementation of the approved scheme, that scheme shall thereafter be maintained. 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.

Background

2. The development has commenced. I saw that there was a Shetland pony on site. New hardcore rubble was placed around the caravan and barn structure and extending part way into the field. A high close boarded fence with integral door was erected to the front of the premises, preventing any view of the site from the roadside.
3. Additional hardstanding between the fencing and carriageway was sufficient to park at least three vehicles so that they face perpendicularly to the highway. No block plan was provided but this parking area has probably been created within the appeal site, judging from the location plan. The hardstanding, high fencing and integral door were neither part of the application nor the subject of any amendment. A water connection had recently also been provided for horses, to the front of the site.
4. The appellant is clear in his statement that the main purpose of the changed use of the land is to keep horses and ponies which are used in the traditional Gypsy pursuit of pony trap racing. He owns the site and states there is no other rural land available for his purposes.
5. Reference was made to the application being altered to replace keeping of horses with grazing since grazing was seen as a continuance of the agricultural use. However the application and appeal forms clearly refer to the keeping of horses. Moreover I am satisfied from the information supplied that the grazing would be incidental to the proposed keeping of the horses.
6. The caravan is used for human cleansing following tending of the animals and generally for "health and safety and refreshment purposes." It is understood to contain disinfectant, hand cleaning material, and animal husbandry equipment.

Main issues and reasons

7. The main issues are the effect of the development on the character and appearance of the area; whether it is sustainable having particular regard to the need to reduce travel; and whether the keeping of horses on the land would provide satisfactory safety and security arrangements for their welfare.

Character and appearance

8. The closest residential properties are some distance away to the east and west of the site. The lane providing access to the site is fairly narrow and winding. In the general vicinity of the appeal site it is mostly bounded with dense and sometimes sparse natural vegetation, exemplifying its rural character.
9. The Council had accepted that the development was reasonably screened from the wider landscape and did not consider that harm would be caused to the landscape character of the area. However it argued that the caravan caused visual harm to the character and appearance of the countryside. Contrary to what the officer report implies, the caravan is no longer visible from the highway due to the erection of the high and prominent close boarded fence right across the frontage. This boundary treatment, and parking spaces in front affect the overall appearance of the appeal site by suggesting a residential character to it, however they do not in themselves fall for me to consider as part of the appeal but are a matter for the Council.
10. That said, were the frontage to allow views into the site, the development applied for would in any case not be unduly obtrusive. The caravan itself is not disproportionately large within the 0.75ha site. Although not directly related to an agricultural use, the provision of one caravan, sited alongside the existing barn structure at the rear of the site would not unacceptably undermine the rural character, quality and appearance of the countryside in this vicinity.
11. I note the Council's concern at the need to manage the site so that overgrazing does not harm local character, and that conditions would be impractical to enforce. I note also that the supporting text in Dover District Local Plan, 2002 (DDLPP) Policy DD21 signposts the use of powers other than planning conditions to restore land to a proper standard. Although not supplied by the Council, it turns out that the supporting text at paragraph 8.77 refers to s215 of the 1990 Act as the relevant power. Although not in the bright-line text of a saved policy, in my view that would be an appropriate eventual remedy for the relatively small enterprise proposed.
12. Policy DD21 permits horse related development without stipulating location but subject to criteria, including provision for safety and comfort of horses in terms of accommodation and grazing land, considered below. Although outside the settlement boundaries in regard to the Council's Core Strategy, 2010 (CS) Policy DM1, the development proposed would have no unacceptably harmful adverse impacts on the character and appearance of the area and in that regard would comply with the aims of CS Policy DM15.

Sustainability of location

13. Given the size of the field, any number of horses beyond one may involve regular supplementary feeding. However the barn structure on the land would provide storage facilities, indeed it was being used to store hay to feed up to seven horses according to the Council, before enforcement action was taken.

14. I accept that the proposed use may require some travel to and from the site to supply horses with feed, but in my view any travel would not be so significant as to undermine the relevant policies in the National Planning Policy Framework, or the specific aims of CS Policy DM11 to manage travel demand.

Welfare of horses

15. The dimensions of the barn structure are fairly generous, and as well as storage of feed, I see no reason why, with any necessary minor adaptations that would not materially affect its appearance, it could not provide temporary shelter for the animals in extreme weather.
16. A ratio of two horses per hectare is suggested as appropriate where permanent grazing is proposed. Although not specifically reflected in planning policy I considered guidance from the British Horse Society and the Council's rural planning advisor. Several factors affect the optimum ratio, for example the size and types of horses, periods spent off pasture, how well it is managed and so forth. Due to the lack of supporting evidence on such matters I prefer the recommendation of the planning advisor that a maximum of two horses could be kept on the appeal site. However, and in order to maximise the grazing area, I consider that any area of hardstanding should be kept to a minimum.
17. In light of my finding on the first main issue, the detailed criteria in Policy DM15 do not apply, so it is unnecessary to weigh in the balance that the proposed use would be private, is not driven by a need to sustain the rural economy, or cannot be located elsewhere.
18. I find on this issue that the proposed use of siting the caravan for storage and animal husbandry in association with the use of the land for the keeping of horses, subject to conditions, would comply with saved Policy DD21 including in particular by providing for the safety and comfort of up to a maximum of two horses to be kept on the appeal site.

Other matters

19. The applicant owns and occupies the site and it is not in dispute that he has Gypsy ethnicity and travels for a living. However the Planning Policy for Traveller Sites 2015 deals with residential accommodation for Gypsies, not land used for other purposes. The proposed use is not for residential use whatsoever on the land, therefore it is unnecessary for me to take account of this policy
20. The Council published its draft local plan on 13 October 2022 for a consultation running between 21 October and 9 December 2022 and is at an early stage. It attracts no appreciable weight for the purposes of this decision.

Conditions

21. I have considered the Council's suggested conditions. However, in the interests of preserving the character and appearance of the area there should be a strengthened condition whereby a scheme is approved by the Council for the internal layout including siting of the caravan, hardstanding, temporary means of shelter for the animals, surface water drainage and boundary treatment.
22. For similar reasons, the caravan and barn structure on the land should be restricted to purposes ancillary to its permitted use for the keeping of horses and neither they nor the land should be used as residential accommodation,

nor more than one caravan sited thereon. Also to preserve the character of the area and to achieve a reasonable degree of control over the site's sustainability, no more than 2 horses should be kept on the appeal site.

23. It is unnecessary, as the Council suggests, for the caravan to be contained within the existing barn structure; the appearance of the site is not unduly harmed by them being sited to the rear alongside one another.
24. Condition 7) is imposed is to ensure that the required details are submitted, approved and implemented to make the development acceptable in planning terms. There is a strict timetable for compliance because permission is being granted retrospectively, so it is not possible to use a negatively worded condition to secure the approval and implementation of the required details before development takes place. In the present circumstances it is necessary and reasonable to require the further details within the timeframe as set out. The condition ensures that enforcement action may be taken in default of any of the individual requirements.

Conclusion

25. For the reasons given above I conclude that the appeal should be allowed.

Grahame Kean

INSPECTOR