



Appeal Decision

Site visit made on 15 February 2023

by **M Madge Dip TP MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 13 April 2023

Appeal Ref: APP/U1430/C/21/3289997

Land on the north side of Stubb Lane, Brede, East Sussex

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Shane Moon against an enforcement notice issued by Rother District Council.
- The notice was issued on 23 November 2021.
- The breach of planning control as alleged in the notice is without planning permission:
 - (i) the material change of use of the Land from garden use ancillary to, and associated with, Shearfold Cottage (formerly Shearfold Farmhouse) to a mixed use comprising of business use and the stationing and storage of touring caravans for separate independent residential use; and
 - (ii) the construction of a stable building, a timber open structure, hardstanding, walls, brick pillars and entrance metal gates.
- The requirements of the notice are:
 - (i) Cease the use of the Land for the stationing and storage of touring caravans for separate independent residential use.
 - (ii) Remove the touring caravans from the Land in their entirety.
 - (iii) Dismantle and remove from the Land the timber structure.
 - (iv) Dismantle and remove from the Land the stable building.
 - (v) Break up and remove from the Land, and take to an authorised place of disposal, all the concrete, tarmac, road planings, and hardcore used to create the hardstanding that is shown in area hatched in red on the attached plan.
 - (vi) Cover with topsoil the whole area of the Land where the hardstanding has been removed and reseed this area of the Land with mixed grass seed.
 - (vii) Dismantle and remove from the Land the brick pillars, walls and metal gates in their entirety and remove from the Land all other materials used to create the brick pillars, walls and gates, including but not limited to the cement and brackets.
 - (viii) Remove all waste and materials from the Land from complying with steps (iii), (iv), (v), (vi) and (vii) above and return the Land to its former condition before the breach took place.
- The period for compliance with the requirements is five months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (b) and (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 of Decision: Following correction of the enforcement notice, the appeal is allowed, the enforcement notice is quashed, and planning permission is granted in the terms set out below in the Formal Decision.

Preliminary matters

1. I saw that further works have occurred at the appeal site since the notice was issued. The notice does not capture the additional timber sheds or the timber building, which was under construction. While the stable building and timber open structure have been relocated, they remain captured by the notice.

2. The Council agrees that the appellant has a nomadic lifestyle and that they have PPTS status.
3. Since the development relates to the setting of listed buildings, I have had special regard to section 66 (1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act).

The appeal on ground (b)

4. An appeal on this ground is that the matters alleged have not occurred as a matter of fact. The appellant accepts that the operational development and stationing of caravans for residential purposes has occurred. The onus of proof is on the appellant to show, on the balance of probability, that the alleged mixed use comprising of business use and the stationing and storage of touring caravans for separate independent residential use has not occurred as a matter of fact.
5. It is also incumbent upon me to put the notice in order. While the former use of the appeal site as garden to a dwelling is relevant, which dwelling it was associated with is not. For precision, the words 'domestic garden use' should replace the words relating to the ancillary/associated use with Shearfold Cottage set out in the allegation.
6. Where a material change of use is alleged, it is necessary to define the extent of the planning unit. While the appeal site has been divided into 3 areas by the erection of walls, pillars and gates, it remains in single ownership and is occupied as a single unit. There is no dispute that the appeal site is a single planning unit and I see no reason to disagree.
7. The concept of a mixed use is one of two or more primary uses existing within the same planning unit, where one is not incidental to another. There may also be incidental uses associated with each primary use, which would not be part and parcel of the mixed use specified.
8. The appellant is employed by Greenwell Tree Services Ltd, which provides tree surgery and landscaping services to clients throughout the southeast of England. The nature of the work means that it is carried out at client's properties not on the land. Commercial vehicles, when not in use are parked on the land and the stable building and timber open structure are used to house machinery, equipment, a trailer, tools and associated goods. The burning of waste on the land has also been alluded to, although no evidence of this has been provided.
9. Given the nature of the business, it is unlikely that clients would visit the site. Furthermore, it is not uncommon for residents to use their work vehicles to travel between their home and place of employment. However, I saw two commercial vehicles parked on the land. The scale and amount of machinery, equipment, tools and goods being stored is also greater than what would normally be associated with a residential use. The comings and goings of multiple commercial vehicles and the associated business storage provides the potential for a greater number of commercial vehicle movements. Taking these factors together, as a matter of fact and degree, the tree surgery and landscape business is a primary use.
10. The allegation refers to the '*stationing... of touring caravans for separate independent residential use*'. The appellant has taken this to mean their use of

the caravan for residential purposes. The 1960 Act¹ defines a caravan as '*any structure designed or adapted for human habitation which is capable of being moved from one place to another...*'. While not changing the substance of the allegation, '*the stationing of caravans for human habitation*' would provide the allegation precision.

11. The use of land for the '*storage*' of touring caravans implies that the stored caravans are not occupied for human habitation purposes. There is no evidence before me to show that the storage of caravans has been undertaken for any purpose other than as ancillary to the stationing of caravans for human habitation. As an ancillary use, the storage of touring caravans is not part and parcel of the mixed use alleged.
12. For the above reasons, the tree surgery and landscape business in conjunction with the stationing of caravans for human habitation, constitutes a material change of use to a mixed use. The allegation would not be fundamentally changed by this correction, and it would not cause injustice. For clarity, the corrected allegation shall read, '*the material change of use from domestic garden use to a mixed use of tree surgery and landscape business use and the stationing of caravans for human habitation*'.
13. The appeal on ground (b) succeeds to this limited extent.

The appeal on ground (a) and the deemed application for planning permission

14. An appeal on this ground is that planning permission should be granted for the corrected matters alleged. The **main issues** are:
 - the effect on character and appearance, in particular that of the High Weald Area of Outstanding Natural Beauty;
 - the effect on the setting of Shearfold Cottage (formerly Shearfold Farmhouse) and Shearfold Barn, grade II listed buildings;
 - the effect on living conditions of neighbouring residents; and
 - whether this is a suitable location for a gypsy and traveller site, having particular regard to access to services.

Character and appearance

15. The Framework requires great weight to be given to conserving and enhancing landscape and scenic beauty of Areas of Outstanding Natural Beauty (AONB). The High Weald AONB is characterised by green rolling countryside, of a pastoral nature, punctuated by small areas of woodland, small towns, villages and hamlets. The appeal site is located on the edge of one such village, behind residential properties and adjoining green rolling countryside to the rear.
16. While mainly undeveloped, the sales particulars show that the site had a managed and domesticated appearance before the development occurred. They also show high boundary fencing and hedgerows between the site and the neighbouring residential properties, Merryhills and Shearfold Barn.

¹ Section 29 (1) of the Caravan Sites and Control of Development Act 1960

17. The site may be beyond the defined development boundary but it is visually associated with and an integral part of the settlement. The development does not encroach upon the countryside or compromise countryside character or any woodland or landscape feature within it. The overarching strategy for countryside development, including agricultural practices, land-based economic activities, and tourism, set out in policy RA2 (ii) and (iii) of the Rother Local Plan Core Strategy (September 2014) ('the CS'), are not therefore applicable.
18. The site's fruit trees, grass and vegetable beds have been replaced with hardstanding, which has no doubt compromised the site's biodiversity. The stable building, timber open structure and caravan are located where structures did not previously exist. This has the potential to be visually intrusive. However, the scale and extent of the development is limited. Access is via an established driveway, which also serves adjoining residential properties. Being located behind Merryhills and Shearfold Barn, the site and development is not visible from Stubb Lane. I have not been made aware of any public rights of way within the adjacent countryside from which the development can be seen. In long distance views, available between the built development on Udimore Road (B2089), the site is barely discernible.
19. Close boarded fencing may have been erected along the boundary with the countryside at the time the notice was issued. However, this had been removed at the time of my visit. The reinstatement of close boarded fencing and its replacement with an appropriate native species hedgerow could be secured by suitably worded conditions. I also saw that several silver Birch trees have been planted within the site, and there is capacity for further landscaping to be carried out. The implementation and future maintenance of a suitable landscaping scheme, to include the provision of a native species hedgerow and bird and bat boxes, would deliver biodiversity improvements and soften this part of the settlement edge. Landscape character and the scenic beauty of the AONB and countryside would therefore be conserved.
20. For these reasons, the development accords with policies DEN1 and DEN2 of the Development and Site Allocations Local Plan (December 2019) ('the DaSA') and policies LHN6 (ii), EN1((i), (v), and (viii)), EN3(i), EN5((i), (ii) and (iii)) and RA3 (v) of the CS, which seek amongst other things to maintain, protect and enhance landscape and AONB character, scenic beauty and biodiversity.

Setting of the listed buildings

21. The extent of the setting of the listed buildings, Shearfold Cottage and Shearfold Barn is not identified by the Council. The Council also makes no assessment of the effect the development has had on their setting, only claiming it has been harmed.
22. Shearfold Cottage is identified as a former farmhouse, which could have been associated with a larger farm complex of which Shearfold Barn may have formed a part. Shearfold Cottage has ground floor stucco with red brick above and a tiled roof. It dates from the early 19 Century. Shearfold Barn is faced with weatherboarding on a red brick base and dates from the late 17/early 18 Century. Originally put to agricultural use, Shearfold Barn has been converted to a dwelling.
23. The Framework defines setting as the surroundings within which a heritage asset is experienced. The northern side of Stubb Lane is characterised by

predominantly two-storey dwellings that follow a linear, frontage pattern of development. These listed buildings, like their neighbours, stand within well-defined and landscaped gardens of domestic appearance. The residential conversion of Shearfold Barn in conjunction with the erection of dwellings between it and Shearfold Cottage, the subdivision of land to provide gardens and the general domestication of the immediate area has eroded any historic ties that may have existed between these listed buildings. Similarly, any intervisibility between them that may have existed has been lost.

24. Shearfold Cottage cannot be seen from the site and only Shearfold Barn's roof and part of its first floor is visible above the high boundary treatment. Views of these listed buildings from Stubb Lane are obscured to some degree by boundary hedgerows and other shrubbery. The development is low-lying, and it is set well back from Stubb Lane, behind adjacent residential properties and the driveway's gates. As such, any historic and functional relationship of these listed buildings with one another and/or with the appeal site is limited.
25. Taking these factors into account, I do not regard the listed buildings to be readily associated with the appeal site. I am content that the development does not erode any of the elements which contribute positively to the special interest and significance of Shearfold Cottage or Shearfold Barn. I am therefore satisfied that the development does not detract from the setting of those listed buildings or the ability to appreciate and understand them.
26. For these reasons, the development preserves the setting of the listed buildings and causes no harm to the significance of these heritage assets. That being so, there is no conflict with paragraph 195 of the Framework, which concerns development proposals that would lead to less than substantial harm to the significance of a heritage asset. The development accords with policy RA2(viii) of the CS and DEN1 of the DaSA, which seek to conserve built heritage and the built landscape, amongst other things.

Living conditions

27. Shearfold Barn and Merryhills are accessed from the appellant's driveway, which extends past their gardens. Once past their respective entrances, the driveway is bounded by high hedgerows and fencing. Both dwellings are also set back from the driveway. Traffic generated by two commercial vehicles and the appellant's domestic vehicle(s) would therefore be unlikely to cause significant noise or other disturbance to neighbouring occupiers' living conditions.
28. The stable block, open timber structure and the caravan used for human habitation have been relocated to back on to the rear garden of Merryhills. Activity associated with the mixed use of the land is separated from the immediate vicinity of the neighbours' private garden and, except for the burning of waste, is also unlikely to have any significant effect on their living conditions. The burning of waste can be precluded by the imposition of an appropriately worded condition.
29. The site currently provides a base for a single Gypsy family and provides a base for their tree surgery and landscape business. Any increase in the scale of the development or change of business activities could adversely affect living conditions of neighbouring residents. It is therefore necessary and reasonable to impose conditions restricting the scale and nature of the development to

that which was occurring at the time the notice was issued. The number of commercial vehicles allowed to operate from the site will be restricted to two, and the number of caravans for human habitation will also be restricted to two, with only one being a static.

30. For the reasons given above, the development accords with policies OOS4 (ii) and LHN6 (vi) of the CS, which seek to preserve the amenities of adjoining properties, amongst other things.

Suitability of location

31. Policy LHN6 sets out the criteria against which site allocations and/or planning applications for Gypsy, Traveller and Travelling Showpeople sites will be considered. It confirms that planning permission will be granted where all the identified criteria are met. I have concluded above that the development accords with criteria (ii) and (vi), as, notwithstanding being in the AONB, it does not have an unacceptable visual or landscape impact or unreasonably harm the living conditions of adjoining properties.
32. The site is not located within a nature conservation designated area or near a Source Protection Zone. It is not at risk of flooding and contamination has not been raised as an issue. There is adequate provision for parking and turning of vehicles and I see no reason why emergency vehicles could not be accommodated. The site is accessible by vehicles towing caravans and no issues of highway safety have been identified.
33. The site accommodates a single Gypsy family and is not therefore disproportionate in scale to the existing settlement. The site is on the edge of an existing settlement and there are bus stops located on Brede Hill, which can provide access to local services without reliance on private transport. However, the Gypsy and Traveller way of life is inherently reliant on private transport. Having a settled base will provide better access to medical and educational facilities. The development therefore complies with all the relevant criteria within policy LHG6.
34. The PPTS advises local planning authorities to '*very strictly limit new traveller site development in open countryside that is away from existing settlements or outside areas allocated in the development plan*'. The site is not allocated for development, but it adjoins and is part of an existing settlement. There is therefore no conflict with paragraph 25 of the PPTS.
35. The Council advise they have allocated sites and met their delivery targets for Gypsy and Traveller sites. A demonstrated need for this site is not however required by policy LHN6. This policy does however require the imposition of a condition to ensure that occupation of the site is restricted to those persons genuinely falling into the definition of Gypsies, Travellers and Travelling Showpeople. As the site is beyond the defined settlement boundary, such a condition would be appropriate.
36. For these reasons, the development accords with policies LHG6 and PC1 of the CS, which seek to approve Gypsy, Traveller and Travelling Showpeople sites and sustainable development without delay.

Other matters

37. While the Council has referred to ancient woodland and protected species, they acknowledge that the site is outside any relevant buffer zone. There is no evidence before me to suggest that the development has had any effect on ancient woodland or protected species.

Conditions

38. I have not been provided with any suggested conditions. However, for the reasons given above I find that conditions relating to occupancy, the number of commercial vehicles and caravans permitted on the site, removing permitted development rights for fences and walls, and landscaping are necessary. Requiring the approval of a site development scheme would also provide control in respect of the layout of the site, provision of adequate foul and surface water drainage, and external lighting, all in the interests of preserving living conditions for neighbouring occupiers.
39. The landscaping scheme, to include the replacement of close boarded fencing with native species hedgerows on the boundaries identified in green on the attached plan, shall be included as part of the site development scheme. The provision of bird and bat boxes shall also form part of the site development scheme.
40. The occupancy condition required to comply with policy LHN6 limits occupation of the site to Gypsies and Travellers as defined in Annex A of the PPTS. However, the Court of Appeal in *Smith* held that the exclusion of Travellers who have ceased to travel permanently is discriminatory and has no legitimate aim.
41. In this case, there is no foretelling as to whether any occupiers might be forced to cease travelling permanently during the anticipated lifetime of the permission. Imposing the suggested condition would be liable to result in unlawful discrimination, with members of the family being unable to live on this site. I shall therefore impose a condition which restricts occupation to Gypsies and Travellers, defined so as to not exclude those who have ceased travelling permanently.
42. Condition 6 is imposed to ensure that the site development scheme is submitted, approved and implemented so as to make the development acceptable in planning terms. There is a strict timetable for compliance because permission is being granted retrospectively, and so it is not possible to use a negatively worded condition to secure the approval and implementation of the site development scheme before the development takes place.
43. Condition 6 will also ensure that the development can be enforced against if the site development scheme is not submitted for approval within the period given by the condition, or if the details are not approved by the local planning authority or the Secretary of State on appeal, or if the details are approved but not implemented in accordance with an approved timetable.

Conclusion on ground (a)

44. For the reasons given above, I conclude that the appeal succeeds on ground (a). I shall grant planning permission for the use and operational development described in the notice as corrected. The appeal on ground (g) does not fall to be considered.

Formal Decision

45. It is directed that the enforcement notice shall be corrected as follows:

In section 3.THE MATTERS WHICH APPEAR TO CONSTITUTE THE BREACH OF PLANNING CONTROL, the deletion of all the words in (i) and the substitution of the words 'the material change of use of the Land from domestic garden use to a mixed use comprising of tree surgery and landscape business use and the stationing of caravans for human habitation'.

Subject to the correction, the appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the material change of use of the Land from domestic garden use to a mixed use comprising of tree surgery and landscape business use and the stationing of caravans for human habitation and the construction of a stable building, a timber open structure, hardstanding, walls, brick pillars and entrance metal gates at land on the north side of Stubb Lane, Brede, East Sussex as shown on the plan attached to the notice and subject to the conditions set out in the attached 'Schedule of Conditions'.

M Madge

INSPECTOR

Schedule of Conditions

1. The site shall not be occupied by any persons other than Gypsies and Travellers, defined as persons of nomadic habit of life whatever their race or origin, including such persons who on grounds only of their own or their family's or dependants' educational or health needs or old age have ceased to travel temporarily or permanently, but excluding members of an organised group of travelling showpeople or circus people travelling together as such.
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 (of which no more than ONE shall be a static caravan) shall be stationed on the site at any time.
3. No more than TWO commercial vehicles shall be kept on the site for use by the occupiers of the caravans hereby permitted, and they shall not exceed 3.5 tonnes in weight.
4. No commercial activities shall take place on the site, including the storage of materials, machinery, equipment, tools and associated goods, except within the open timber structure and the stable building. No burning of materials or waste shall take place on the site.
5. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no fences or walls shall be erected on the land.
6. The use hereby permitted shall cease and all caravans, structures, equipment and materials brought on to the site for the purposes of such use shall be removed within 30 days of the date of failure to meet 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 disposal of foul and surface water drainage of the site; proposed and existing external lighting on the boundary of and within the site; the provision of bird and bat boxes; the internal layout of the site, including the siting of caravans, hardstanding, parking and amenity areas; and tree, hedge and shrub planting, the replacement of the close boarded fencing on the boundaries coloured green on the attached plan with a native species hedgerow, including details of species, plant sizes and proposed numbers and densities (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) 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 scheme shall have been carried out and completed in accordance with the approved timetable.
- (v) Upon implementation of the approved site development scheme specified in this condition, that scheme shall thereafter be maintained.
- (vi) 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 the legal challenge has been finally determined.

Plan Referred to in Condition 6 (i)

