



Appeal Decision

Hearing Held on 3 May 2023

Site visit made on 3 May 2023

by David Murray BA (Hons) DMS MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 May 2023

Appeal Ref: APP/U2235/W/20/3259339

Lynch Bank Farm Barn, Detling Hill, Detling, Maidstone, Kent, ME14 3EX.

- 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 N Devlin against the decision of Maidstone Borough Council.
 - The application Ref. 19506349/FUL, dated 12 December 2019, was refused by notice dated 20 March 2020.
 - The development proposed is the change of use of land to use as a residential caravan site for one traveller family,
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Decision

1. The appeal is allowed and planning permission is granted for the change of use of the land to use as a residential caravan site for one traveller family at Lynch Bank Farm Barn, Detling Hill, Detling, Maidstone, Kent, ME14 3EX, in accordance with the terms of the application Ref. 19506349/FUL, dated 12 December 2019, and the plans submitted with it, subject to the conditions set out in the attached Schedule.

Preliminary matter

2. Prior to the hearing the Council queried the appellant's status as a gypsy or traveller. Mr Devlin said he was an Irish Traveller and undertakes building work particularly around Kent and Essex. Much of the work is on day trips but he regularly stays away in a caravan and meets up with others in his team to do building work and they also stay in caravans. Outside of his children's school term time he travels further afield for work with his family. He obtains work by leafleting and by door-to-door canvassing. Although he is looking for a settled base in Kent, so that his children can stay at the same school, he said he would continue to travel around southern England for work.
3. On the basis of the written and oral evidence given I am satisfied that Mr Devlin identifies as being a Traveller and he has a mainly nomadic habit of life where he regularly travels away for economic purposes. It is therefore appropriate to consider this appeal in relation to national and local policies applying to Gypsies and Travellers.

Main Issues

4. The main issues are:
 - Accord with the development strategy on the location of development;

- The effect on the character and appearance of the area;
- The effect on interests of biodiversity value;
- the need and supply of Gypsy and Traveller sites; and
- the personal circumstances of the appellant and best interests of children.

Reasons

Background

5. The appeal site comprises a generally square area of land which lies on the lower slopes of the 'Boxley Scarp' part of escarpment of the southern edge of the Kent Downs Area of Outstanding Natural Beauty (AONB). The site has a vehicular access/driveway to Pilgrims Way, partly shared with the adjoining property Lynch Place, and which then enters the A249, a dual carriageway. At the time of the site visit the appeal site had a dilapidated timber structure (now referred to as The Barn) and a static mobile home which is occupied by the appellant and his family. The area around the mobile home and The Barn is surfaced with gravel while the driveway to the site has a tarmac surface.
6. The planning history of the site is relevant to this appeal. It is evident that permission was granted on appeal for the part demolition, extension and use of The Barn for office use with access, parking and turning facilities. A subsequent application to convert The Barn was submitted in 2016 and allowed by the Council for the conversion and extension of The Barn to residential use. The approved plan of the layout shows a turning facility for a vehicle of a commercial size on the part of the site where the current scheme shows the siting of the mobile home. Although there is no cross-section across the site to show the extent of excavation, the formation of the turning and manoeuvring area would have been likely to have required excavations into the sloping site to form a flat area. This work had been carried out before the submission of the planning application the subject of this appeal. On this basis Mr McQuillan had concluded that the operational development of the excavations within the appeal site, as defined by the red line, were lawful and as the permission had been in part implemented it was still 'live'.
7. On other land outside and to the east of the red line denoting the appeal site, there was a stable building which the appellant said was a temporary building placed there for the welfare of horses and which would be removed. Moreover, further to the east there appeared to be other extensive excavations on land in the appellant's ownership, but such work is beyond the scope of this appeal.

Policy context

8. The development plan includes the Maidstone Borough Local Plan (the LP) adopted in 2017. Mr McQuillan explained that the Council is preparing a new local plan and the Stage 1 examination of this was held in November 2022. The Examining Inspector has indicated that the Stage 2 Examination is likely to be held later this year with the policy concerned with the provision of sites for gypsies and travellers initially scheduled for the 6th of June. Mr McQuillan accepted that the policies and provisions of the emerging plan were not at a stage where they could be taken into account in this appeal and I agree.

9. Policies in the Kent Downs AONB Management Plan are also relevant but these appear to have similar provisions and policy tests as the main development plan policies mentioned below.

Accord with the development strategy

10. LP policy SS1 sets out a spatial strategy for the Borough which makes provision for new development principally around Maidstone and then larger villages but in countryside locations protection will be given to the local landscape of the Borough and the Kent Downs AONB will be conserved and enhanced. Policy SP17 deals with development in the countryside in more detail and requires new development to meet one of the specific other policies and not result in harm to the character and appearance of the area, but in the AONB, it should not have a significant adverse effect. Policy DM15, in relation to Gypsy and Traveller accommodation was not referred to in the reasons for refusal however Mr McQuillan agreed it is relevant to the case, including in landscape terms and accessibility to facilities and services.
11. Where the policies refer to character and appearance they shall be considered under a subsequent main issue below. The Council is also concerned about the location of the site in sustainability terms. While the appeal site lies in the countryside outside a settlement, I noted at the site visit that it lies close to the village of Detling via the pedestrian Jade's Bridge over the A249 and there is a community shop in the village and other facilities including a pub and village hall. These facilities are easily accessible from the appeal site on foot. I also noted that there are bus stops on the A249 close to the access to the site with a service to Maidstone and Sittingbourne. Although the local facilities are relatively limited, with the public transport links also available I am satisfied that the site has reasonable accessibility to meet the requirements of criterion (i) of Policy DM15.

The effect on the character and appearance of the area and landscape of the AONB

12. In considering this effect I have taken account of the Landscape and Visual Impact Assessment produced by 'Reports 4 Planning' (now referred to as the LVIA) for the appellant; Mr Quillian's Statement and the representations made by the AONB Unit together with the AONB Management Plan. These documents provide a comprehensive analysis of the sensitivity of the appeal site and its surroundings. At the site visit I considered the proposal around the immediate environs of the appeal site and its siting on Boxley Scarp from Jades Bridge, the footpath along the frontage of the site adjoining the A249, and the public footpath which goes northwards over Lynch Bank. The latter was said to be part of the old route of the North Downs Way before this was diverted to run over Jades Bridge.
13. The LVIA identifies the main landscape receptors and their sensitivity and considers the main impact during construction and during occupancy afterwards. In each receptor element, which is rated as having a high degree of sensitivity, the significance is assessed as either a 'negligible' or 'low-to-negligible' impact.
14. This reflects my own assessment of the visual impact of the proposal. Viewed from the elevated position on Jades Bridge and its ramped walkways, the mobile home on the appeal site is mostly hidden by existing vegetation. There is a similar dense screen and an interior wooded fence along the frontage with

the A249. From the public footpath mentioned above, there are occasional views out through the trees and shrubs of the land excavations to the east of the appeal site, however the appeal site itself and the sited mobile home were hardly apparent in the landscape setting.

15. I appreciate that there would be a change to the immediate environs of the appeal site but this has to be seen in the context of the residential environment of the adjacent property at Lynch Place together with The Barn. Mr McQuillan stresses that the approved site plan for the residential conversion of the Barn shows a grassed area either side of the turning space but the gravelled surface as proposed, and as existing, does not make the appearance of the proposal more imposing in the landscape. I have also taken account of the fact that the live permission for the residential conversion of The Barn may lead to two residential units but given the dilapidated state of the barn I do not feel that such conversion is likely. Mr Devlin said that if The Barn was repaired it would probably be used as a day-room for the proposed residential caravan site, and this could reduce the potential need for outbuildings. Even so, I am satisfied that the appeal proposal is not incompatible with the permission already granted nor would it lead to a more intrusive use of the site in visual terms.
16. Great weight has to be given to conserving and enhancing the landscape and scenic beauty of the AONB as set out in paragraph 176 of the National Planning Policy Framework. However, overall on this issue I find that the use proposed, and its inherent trappings, would not have an adverse effect on the landscape character of the area and the special character of the Boxley Scarp in the AONB would be conserved. As such there is no conflict with part 9 of Policy SS1, parts (1) and (4) of Policy SP17, and part (ii) of Policy DM 15.

The effect on interests of biodiversity value

17. The appeal site lies on the scarp slope of the downs and lies adjacent to land designated as a SSSI and Special Area of Conservation (North Downs Woodlands) (SAC). The Council advised that in such a sensitive location an ecological appraisal should have been submitted with the application to assess the impact on an ecology and biodiversity. Mr Godding also said that he had seen adders and grass snakes in his own garden and on the appeal site. The appellant says that the LVIA was prepared by a team that included an ecologist, and the assessment takes full note of the biological sensitivity of the land. However, the assessment was also undertaken on the basis that the land excavations on the appeal site had previously been undertaken and were not part of the appeal proposal, or were on other land outside of this and subject to a separate enforcement investigation.
18. Bearing in mind that the Council accepts that the land excavations on the appeal site itself were permitted under the previous permission and the proposal is only for the change of use of the land, I find that the evidence submitted does not indicate that the proposed change of use would be likely to damage the features for which the SSSI or SAC have been designated. I therefore find no conflict with the general provisions of Policy DM1 or Policy DM3 concerning the natural environment.

The need and supply of gypsy and traveller sites

19. The Planning Policy for Traveller Sites (PPT)S indicates that Councils should identify a five year supply of deliverable sites set against locally set targets.

The relevant part of the spatial strategy in Policy SS1 sets out that between 2011 and 2031 provision should be made for 187 Gypsy and Traveller pitches. The Council said that the most recent analysis based on the 5 years between 2022 and 2027 indicated that there was a need for some 29 pitches for gypsies and travellers while the supply side during the same period amounted to some 35 pitches. This amounted to a 6.2 year supply and met the requirements of the PPTS.

20. However, it was recognised that the survey data for the need requirement was based on the GTAA undertaken in 2012 which was now out of date. The Council had commissioned a new GTAA to inform the policies in the emerging local plan and this was published in January 2023. Mr Brown said that the total pitch requirement covering all needs for the period 2019-2040 was in the region of 604 pitches and so when annualised that would result in an increased level of need for pitches compared with the 2012 assessment. Mr McQuillan accepted that the basic need for gypsy and traveller sites has increased but advised that the emerging local plan had been prepared to accommodate this requirement although the plan and applicable policies would be formally tested soon at Examination. Mr McQuillan predicted that if the plan was found to be sound, with modification, the earliest date when allocations could take effect on the ground was about 2027.
21. Overall, on the issue of need and supply there is evidence that the Council has met the need previously identified for traveller sites until this year but it is likely that that this need has increased from now onwards. Nevertheless, I agree with Mr McQuillan that the strategic level of need for gypsy and traveller sites has to be properly considered through the formal local plan process rather than individual section 78 cases. At the moment I find that and there is not a significant unmet need which should be afforded much weight.

The personal circumstances of the appellant and best interests of children

22. Mr Devlin explained that the mobile home on site and the subject of this appeal is his home with his partner and their four children. They are aged nine, eight, five and two. The children of school age attend local infant / junior schools. Letters were submitted from the Headteacher/Deputy Head of these Schools which refer to the progress that the children have made at school since having a settled base. The teachers stress the importance of stability for the children in receiving education and social development including the benefit of maintaining friends.
23. I have also taken account of the letter from a doctor at the Bearsted Medical Practice who sets out a medical condition applying to a family member. They benefit from having regular and certain access to these facilities and the doctor indicates that a transient life on the roadside would be detrimental to the condition.
24. Mr Devlin said that if the appeal was dismissed he and family did not have any alternative accommodation and would be faced with a life on the roadside. Moreover, the Council was not aware of any alternative accommodation which was suitable and available for the appellant to turn to.
25. These personal circumstances are factors to which significant weight must be attached.

Other matters

26. The Council refers to an appeal decision at Eden Park farm elsewhere in the Borough where an appeal¹ was dismissed in 2019 in circumstances said to be similar to this case. Mr McQuillan said the Council expected consistency in decisions. However, Mr Brown tabled a more recent decision² relating to a two pitch Gypsy site at Eden Park Farm where the appeal was allowed. I have read both cases and it appears to me that each has been decided on the individual site specific merits of the case, although I note that Eden Park Farm lies in the Low Weald Landscape of Local Value, a local designation, rather than in the statutory designation of the AONB. Other than this point, these appeal cases do not have a material bearing on the current appeal.

Planning balance

27. On the main issues I have found that the location of the appeal site lies close to basic facilities in Detling and is on a bus route to facilities further afield. In sustainability terms the proposal meets the requirements of criterion (i) of Policy DM15.
28. The impact on the sensitive landscape of the AONB has to be considered on the basis that it is agreed that the land excavation on the appeal site itself related to a previous permission and the current proposal is only for the change of use of the site. In this context I find that the proposed residential caravan site use, including the siting of the mobile home, would not have an adverse effect on the special landscape character of Boxley Scarp or the wider AONB. Neither has it been demonstrated that the proposed change of use would be likely to damage the features for which the SSSI and the SAC have been designated.
29. In policy terms I find that the proposal meets the provisions of Policy DM15 on new Gypsy and Traveller sites. Moreover the proposal will not have a significant adverse effect on the setting of the AONB or harm the general character of the area. As the other criteria in Policy SP17 are met or are not applicable, the proposal accords with this policy and is development that can be permitted in the countryside. There is also accord with the relevant parts 9 and 10 of Policy SS1 on the current overall strategy for development.
30. The proposal therefore accords with the development plan when read as a whole. Other relevant factors such as the appellant's personal circumstances and the best interests of children support the residential development for a traveller family. I will therefore allow the appeal on a permanent basis.

Conditions

31. The Council recommends 12 conditions, which were discussed at the hearing, and I will consider under the same numbering. As the proposal is justified on a permanent basis I will not impose a personal restriction (No.1) or a temporary restriction (No.2). As the proposal has been shown to meet the specific policy on the development of new gypsy and traveller sites I will impose a condition to limit the occupancy accordingly (No.3) but amend this in the light of the Court of Appeal decision on the case of *Lisa Smith*.

¹ APP/U2235/W/18/3206450

² APP/ U2235/W/20/3255646

32. Conditions requiring the development to accord with the approved plans (No.4) and to limit the number of caravans (No.5), as well as restrictions on commercial activities (No.7) and the size of vehicles (No.8) are also reasonable and necessary to control the overall visual impact of the use and its setting in this sensitive landscape. I will also impose condition No. 9 as related to further details which need to be submitted and agreed but amend this to make it simpler. Finally, it has not been demonstrated that there is an exceptional need to remove 'permitted development rights' from the site as related to this permission, even if such provisions do exist in the GPDO³. I will therefore not impose conditions 11 or 12.

Conclusion

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

David Murray

INSPECTOR

³ The Town and Country Planning (General Permitted Development) (England) Order 2015, as amended.

Schedule of conditions

1. The development hereby permitted shall be carried out in accordance with the following approved plans:- Site Location Plan (as date stamped by the Council 19 December 2019) and Proposed Site Layout Plan (as date stamped by the Council 19 December 2019).
2. Within six months of the date of this decision a Site Development Scheme shall be submitted to the Council. The Scheme shall include:
 - (a) The landscaping of the site including recommended mitigation as per the LVIA (prepared by Reports 4 Planning) dated 15 October 2021;
 - (b) The disposal of foul drainage from the site;
 - (c) Facilities for the storage and collection of refuse and waste;
 - (d) Details of external lighting.

The approved details of the Scheme as agreed by the Council shall be implemented within six months of their agreement and retained thereafter for as long as the residential use remains.

3. All new planting required as part of the landscaping scheme shall be carried out by the end of the next available planting scheme. All shrubs, trees and hedge planting shall be maintained free from weeds and shall be protected from damage by vermin and stock. Any trees or plants, including extant planting shown on the proposed landscaping scheme to be retained, which within a period of five years, 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, unless otherwise agreed in writing by the local planning authority.
4. The site shall not be occupied by any persons other than gypsies and travellers, defined as persons of a 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.
5. 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 static caravans, shall be stationed on the site at any time.
6. No vehicle over 3.5 tonnes shall be stationed, parked or stored on this site, and no commercial activity or use, including the storage of commercial materials and waste, shall be carried out on the site.

APPEARANCES

FOR THE APPELLANT:

Mr P Brown BA	Planning Consultant
Mr N Devlin	Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Mr McQuillan, BA (Hons)MTP, MRTPI Mr	Planning Consultant on behalf of Maidstone Council.
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Interested person

Mr G Godding, BSc, FAPM.	Neighbour
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Documents handed in at the Hearing

1. Letter from Bearsted Medical Practice – dated 26 June 2021 (PB)
2. Letter from Dept of Work and Pensions - dated 23 April 2023 (PB)
3. Letter from Headteacher North Borough Junior School - dated 16 July 2021(PB).
4. Letter from Deputy Head Teacher – dated 6 July 2020 (PB).
5. Letter in support dated 1 August 2021 (PB).
6. Copy of planning appeal decision- APP/U2235.W/20/3255646 (RM).
7. Copy of approved site plan for permission 19/506402/SUB (RM).

End