



Appeal Decisions

Hearing held on 15 March 2022

Site visit made on 15 March 2022

by Timothy C King BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 May 2023

Appeal A: APP/J2210/C/20/3262833

Land at New House Lane, Chartham, Kent CT4 7BN

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Billy Lee against an enforcement notice issued by Canterbury City Council.
 - The enforcement notice was issued on 5 October 2020.
 - The breach of planning control as alleged in the notice is, Without planning permission the material change in the use of the land for the stationing of three touring caravans for residential use together with the formation of hard standing and the erection of fencing, a single-storey outbuilding for ancillary use.
 - The requirements of the notice are:
 - 1) Cease the unauthorised material change of use of the Land for the stationing of three caravans for residential use within thirty days of the Notice taking effect;
 - 2) Remove from the land the three caravans within six months of the Notice taking effect;
 - 3) Remove from the land all goods and paraphernalia and rubbish and other materials brought onto the land for the purpose of the unlawful residential use; and
 - 4) Remove from the land the hard-core surface which has been laid to facilitate the material change of use of the site and then rake over the land and apply 100mm of top-layer earth.
 - The period for compliance with the requirements are; for Requirement 1, thirty days from the date this notice takes effect, and for Requirements 2, 3 and 4, six months from the date this Notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (b), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a) and the prescribed fee has been paid, an application for planning permission is deemed to have been made under section 177(5) of the Act as amended, and falls to be considered.
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Appeal B: APP/J2210/W/20/3252982

Land at New House Lane, Chartham, Canterbury, Kent CT4 7BN

- 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 Billy Lee against the decision of Canterbury City Council.
 - The application Ref CA/19/01901/FUL, dated 27 September 2019, was refused by notice dated 22 November 2019.
 - The development proposal is described as "*The use of land for the stationing of caravans for residential purposes of a single gypsy pitch together with the formation of hardstanding and utility/day room ancillary to that that use, and the erection of a stable.*"
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Formal Decisions

Appeal A

1. It is directed that the enforcement notice be corrected by, in the allegation, deleting the words "three touring caravans" and replacing this with the words "caravans related to the residential use of the land".

Requirement 1) shall be deleted and reworded to state:

"Cease the unauthorised material change of use of the land for the stationing of caravans relating to the residential use of the land."

Requirement 2) shall be deleted and reworded to state:

"Remove from the land all caravans relating to the residential use of the land".

2. The enforcement notice shall be varied by changing the time for compliance (i) from a period of thirty days to six months from the date this notice takes effect.
3. Subject to these corrections and variation the appeal is dismissed, the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal B

4. The appeal is dismissed insofar as it relates to the change of use for the stationing of caravans for residential use together with the formation of hardstanding. The appeal is allowed insofar as it relates to the erection of a stable on land at New House Lane, Chartham, Kent CT4 7BN, in accordance with the terms of the application ref 19/01901/FUL, dated 27 September 2019, and the plans submitted with it, so far as is relevant to that part of the development hereby permitted and subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
 - 2) The development hereby permitted shall be carried out in accordance with the following approved plans: drawings nos 19_1001-001 (Location Plan), 19_1001_004 (Stable Block) and 19_1001_003 Rev C (Proposed Site Plan), but only insofar as it relates to the stable block.

Preliminary Matters

5. The appellant lives alone in one of two caravans at the appeal site. In his Witness Statement he indicates that his two small children, who mainly reside with their mother elsewhere, do stay overnight at the site on occasions during the week.
6. The site is located within a designated Area of High Landscape Value and is approximately 500m from the edge of the Kent Downs Area of Outstanding Natural Beauty. Considered adverse effects on the surrounding landscape's features formed part of both the reasons for the Council refusing planning permission and also stated reasons for issuing the enforcement notice. However, at the Hearing the Council said that it would offer no evidence in this regard. I agree with the Council's approach.

7. Also at the Hearing the Council produced updated figures for its 5 year land supply and had calculated that this requirement was significantly exceeded with an estimated supply of 11.67 years. The appellant took issue with this and, as the Council had commissioned specialist consultants to undertake a Gypsy and Traveller Accommodation Assessment (GTAA) to identify their accommodation needs, and neither of the Council's witnesses felt able to comment with particular certainty on this issue, I was agreeable to a request that the consultants be contacted to explain matters in writing. Accordingly, the appellant was given the opportunity to respond to any comments made.
8. In the event the consultants agreed with the appellant that there is a shortfall of gypsy and traveller pitches across the Canterbury City Council area. However, the consultants did calculate that by April 2022, with completions and the number of planning permissions granted since the base date of the GTAA, there was a 5.88 year supply of sites. This is a considerable adjustment from the estimated supply that had been put to me at the Hearing.
9. The appellant, in his written response, disagreed with the consultants' figures on the basis of considered doubled-up households, concealed households, hidden need and emerging need. In taking into account the need calculated during the five years, 2022-2027 and the current supply, he concluded that there was a significant shortfall, that the GTAA has significantly underestimated the need for pitches, and the Council did not have a five year supply.
10. The appeal site lies within the catchment area of Stodmarsh, an area of lakes and important wetland habitats. Nutrient levels (phosphorus and nitrogen) are resulting in eutrophication within Stodmarsh, adversely affecting the protected habitats. Research is ongoing but Stodmarsh is thought to be at risk from additional nutrient inputs, including that from new developments within its catchment.
11. Any likely significant effects (LSEs) arising from a development need to be considered alone and in combination with other development in the area, adopting the precautionary principle. Accordingly, Natural England (NE) has adopted such an approach that LSEs on Stodmarsh and its designated features and species, due to increases in wastewater from new development, cannot be ruled out.

Matters concerning the enforcement notice

12. The appellant has occupied the site since May 2015. The enforcement notice alleges that 3 touring caravans were sited on the land at the time it was issued in October 2020. The appellant says in his Witness Statement that the notice was issued without any Council official having visited the site at that point. Indeed, the Council's representations refer only to a site visit carried out in January 2020 which confirmed that 3 caravans were present on the land, hard-core material had been laid, a single-storey outbuilding had been erected and fencing surrounded the yard. This was cross-referenced with an aerial photograph from 2019 which showed that development had taken place between these dates.
13. It was on this basis that the Council decided to issue the enforcement notice.
14. The appellant's Witness Statement goes on to say that one of the caravans had, in fact, been removed in March 2020, at the start of the first lockdown.

That caravan had been lived in by the appellant's sister who, at that time, then vacated the site. Since his sister's caravan was removed two caravans have remained at the site. At my site visit I noticed that there was one static van and one tourer.

15. Also at my site visit I noted that the plan attached to the enforcement notice represents a wider area than that concerned with the matters relating to the alleged breach. The smaller area, limited to the yard where the caravans are positioned, along with the access track off New House Lane, is instead shown on the site plan submitted alongside the planning application; in other words that area now relating to Appeal B.
16. The wider site includes two paddocks on either side of the yard, previously used in relation to the keeping of horses; the appellant saying that he sold his last horse in 2019. A small timber, stable block was present abutting the eastern boundary of the site, but was in a state of some disrepair. The planning application the subject of Appeal B shows a new stable block proposed within the yard area. In this regard the appellant indicated that he hopes to acquire horses again in the future. The enforcement notice makes no mention of the stable block nor the keeping of horses
17. The appellant does keep chickens, ducks and goats on the land, but this constitutes an agricultural use which does not fall within the definition of development.
18. In the circumstances, the appellant suggested that, either the enforcement notice's allegation should be amended to include the word agriculture, or the area ringed on the plan attached to the notice should be redrawn. However, it appears to me that the planning unit as is relevant to the breach of control is shown on the plan and it is not therefore necessary for any such amendments to be made.
19. Although the enforcement notice's allegation refers to the erection of fencing and a single- storey outbuilding for ancillary use there is no mention of such in the required steps for compliance. It is not within my remit to make amendments in this regard as this could have implications for the provisions of S173(11) of the 1990 Act, as amended, in the event that the enforcement notice's other requirements are subsequently complied with.
20. Requirement 4 of the enforcement notice not only stipulates the removal of the yard's hard-core surface, it also requires that the land be raked over and, specifically, that 'top-layer earth' to a depth of 100mm be applied. S173(5)(b) of the 1990 Act, as amended, can require for the carrying out of any building or other operations. In this particular instance I am satisfied that the said step is reasonable given the purpose of the enforcement notice.
21. Apart from the existing single-storey ancillary day room/utility block the yard area also contains several small timber sheds which it appears are currently being used in an ancillary capacity to the residential use. The Council has made no mention of these structures in the enforcement notice, and as I have not been provided with any information relating to the lawfulness or otherwise of these structures it is not necessary that I explore this particular matter further.

22. To put the notice on a proper footing I shall, though, correct the wording of the allegation by deleting the reference to three touring caravans and, instead, I shall refer to caravans related to the residential use of the land so as to more accurately focus on the actual development involved.

Appeal A on ground (b)

23. An appeal on ground (b) is that the alleged breach, which must firstly constitute development, was not occurring at the time the enforcement notice was issued, as a matter of fact.
24. The enforcement notice, although it refers to the stationing of three touring caravans, does refer to their use for residential purposes. Moreover, the appellant acknowledges that he was residing at the site in a caravan in October 2020 when the notice was issued. This constitutes a material change in the use of the land for which the benefit of planning permission is required.
25. The appellant says that, rather than the single residential use specified, the allegation be expanded to include the keeping of horses. However, given that the appellant, in his Witness Statement, says that he sold his last horse in December 2019 and the enforcement notice was not issued until October 2020, the land would not have been used for the keeping of horses at the date of issue.
26. Even if there had been an identifiable mixed use of the land at the time the notice was issued, such an allegation would obviously have implications for the steps required for compliance, unless the Council chose not to require that the horse related use cease.
27. In the circumstances I conclude that a breach of planning control was occurring at the time that the enforcement notice was issued. Accordingly, the appeal on ground (b) does not succeed.

Appeal A on ground (a) – the deemed planning application (DPA), and also Appeal B

Main Issues

28. The main issues are largely the same for both appeals A and B. These are:

- 1) National policy, and the objectives of the development plan in respect of gypsy and traveller accommodation;
- 2) Whether the development is situated in an appropriate location, with regard to accessibility to shops and facilities;
- 3) The development's effect on water nutrient neutrality; and
- 4) Whether the development results in harm to the rural New House Lane, off which it is situated.

Reasons

National policy and the development plan

29. National policy is contained in the government's Planning Policy for Traveller Sites, 2015 (PPTS) which states that applications should be assessed and

determined in accordance with the presumption in favour of sustainable development.

30. Policy B of the PPTS says that local planning authorities, in producing their Local Plan, should identify and update annually, a supply of specific deliverable traveller sites, sufficient to provide five years' worth of sites against their locally set targets. In this context 'deliverable' means sites that are available now, offering a suitable location for the development.
31. In the above connection, Policy H of the PPTS says that Councils should, amongst other things, consider the level of need for additional gypsy and traveller accommodation and the availability of alternative accommodation.
32. Policy HD10 of the Canterbury District Local Plan (LP), adopted in 2017, says that sites should be well related to and within a reasonable distance of local services and facilities, and should also be capable of being provided with water supply, sewage disposal and power supply. The explanatory text says that the City Council worked in partnership with other Kent local authorities, Thanet, Dover and Shepway to produce the Gypsy and Traveller Accommodation Assessment 2018 (GTAA) and provide an evidence base on existing provision and future demand for sites.
33. The Local Plan says that it is intended to address this matter by way of a Development Plan Document (DPD). However, when questioned at the Hearing, the Council witness was not able to indicate how the document was progressing, nor indeed when it would be completed.
34. The appellant drew my attention to what he considers to be errors in the GTAA methodology which, if so, will have resulted in a significant underestimation of need. These include inaccuracies in recording the number of households in the district with planning permission at the base date, the belief that households were not accurately identified that were doubled up, concealed or over-crowded, and a failure to establish an accurate number of gypsies living in bricks & mortar houses who would instead prefer to be resident in mobile-homes. The Council's witnesses, when faced with these assertions, could not convincingly counter the claims due to a lack of empirical evidence and detail at their disposal.
35. There is clear disagreement between the two main parties as to whether the Council has a five year deliverable land supply of pitches for the residential needs of gypsies and travellers. The fact that the Council's original estimation of a 11.67 years supply had to be revised down sharply to 5.88 years only adds to the uncertainty. Also, as the 2018 GTAA has yet to be formally updated I am not fully convinced as to the accuracy of the figures.
36. Both main parties do, however, agree that there is a shortfall of residential pitches throughout the Canterbury City Council area, and I afford this considerable weight. When also taking into account the appellant's reasoning that the GTAA had significantly under-estimated the need for pitches and the absence of the intended DPD, I am somewhat more inclined towards the appellant's view as to the current position.

Location

37. The site lies isolated in the open countryside, and is accessed via a narrow track spurring off from New House Lane. Paragraph 25 of the PPTS says that Councils should very strictly limit new traveller site development in open countryside that is away from existing settlements or outside areas allocated in the development plan. LP Policy SP4 indicates that the urban areas of Canterbury, Herne Bay and Whitstable continue to be the principal focus for development. That said, gypsy and traveller sites tend mostly to be in rural areas in accordance with their lifestyle.
38. LP policy HD10 says that, in considering proposals for gypsy and traveller sites planning permission will be granted if a number of criteria are met; one of these being that the site should be well related to and within a reasonable distance of local services and facilities.
39. The nearest settlement is Chartham, which is distanced some five minutes away by car. Chartham has a general store, a post office, a primary school and a sports club. Alternatively, if travelling by car towards Canterbury, the Wincheap area, centred around the A28 road, has both shops and services. and can be reached in approximately ten minutes.
40. LP policy SP4 indicates that, although specifically relating to new housing, development should be of an appropriate size, design, scale, character and location appropriate to the character and built form of the local centre (in this case Chartham), and this will be supported provided that the proposals are not in conflict with other local policies.
41. Here, there is no local bus nor train service and, inevitably, there is heavy reliance on the private motor vehicle. That said, local shops and facilities are not located that far away, and the accommodation is limited in scale and represents a low key use of the land.
42. In this regard I disagree with the Council's view that the use urbanises the site. The site is set back significantly from New House Lane and bearing in mind the proposed stable block, the intended keeping of horses at the site, and also the agricultural use of the land involving the appellant keeping chickens, ducks and goats, I find that the use is not unacceptable in terms of its character and appearance. The day room or amenity building is also of modest scale and form.
43. I conclude that, although, the use does largely run contrary to the objectives of LP policies SP4 and HD10, it is reasonably close to Chartham and the location is not necessarily in material conflict with the general guidance in paragraph 25 of the PPTS. On balance, I am satisfied that the development, as it stood on the site at the time of my site visit, is not unacceptable in its contextual setting and also integrates satisfactorily into the surrounding landscape.

Water neutrality

44. The Stodmarsh Nature Reserve is protected under European Law and is managed by NE. Due to the discharge of wastewater from residential development into the wastewater treatment works within the Stour Valley river catchment area the development could have a potential significant effect on the integrity of the Stodmarsh Special Area of Conservation/Ramsar site.

45. The basis of nutrient neutrality is that there is no increase from the existing nutrient contribution at a Habitats site as a result of a plan or project. Where a Habitats site is already unfavourable, there is the potential that making a fresh decision under the Habitats Regulation Assessment (HRA) process to sustain the current nutrient contribution could mean that development may inadvertently undermine the achievement of the restore objective by others.
46. In September 2021 NE produced guidance which advised that any new development taking place must not add to this negative impact, and to prevent any further such impact all new development should demonstrate water neutrality. This advice was further updated in March 2022 to reinforce the directive.
47. The appellant says that a grant of planning permission would not generate additional nutrients, but instead would maintain the status quo that has existed since May 2015.
48. The correct approach to be taken, as applied by NE, is that the development needs to be assessed against the requirements of regulation 63 of the Conservation of Habitats and Species Regulations 2017. The consideration of any measures to avoid or reduce the harmful effects upon Stodmarsh and achieve water neutrality can only be taken into account at the Appropriate Assessment stage of Habitats Regulation Assessment. The general advice is that mitigation within such a development site should be considered first to minimise the contribution from the development itself. Where it is not possible to provide or secure the necessary mitigation in this way, then mitigation on land outside the development can be considered.
49. Attempts to secure a water neutrality strategy by way of a condition imposed on a planning permission is not considered to be acceptable by Natural England as it does not provide for the necessary certainty that the impacts of a development can be mitigated. Any grant of planning permission absent of the up-front certainty that the impact on Stodmarsh can be mitigated would therefore be contrary to the Habitat Regulations.
50. LP policy LB7 says that development or land-use changes likely to have an adverse effect, either directly or indirectly on designated sites, such as Stodmarsh, will be expected to demonstrate enhancement measures to benefit biodiversity. Notwithstanding this, as mentioned, no measures of mitigation have here been put forward. The essence of the policy is reflected in the contemporary advice within paragraph 180 of the Framework which clearly indicates that planning permission should be refused for development that would result in significant harm to biodiversity and/or result in the loss or deterioration of irreplaceable habitats. No means of strategic mitigation currently exists.
51. The appellant has occupied the site since May 2015, which was several years prior to Natural England's original notification to Councils as to the necessity of water neutrality. There is currently a septic tank installed, although the proposed block plan shows a biodigester would be introduced. However, no clear details of such are before me. Due, though, to the length of time the site has been occupied the appellant takes the view that there would be no effect on the generation of nutrients, and does not therefore consider that an Appropriate Assessment needs to be undertaken.

52. In support of his case the appellant has drawn my attention to two previous appeals, one from 2006 and the other from 2011 where, similarly, the Inspectors were faced with the effects on habitats sites. Both cases also involved gypsy and traveller development. In each case the respective Inspector found that, due to the site having been occupied for a number of years, an additional household would not effectively be introduced and, in allowing the appeals the Inspectors concluded that the status quo was being maintained.
53. However, this preceded Natural England's recent advice. Nonetheless, the appellant has also highlighted a more recent appeal decision from September 2022 (*APP/F1610/W/19/3237163*) where, in allowing the appeal, the Inspector granted planning permission, retrospectively, for a single gypsy pitch where the site was within the Zone of Influence of a Special Area of Conservation.
54. Despite NE's directive the Inspector reasoned that, as the occupants had been residing at the site for over six years, the development did not add to the resident population and the proposal would not have an adverse effect on the integrity of the protected habitat. In his reasoning the Inspector also commented that the Council's witness had confirmed at the Hearing that there was no intention to take any enforcement action against the occupiers should the appeal fail.
55. Whether or not this influenced the decision is unclear but I would suggest that the Council would not be legally bound by its witness's apparent intention. It would also appear that NE took little, if any, part in the appeal process for that particular case. That said, given the circumstances, the Inspector reasoned that no mitigation or an appropriate assessment would be required here.
56. In this regard NE, when re-consulted on the current development, took a contrary view to that of the above Inspector and stated:
- "Natural England advise that the appellant's interpretation of the position is not correct and that we do not agree that existing developments without extant planning permission should be exempt from nutrient neutrality. This represents Natural England's legal opinion..."*
57. NE goes on to say that the appellant should provide a strategy for achieving nutrient neutrality, using the March 2022 guidance and nutrient budget calculator water, and also will need to provide evidence for its treatment efficiency, as well as a management and maintenance strategy, to protect against potential malfunction/failure and ensure its efficiency is maintained in perpetuity.
58. Only when in receipt of the necessary details can the requisite appropriate assessment be carried out by a competent authority.
59. In conclusion, on this main issue, the development does not enjoy planning permission, and neither is it immune from planning control. Irrespective of the Inspector's conclusions in the 2022 appeal decision cited above I am satisfied that NE's contemporary advice should be adhered to and mitigation measures should be identified by the appellants to allow for an Appropriate Assessment to take place.

Effect on New House Lane

60. One of the stated reasons for issuing the enforcement notice is that the development has impacted unacceptably on the rural lane due to resultant harm from vehicular movements. However, this is directly at odds with comments in the Council's case report relating to the planning application which says that, given the scale of the development, it would not generate an increase in vehicular movement such that it would result in an unacceptable impact on the highway network or undue pressure on local infrastructure.
61. Due to the site's low level of occupation I am satisfied that the use has little effect in these regards.

Other Considerations

Human Rights

62. 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.
63. However, in considering the proportionality of a requirement to leave one's home, as the enforcement notice here stipulates, it is relevant whether or not the home was established unlawfully. This is a case in point. Although, as required, I have had due regard to the appellant's rights in this instance I have found the interference proportionate due to the nutrient issue being of overriding weight.

Representations

64. I have had regard to the representations received from interested parties. These have been covered in my reasoning and the representations have not affected my conclusions.

Conclusions on Appeals A and B

65. I have taken into account that, although there is a contention over whether the Council has a five year supply of land for gypsy and traveller purposes, the Council's consultants agree with the appellant that there is a shortfall of gypsy and traveller pitches across the Canterbury City Council area. I have also found that the development enforced against, and also that refused planning permission, does not involve harm in planning terms and to interests of acknowledged importance, save for the matter of water neutrality which I have set out. Due to the implications of such and NE's stance I must consider that this identified harm outweighs the other main issues, and consequently the appeals turn on this issue. In the circumstances I am unable, therefore, to allow the appeals.
66. Given my findings I should imagine that likelihood will be that the appellant will look to address the neutrality issue and then return to the Council with a revised planning application. In order to facilitate this I am extending the time period for compliance.
67. Turning to the proposed stable block, there is no firm indication as to what the Council's stance would be as to an unauthorised use of the land for equestrian related purposes. However, I do note that there was no reference to the proposed erection of the stable building, which formed part of the planning application, in the Council's reasons for refusal. On this basis, it can be

reasonably assumed that the Council does not regard the stable building as an unacceptable form of development. I share this view.

Appeal A, on ground (f)

68. An appeal on ground (f) is that the requirements of the enforcement notice go beyond what is necessary to remedy the identified breach or the harm to amenity.
69. On the basis that the enforcement notice, in this instance, has been issued to remedy the identified breach I am satisfied that the various requirements are both reasonable and necessary to serve the planning purpose for which this notice has been designed to address. Lesser steps would not remedy the breach.
70. For this reason the appeal on ground (f) does not succeed.

Appeal A, on ground (g)

71. An appeal on ground (g) is that the stated time period for compliance with the enforcement notice's various requirements is unreasonably short.
72. Given that the site is the appellant's sole residence I have found that the specified period of thirty days for the use to cease is unrealistic and unreasonable. Instead, extending this particular compliance period to one of six months would potentially allow for the breach in its entirety to be remedied over this period.
73. I consider this variation reasonable in the circumstances, and the appeal succeeds to this extent.

Summary of Decisions

Appeal A

74. It is directed that the enforcement notice be both corrected and varied as set out in the formal decision. Subject to these corrections and variation the appeal is dismissed, the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act, as amended.

Appeal B

75. The appeal is dismissed insofar as it relates to the change of use for the stationing of caravans for residential use together with the formation of hardstanding. The appeal is allowed insofar as it relates to the erection of a stable.

Timothy C King

INSPECTOR

APPEARANCES

For the Appellant

Matthew Green	Agent for the appellant
Ruth Read	Landscape Consultant, Green Planning Studio Ltd
Billy Lee	Appellant

For the Council

Jessica Brown	Principal Planning Officer, Canterbury City Council
Ian Farrow	Principal Planning Enforcement Officer, Canterbury City Council

Other Interested Parties

Masey Lee

Documents produced at the Hearing

1. Council's notification letters of appeal and the Hearing event.
2. Matrix, updating the Council's 5 year land supply of gypsy and traveller pitches