



Appeal Decisions

Hearing Held on 16 May 2023

Site visit made on 16 May 2023

by Hilary Orr MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5 June 2023

Appeal A Ref: APP/G2245/C/22/3304192

Land at Seven Acres Farm, Hever Road, Edenbridge, Kent TN8 5DJ

- 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 Patrick O'Driscoll, against an enforcement notice issued by Sevenoaks District Council.
 - The enforcement notice was issued on 4 July 2022.
 - The breach of planning control as alleged in the notice is carrying out of unauthorised engineering operations, including excavation, changes to land levels on the importation/exportation of material such as rubble, waste and soil, and change of use of land to residential use (gypsy and traveller) and for the stationing of caravans.
 - The requirements of the notice are:
 - 1) Cease all engineering operations upon the land, including groundworks and the importation and exportation of material such as soil and rubble;
 - 2) Cease using the land for residential use (gypsy and traveller);
 - 3) Remove all caravans (tourers and mobile homes) stationed upon the land;
 - 4) Remove all residential paraphernalia from the land;
 - 5) Remove all resultant material from the land; and
 - 6) Return the land to pre-existing condition of vacant grassland.
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a) 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.
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Appeal B Ref: APP/G2245/W/22/3303974

Seven Acres Farm, Hever Road, Edenbridge, TN8 5DJ

- 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 Patrick O'Driscoll against the decision of Sevenoaks District Council.
 - The application Ref 21/02890/FUL, dated 30 August 2021, was refused by notice dated 9 June 2022.
 - The development proposed is the enlargement of gypsy traveller's site, by way of additional 5 mobile homes and 5 touring caravans.
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Decision

Appeal A

1. It is directed that the enforcement notice is corrected by the deletion of the words 'change of use of land to residential use (gypsy and traveller) and for the stationing of caravans' in paragraph 3 and their substitution with 'the material

change of use of the land to the stationing of caravans for residential purposes.’ and the requirements at paragraph 5 varied by the deletion of step 6) and substitute with the words ‘6) Restore the land and land levels to their condition before the development took place.’

2. Subject to the correction 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

3. The appeal is dismissed.

Background and Preliminary matters

4. The appeal site encompasses a large and roughly triangular parcel of land, that is understood to all be in the appellant’s ownership. Part of the land to the north, has been used for the stationing of caravans for residential purposes for a number of years (the original site). Following several temporary permissions this use was regularised in 2020, through a planning application (20/02981). This granted conditional planning permission, in January 2021, for the stationing of 10 caravans for residential purposes and a barn for B1 use. The conditions included restricting the residential use to gypsies and travellers. It also restricted the site to 10 residential pitches, with no more than one static caravan on each pitch.
5. The location plan submitted with the application for Appeal B, includes this and the whole of the wider triangular site. In contrast the area of land targeted by the notice (Appeal A) is significantly smaller, lying to the east of the main internal access road that serves the site. At the site visit there were five plots laid out with a total of six mobile homes sited within the land covered by the notice. Accordingly, whilst the number and layout differ on the ground, the land occupied by the caravans is broadly the same for both appeals, so I shall consider them together.
6. The definition of Gypsies and Travellers is set out in Annex 1 of the Planning Policy for Traveller Sites 2015 (the PPTS). It is not in dispute that the occupiers of the site meet that definition. Having regard to the evidence, I have no reason to come to a different view.
7. The allegation in the notice set out in the heading above, refers to both the operational development and the change of use of the land to the residential stationing of caravans. At the Hearing it was clear that the Council consider that a material change of use has occurred and that the associated operational and engineering works were carried out to facilitate that residential use.
8. I am satisfied that the appellant understands the allegation and what he is required to do to comply with the notice. However, I have a duty to put the notice in order and I shall correct the allegation at paragraph 3, by the deletion of the words ‘change of use of land to residential use (gypsy and traveller) and for the stationing of caravans.’ and their substitution with the words ‘the material change of use of the land to the stationing of caravans for residential purposes.’

9. The steps in the notice require clarification with regard to the land levels and requirement for the land to be restored to vacant grassland, which goes beyond that required. Consequently, I shall vary the steps at paragraph 5, by the deletion of the words in step 6) and their substitution with 'Restore the land and land levels to their condition before the development took place.'. I am satisfied that I can correct and vary the notice in this way, without causing injustice to the parties.
10. The Development Plan comprises the Allocations and Development Management Plan (2015) (LP) and Local Development Framework Core Strategy Development Plan Document (2011) (CS). Policy SP6 of the CS specifically deals with the needs of gypsy and travellers and is therefore relevant to the determination of this appeal. It sets out that future sites will be provided through allocations. Sites coming forward will be assessed against a number of criteria. At the Hearing the Council confirmed that windfall sites proposed through the planning application process, would also be assessed against the same criteria.

Main Issues for ground (a) and s78 appeal

11. It is common ground that the appeal site lies within the Metropolitan Green Belt. The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. Paragraph 137 of the revised National Planning Policy Framework (the Framework) makes clear that openness and permanence are the essential characteristics of the Green Belt.
12. In accordance with the Framework, the material change of use, as alleged in the notice, represents a form of development that should not be regarded as inappropriate development in the Green Belt, provided that it would preserve openness and would not conflict with the reasons for including land within it. The introduction of a mobile home harms the openness of the Green Belt and thus constitutes inappropriate development in accordance with the PPTS.
13. On this basis I consider that the main issues are:
 - The effect of the operational development on the openness of the Green Belt and the purposes of including land within it;
 - Effect of the development on the character and appearance of the area; and
 - Whether the harm to the Green Belt and any other harm, is clearly outweighed by other considerations, so as to amount to the very special circumstances necessary to justify the grant of planning permission.

Reasons

Openness

14. With regard to the operational development comprising the hard surfacing, the Framework confirms that the construction of new buildings should be considered as inappropriate development. There is no suggestion that the hard surfacing and associated work has been carried out for any purpose other than to facilitate the residential use of the mobile homes and therefore they do not benefit from any of the exceptions to inappropriateness.
15. Inappropriate development is by definition harmful to the Green Belt and should not be approved except in very special circumstances. Very special

circumstances will not exist unless other considerations exist that would clearly outweigh the harm by reason of inappropriateness and any other harm. The harm by reason of inappropriateness must be afforded substantial weight.

16. Access to the whole site is through large gates set back from Hever Road. The internal road then splits, with one road leading to the original site and the other towards the subject mobile homes. There is then a very large area of hard surfacing that runs parallel to the railway and across most of the land covered by the notice. This gives vehicular access to the plots. A substantial pile of soil and spoil is located close to Hever Road. To the west there is a small, fenced paddock being used for a pony.
17. The appeal site is fairly well screened by existing hedging and vegetation from Hever Road and the railway line, although the level of screening is likely to vary depending on the time of year. However, from my site visit there are views into the site from Hever Road, through the gated access. Hever Road, which is a reasonably busy road, rises noticeably to the east, as it crosses the railway line and from here there are clear views of the mobile homes, the associated hard surfacing and residential paraphernalia. This is particularly apparent when travelling from the east, either on foot or by vehicle, towards Edenbridge. Third party evidence also suggests that the appeal site is also visible from trains by those using the railway.
18. Overall, the excessive hard surfacing and associated development has introduced development into an area where there was previously none. Consequently, I find that it results in a modest loss of openness and is in conflict with Policy LO8 of the CS which seeks to maintain the extent of the Green Belt.

Character and appearance

19. The site lies outside any defined settlement boundary, in countryside designated as Green Belt. From the site visit, the prevailing character of the immediate area is rural, with the railway line and pockets of farm buildings and residential dwellings to the east. As you approach Edenbridge to the west, the pattern of development becomes more urban and dense in character. The Council run gypsy and traveller site known as Romani Way lies a short distance to the west on Hever Road.
20. From the site visit, it was clear that the position of the mobile homes annotated 1 to 5 differ from that shown in the submitted block plan dated 10.09 2021. Within the notice area there were 5 formal pitches separated by close boarded fencing. On these pitches there were a total of 6 mobile homes, which all appeared to be in residential occupation, plus 4 touring caravans. The mobile home annotated as 'Mobile home 1' on the block plan is sited outside the area covered by the enforcement notice.
21. The permitted pitches on the original site were shown to be clustered to the north, behind the permitted barn. In contrast, the subject mobile homes are positioned in large, fenced plots that have been sited along the railway line and much closer to Hever Road. The new plots are all hard surfaced, some with small, grassed areas. Most had children's play equipment, trampolines, paddling pools, toys and swings.

22. If allowed the development before me, would result in the permanent siting of five large static caravans, extensive hardstanding, touring caravans and other associated domestic paraphernalia, into this predominantly rural location. The extensive hard surfacing laid across this part of the site, has been finished in light grey chippings which further emphasises its overly intrusive appearance in the landscape.
23. Drawing all of the above points together, despite the existing vegetation which provides a variable level of screening, the mobile homes, the scale and appearance of the hard surfacing, together with the associated residential paraphernalia, have introduced development into an area where there was previously none. In my judgment, it results in an incongruous form of development that is at odds with this rural location causing modest harm to the character and appearance of the area and the Green Belt. The development is therefore in conflict with Policies SP1 and LO8 of the CS and EN1 of the LP. In summary these policies seek to maintain the extent of the Green Belt and ensure that development conserves and respects the character of the landscape and surrounding area.

Other considerations

Personal circumstances

24. Policy E, paragraph 16 of the PPTS states: 'Subject to the best interests of the child, personal circumstances and unmet need are unlikely to clearly outweigh harm to the Green Belt and any other harm, so as to establish very special circumstances'. It further provides guidance for considering matters relating to the need and supply of Gypsy and Traveller sites, through robust assessment of local need being carried out.
25. The appellant did not attend the Hearing and I have little information about the personal circumstances of the occupiers of the additional mobile homes. From the evidence that was provided at the Hearing, the pitches are occupied by: The appellant's daughter and her child; his three nieces each with one child; and his nephew, who has two children. All of these children are reported to be aged between one and two years old.
26. All of these occupants are understood to have moved from the original site, due to overcrowding. The reason given by the appellant for the overcrowding, is that the families living on the original site have expanded, with additional children. He further submitted that there are now a total of 40 adults and 50 children across the original and the appeal site.
27. At the site visit it was apparent that on the original site the number of mobile homes has increased significantly since January 2021, when 10 pitches were granted permanent permission. There were some 19 mobile homes and static caravans which appeared to be occupied. They were largely sited around an open area to the centre, with another pitch to the east of the permitted barn. A large day room was under construction.
28. I have been provided with no information about the occupiers of any of these extra mobile homes and caravans, their status and whether they are family members of the appellant. Furthermore, it is not clear how the additional 5 pitches applied for, relate to those on the original site and why an extension into former undeveloped land is now necessary.

29. For the above reasons, I give moderate weight to the appellant's personal circumstances, those of his extended family and the advantages of keeping the extended family together. I give substantial weight to the best interests of the children.

The need for sites for gypsies and travellers

30. At the Hearing the Council gave an update to their position on need. The Council's most recent Gypsy and Traveller Accommodation Assessment (GTAA) was carried out in 2022. This showed a need for an additional 43 pitches up to 2040. Between 2022/23 and 2026/27 the GTAA identified a need for 5 additional pitches. Since April 2022, a further 6 pitches have been delivered, resulting in no unmet need at the time of the Hearing. This is not in dispute and weighs against the development.
31. Turning to Policy SP6 of the LP. The site is not in an area prone to flooding and I have no evidence to suggest that the development would result in poor living conditions for either those living on the site, or nearby residents. I note that no objection has been raised by the Highway Authority in terms of highway safety, or on the operation of the highway network.
32. I have however, found harm by reason of inappropriateness which must be afforded substantial weight. I have also found limited harm to openness and modest harm to the character and appearance of the area. I acknowledge the site's proximity to Edenbridge, where there are a range of local facilities available. However, to reach those facilities either on foot or by cycle I found the lanes to be narrow, generally unlit and without footpaths. Whilst I accept that accessibility in rural areas is not normally as good as that of urban areas, to my mind this would make walking and cycling, especially in the winter months or after dark, a less attractive alternative to the private car.
33. The site has been proposed for allocation, through the emerging local plan, where its suitability will be assessed along with any other potential sites, which due to the nature of the District are also likely to be sited within the Green Belt. However, this is at a very early stage with the initial assessment not taking place until later this year. The Council hopes that the emerging plan will be submitted for examination in late 2024 and then adopted in late 2024 or early in 2025. It follows that the timings of any formal planning applications would follow adoption of the LP. For these reasons I find the site only partially compliant with the criteria set out in Policy SP6.
34. Turning to the question of alternative sites. There are 7 vacant pitches on Romani Way. However, all of these require updating which is due to be carried out during the summer, with pitches available to re-let in October 2023. The Council confirmed that there is currently a waiting list for these and they were unable to suggest any suitable, available and affordable alternatives. I give the lack of alternative sites significant weight.

Planning balance

35. The needs of the children are a primary consideration of substantial weight, but are not necessarily determinative. However, as with all those who travel, a settled base would enable the families to have access to medical care and education and this undoubtably weighs in favour of the scheme. I have identified a number of other considerations that weigh in favour of the

- development, these include the contribution that 5 additional pitches would make to the District's overall supply, the advantages of keeping the extended families together, the lack of alternative sites, alongside other social and economic benefits, which all weigh moderately in favour of the development.
36. However, weighed against these benefits are the substantial weight attributed to the harm to the Green Belt, the modest harm I have found to openness, the character and appearance of the area and the conflict with Policy SP6.
37. Overall, in my judgement the considerations in favour of the development, do not clearly outweigh the harm to the Green Belt by reason of inappropriateness, and the other identified harm, so as to comprise the very special circumstances necessary. I therefore find that a grant of permanent permission is not justified.
38. It follows that it is still necessary to consider whether a temporary grant of planning permission would be appropriate. Planning Policy Guidance makes clear that a temporary condition is only likely to be appropriate in certain circumstances, including where a trial run is needed to assess the effect of the development on an area, or it is expected that the planning circumstances will have changed in a particular way by the end of the temporary period.
39. I acknowledge that the site has been proposed for allocation in the emerging, but delayed, local plan. However there remains considerable uncertainty that it will be accepted for allocation and that the emerging plan will meet the anticipated timescales. The lack of evidence about the occupation of the additional mobile homes on the original site, adds further to this uncertainty. For these reasons, in the context of the substantial harm to the Green Belt and the other identified harm, a temporary grant of planning permission is not justified.
40. I am very mindful of the circumstances of those occupying the site and acknowledge that if the appeal fails, there will be a need for the families to leave the site which provides a settled base and is their home. I have carefully considered the Human Rights issues that are pertinent to this appeal. However, the protection of the public interest cannot be achieved by means which are less interfering of the appellant's rights.
41. I have had due regard to the Public Sector Equality Duty, contained in section 149 of the Equality Act 2010, which sets out the need to eliminate unlawful discrimination, harassment and victimisation, and to advance equality of opportunity and foster good relations between people who share a protected characteristic and people who do not share it. Nonetheless, for the above reasons, I consider that the decision is proportionate and necessary in the circumstances.

Other matters

42. Several issues have been raised by third parties, including the effect of the external lighting on the surrounding area and the disposal of foul waste. However, these are matters that could be addressed through a suitably worded condition had the appeals been allowed.

Interim conclusion

43. For the above reasons, the appeal on ground (a) and the s78 appeal fail.

Appeal A Ground (f)

44. Whilst an appeal under ground (f) has not been expressly submitted, the appellant in his statement of case, makes reference to the appeal site being 'earmarked for a new site, with a new application in progress'. He goes on to submit that in view of this, the removal of the associated works would be pointless, time consuming and expensive. To my mind, this constitutes a hidden ground (f) appeal. This was raised during my opening remarks and both parties were given the opportunity to respond at the Hearing.
45. An appeal under ground (f) is that the requirements of the notice exceed what is necessary to achieve the purpose of the notice. The purpose of an enforcement notice are set out in section 173 of the 1990 Act and are to remedy the breach of planning control (s173(4)(a)), or as the case may be, to remedy injury to amenity (s173(4)(b)).
46. In this case, the purpose of the notice is to remedy the breach of planning control, by requiring the unauthorised use to cease and the land to be restored. An appeal under ground (f) provides some scope for a solution short of a complete remedy as set out above.
47. I have already found that a temporary grant of planning permission is not justified. Whilst it is clear from the oral and written evidence that the site has been put forward for allocation, this is at a very early stage, with the outcome uncertain. For this reason, I find that the steps required by the notice do no more than is required, to remedy the breach of planning control, and lesser steps would not achieve that purpose. Consequently, an appeal on ground (f) fails.

Conclusions

Appeal A

48. For the reasons given above, I conclude that the appeals should not succeed. I shall uphold the enforcement notice with a correction and variation and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal B

49. I have considered all of the matters that have been raised, but for the reasons outlined above, I conclude that the appeal should be dismissed.

Hilary Orr

INSPECTOR

Appearances

FOR THE APPELLANT:

Mr Adam Russell Agent

FOR THE LOCAL PLANNING AUTHORITY:

Samantha Simmons Appeal and Senior Planning Officer
Sean Mitchell Principal Planning Officer
Emma Coffin Senior Planning Officer

INTERESTED PERSONS:

Councillor McArthur Sevenoaks District Council
Cllr Barnett Sevenoaks District Council
Caroline Leet Edenbridge Town Council