
Appeal Decision

Hearing Held on 6 June 2023

Site visit made on 6 June 2023

by Laura Renaudon LLM LARTPI Solicitor

an Inspector appointed by the Secretary of State

Decision date: 23 June 2023

Appeal Ref: APP/U2235/W/23/3316176

Pear Paddock, Symonds Lane, Yalding ME18 6HA

- 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 and Mrs Coster against the decision of Maidstone Borough Council.
 - The application Ref 22/502991/FULL, dated 10 June 2022, was refused by notice dated 2 September 2022.
 - The development proposed is described as the siting of 1no. additional mobile home including removal of existing amenity building and erection of a dayroom (part retrospective).
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Summary Decision

1. The appeal is allowed and a planning permission, essentially for what is sought as described above although with some clarification, is granted subject to conditions.

Application for costs

2. At the Hearing an application for costs was made by Mr & Mrs Coster against Maidstone Borough Council. This application is the subject of a separate Decision.

Preliminary Matters

3. A series of permissions have been granted at the application site culminating in a 2017 permission that effectively established the lawful use of the land as a residential caravan site on a permanent basis. The identity of the occupants is not restricted, but the requirement that they are Gypsies or Travellers is found in the first condition. The second condition limits the number, not of pitches, but of the caravans that may be stationed on the site to four, of which not more than two may be mobile homes (static caravans) and not more than two may be tourers.
4. The site is occupied by an intergenerational family presently consisting of three households. The elder married couple, who are the appellants in the case, are presently living in a touring caravan. Two of their children, each now with their own families, occupy each of the permitted mobile homes. The appeal essentially seeks to allow the elder couple their own mobile home, to replace their present living arrangements.

5. In the light of this existing permission, with the number and type of caravans limited by the application of a planning condition rather than found in the description comprised in the operative grant, I expressed some bemusement at the hearing as to the description of the 'use' element of what is now applied for. The 'siting' of an additional mobile home does not in itself appear to reveal development for which permission is required: it is not descriptive of any operational development or of a material change of use.
6. In these circumstances, an application to develop the land without complying with a condition attached to the previous grant of permission would appear to be more apposite. However, at my suggestion the parties agreed that any permission granted should be a fresh overall permission for the use of the land as a residential caravan site, together with the new operational development described, with a suite of planning conditions reflecting what is now sought and in relation to the overall site.
7. Notification of the hearing arrangements was not sent out until a week before the hearing. The only interested party (save for other statutory consultees) to have made representations at any stage was the Parish Council. As they had not been given sufficient notice in accordance with the relevant hearings rules, I adjourned the hearing to give them the opportunity to make oral representations if they wished. They confirmed that they did not seek to do so, and the hearing was subsequently closed in writing.

Main Issues

8. The Council refused permission for the proposed development for two reasons which, as I set out at the hearing, give rise to the main issues in the appeal. The first concerns the implications for flood risk of the development. The second concerns whether the proposed development is acceptable in its countryside and relatively remote location. This raises the question of the applicable policy criteria, because the Council were not satisfied that the proposed site occupants are Gypsies or Travellers. Reference was made to the definition at Annexe 1 of the 2015 Government-issued Planning Policy for Traveller Sites document ('the PPTS').
9. Thus the development (or rather what is described in the reason for refusal as the 'continued use of the site', for which permission is neither sought nor required) was adjudged unsustainable and harmful to the character and setting of the countryside. If, on the other hand, the site is to be occupied by Gypsies or Travellers, then the Council were content to withdraw these objections in recognition of the peculiar applicable policy; namely DM15 of the existing Local Plan.
10. These reasons are now somewhat otiose as the Council have withdrawn all their objections to the proposed development. They persist inasmuch as it is necessary to the imposition of relevant planning conditions to achieve what is desired by the Council's withdrawal of their objections; and of course I must come to my own view on whether to grant permission. The Parish Council's position, maintaining an objection on both main issues, also requires consideration and so, although the Council have withdrawn their objection, this does not make the outcome of the appeal a foregone conclusion and it is necessary for me to have close regard to the particular issues raised.

Reasons

Application of policy DM15 and effects on the countryside and sustainability

11. The Council's second reason for refusal complains that the appellants (then the applicants) have not demonstrated that the proposed site occupants are Gypsies or Travellers. Yet there is nothing in the relevant policy that requires a personal demonstration of need or ethnic identity. It is not as though any housebuilder is required to tell the LPA who exactly is intended to live in the houses s/he proposes to build; concomitantly, there is no such requirement here.
12. Even if one were to accept the requirement to identify the Gypsy or Traveller status of the particular intended occupiers, the Council accepted at the hearing that this was not an impediment to the grant of permission. They contended, first, that it was necessary for the applicants for planning permission to demonstrate the Gypsy or Traveller status of the proposed occupants. Upon being asked to identify where in the development plan this burden was revealed, the Council identified it as a "collaborative" exercise. Having engaged in that enterprise, the Council conceded that the particular proposed occupants of the additional mobile home in this case are Gypsies or Travellers; although, despite having insisted that this be demonstrated, the Council do not suggest securing their personal occupation by the imposition of a relevant planning condition. As described, the proposed occupants are existing residents of the site whose family have grown such that their children now occupy the two authorised mobile homes with their own families. The purpose of the application is to allow the elder couple to situate an additional mobile home to replace the touring caravan they are presently living in.
13. The correct approach to an application for a Gypsy or Traveller site (or extension of the same) would be to assess it against the relevant policy criteria of DM15 and to impose a relevant planning condition restricting the occupancy of the site, if permitted, to Gypsies or Travellers. The policy itself does not require any demonstration or assessment of such need, although it is apparent that such a need exists in the area. Here the site was expressly described in the application form as a Travellers caravan site. Subject to the imposition of a condition, the Council's second reason for refusal can readily be overcome.
14. The underlying point to this reason for refusal is that, if not assessed against policy DM15, rather more stringent policy criteria apply to development in the open countryside away from settlements. The Council's appeal statement makes no reference to how these policies, cited in the decision as policies SS1, SP17 and DM30 of the 2017 Local Plan, might be offended. The reason itself refers to 'unjustified development harmful to the character and setting of the countryside in an unsustainable location'. One would usually expect an appeal statement to elaborate on such an assertion.
15. Turning to the earlier officer's report on the application, these matters did receive some consideration. As to sustainability, it was said that the site is some 1.3km away from the village of Yalding, on a road that has no pavements or streetlights. It was found that the development would increase the likelihood of future occupants relying on private transport for their daily needs.

16. I do not agree with that assessment, because it fails to recognise that no net increase in the number of site occupiers is being sought over the present position and thus there is no net sustainability impact arising.
17. As to the 'character and setting of the countryside', this appears to me to be dealt with in section (v) of the officer's report concerning the design, landscape and visual impacts of the proposal. It was found to be acceptable in all these respects, and the reason for refusal does not appear to be reflective of the findings of the officer's report.
18. Therefore even applying the relevant development plan policies other than DM15, I do not find the Council's second reason for refusal to be substantiated. However, recognising that I am now being asked to grant a fresh permission for the site overall, I nonetheless consider that a planning condition restricting the occupation of the site to Gypsies or Travellers is required. This is to reflect the earlier position whereby to compare what is proposed not with what is there now, but with the previous undeveloped site, any development would not have been justified except pursuant to policy DM15 or its then-equivalent.

Flood Risk

19. The site lies in Flood Zone 3a, an area in which a highly vulnerable land use such as this should not normally be permitted. The parties agreed that there are no reasonably available sites for the proposed development in areas with a lower risk of flooding, thus satisfying the sequential test. As to the exception test, this requires an assessment of whether the sustainability benefits of the development would outweigh the flood risk, and whether the development would be safe for its lifetime taking account of the vulnerability of its users without increasing flood risk elsewhere.
20. These matters are given local effect by criterion (iv) of policy DM15, which requires that a Gypsy or Traveller site (leaving aside the preliminary question whether the site is already 'allocated for that use' by reason of the existing permission) is either outwith Flood Zones 3a or 3b or is the subject of a specific Flood Risk Assessment ('FRA') which has been agreed by the Environment Agency. Although not accepting for their second reason for refusal that policy DM15 applied here, the Council nonetheless assessed the flood risk of the development against that policy, as well as DM1 which seeks to avoid inappropriate development in areas at risk from flooding.
21. The Environment Agency appeared at the hearing to confirm their agreement to the FRA; thus this policy criterion is satisfied. The FRA now agreed will however require certain elements of the development to be secured by the imposition of planning conditions, such as finished floor levels, void spaces underneath the mobile homes and adherence to a flood evacuation plan. Subject to securing those matters, there is no policy conflict.

Conclusions on the Main Issues

22. No conflicts with the development plan for the area are revealed, and no material considerations indicating a decision otherwise than in accordance with the development plan have been brought to my attention. It follows that permission will be granted.

Conditions

23. For the reasons explained above I consider it necessary to restrict the occupation of the site to Gypsies or Travellers, having regard to the extended definition post-*Smith*¹. It is also necessary to require the site to be restored if the use should cease, recognising that such development is not usually appropriate in the open countryside.
24. The number and types of caravans also require restricting in the light of the same considerations. Similarly, restrictions on commercial activities or vehicles, the withdrawal of permitted development rights to provide fences or other means of enclosure, and a restriction on outdoor lighting are all required in the interests of limiting the development's effects on the countryside.
25. I shall not impose a condition requiring the application plans to be complied with, save for those showing the dimensions and appearance of the dayroom, because after some discussion at the hearing it is clear that those plans do not reflect the intention not to achieve an overall increase in the number of residential caravans on the site (they depict the provision of three mobile homes and two touring caravans, unlike the singular one that is sought). Additionally, the Environment Agency will have particular requirements as to the finished floor levels of the mobile homes and the void spaces to be achieved underneath. These matters concerning the site layout and other design details can be achieved by requiring the submission and approval, and subsequent implementation, of a Site Development Scheme.
26. Additionally, although a draft Flood Emergency Plan forms an appendix to the FRA now approved by the Environment Agency, it may be necessary to revisit some of the details of that, and accordingly I shall require such a Plan to be submitted for approval to the Council and adhered to accordingly.
27. No other conditions have been suggested as required and I consider that none are necessary, save for a condition requiring the existing amenity block's removal within a short period following the provision of the dayroom for which permission is granted, in order to prevent an unnecessary accumulation of built development on the site.

Conclusion and Formal Decision

28. I find that the proposed development complies with the development plan for the area, and that no material considerations indicate a different decision. Accordingly, planning permission is hereby granted retrospectively for the use of the land at Pear Paddock, Symonds Lane, Yalding ME18 6HA as a residential caravan site, together with, prospectively, operational development consisting of the demolition of an existing utility block and the erection of a dayroom, subject to the following 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.

¹ *Smith v Secretary of State for Housing, Levelling Up and Communities* [2022] EWCA Civ 1391

- (2) No more than four 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 three shall be a static caravan/mobile home) shall be stationed on the land at any time.
- (3) No vehicle over 3.5 tonnes shall be stationed, parked or stored on the land and no commercial or business activities shall take place on the land.
- (4) There shall be no external lighting on the land other than in accordance with details that shall have first been submitted to and approved in writing by the local planning authority.
- (5) The use hereby permitted shall cease and all caravans, structures, equipment and materials brought onto the land for the purposes of such use shall be removed within 56 days of the date of the failure to meet any one of the requirements set out in (i) to (iv) below:
 - (i) The demolition of the existing utility block within 2 months of the substantial completion of the dayroom for which permission is hereby granted;
 - (ii) Within three months of the date of this permission a scheme for the layout of the site, the siting of the caravans, the position of the permitted dayroom, the means of enclosure, the parking and amenity areas, the means of surface and foul water drainage, the boundary treatments, the finished floor levels of the three mobile homes, the provision of voids beneath those floors and the arrangements for their maintenance for the lifetime of the development, and to include a timetable for the provision of all such elements: together, the 'Site Development Scheme', shall be submitted to the Local Planning Authority for approval.
 - (iii) Within six months of the date of this decision the Site Development Scheme shall have been approved by the Local Planning Authority or, if the Local Planning Authority refuse to approve the Scheme or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
 - (iv) The approved Site Development Scheme shall have been carried out and completed in accordance with the approved timetable and the works comprised in the Scheme shall thereafter be maintained and managed for the duration of the development in accordance with the approved Scheme.
 - (v) If an appeal is made in pursuance of (iii) above, that appeal shall have been finally determined and the Site Development Scheme shall have been approved by the Secretary of State.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

- (6) The use hereby permitted shall cease and all caravans, structures, equipment and materials brought onto the land for the purposes of such use shall be removed within 56 days of the date of the failure to meet any one of the requirements set out in (i) to (iii) below:
- (i) Within three months of the date of this permission a Flood Emergency Plan shall be submitted to the Local Planning Authority for approval. The Plan shall address measures to be put in place in the event of anticipated or actual flooding to ensure the safety of site residents, to include arrangements for their evacuation to places of safety.
- (ii) Within six months of the date of this decision the Flood Emergency Plan shall have been approved by the Local Planning Authority or, if the Local Planning Authority refuse to approve the Scheme or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
- (iii) Within one month of the date of approval of the Flood Emergency Plan, its measures shall have been implemented and it shall thereafter be adhered to for the lifetime of the development.
- (iv) If an appeal is made in pursuance of (ii) above, that appeal shall have been finally determined and the Flood Emergency Plan shall have been approved by the Secretary of State.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

- (7) Should the use hereby permitted cease, within three months of such cessation all caravans, hard-standings, structures, buildings, materials and equipment brought on to or erected upon the land in connection with the use shall be removed and the land restored to its former condition.
- (8) Notwithstanding the provisions of article 3 and Class A, Part 2 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) or any order revoking and replacing that Order, no other fences, gates, walls or other means of enclosure shall be erected upon the land.
- (9) The dayroom hereby permitted shall accord in its dimensions and appearance with the drawing entitled 'Proposed Day Room' numbered 01678/6 rev 1 dated 1 November 2020.

Laura Renaudon

INSPECTOR

APPEARANCES

For the appellants:

Dr Angus Murdoch MRTPI	Planning Agent
Mr Ian Walton BSc (Hons) MSc MICE CEng	Flooding Consultant
Mr and Mrs Coster	Appellants

For the Council:

William Fletcher	Planning Officer
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For the Environment Agency:

John Byne
Karen Rigg