



Appeal Decision

Site visit made on 16 May 2023

by Timothy C King BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 July 2023

Appeal Ref: APP/M2270/W/20/3257410

3 Hartleylands, Swattenden Lane, Cranbrook, Kent TN17 3PS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Mr Hugh Nevin against the decision of Tunbridge Wells Borough Council.
- The application Ref 19/03123/FULL, dated 29 October 2019, was refused by notice dated 7 February 2020.
- The application sought planning permission for a variation of condition 3 (No. of stationed caravans) of planning permission Ref TW/12/03241/FUL, dated 28 May 2013 for use of the land for the stationing of caravans for residential purposes for 1 No gypsy pitch at 3 Hartleylands, Swattenden Lane, Cranbrook, Kent TN17 3PS.
- The condition in dispute is No 3 which states that: No more than two caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 (of which no more than one shall be a static caravan or mobile home) shall be stationed on the site at any time.
- The reason given for the condition is: To prevent further intensification of the use of the land without planning permission in accordance with Policies EN1, EN25 and H4 of the Local Plan.

Decision

1. The appeal is allowed and planning permission is granted for the use of the land for the stationing of caravans for residential purposes without compliance with condition no 3 previously imposed on planning permission Ref TW/12/03241/FUL dated 28 May 2013, but subject to a replacement condition in this respect, along with other relevant conditions as set out in the attached Schedule.

Background

2. Hartleylands, now split into three separate sites, was once a single piece of land used as a trade and domestic waste tip until 1968 when it was infilled. Planning permission (ref TW/93/00065) was granted in 1993 for the land's use as a two-pitch gypsy and traveller site.
3. Following this, the site was physically sub-divided and separate planning permissions were granted for gypsy and traveller purposes. No 3, the southernmost site, was granted permission (ref 12/03241/FUL) in 2013 for the stationing of caravans for residential purposes on one pitch, and no 1 was

given permission in 2015 for the stationing of two mobile homes, a welfare building and three touring caravans on the site. No 2, the middle site is also occupied for gypsy and traveller purposes.

4. In 2016 planning permission was refused for non-compliance with a condition attached to the 2013 permission concerning no 3 which restricts the number of caravans at the site to a maximum of two (one static and one tourer). The appellant sought a variation of the condition to allow for the stationing of an additional two mobile homes and two touring caravans on the site. This would have allowed the maximum number of caravans permitted on the site at any one time to be increased from two to six with no more than three being a static caravan or mobile home.
5. The application, submitted retrospectively, was unsuccessfully appealed in 2018 and an enforcement notice issued against the said condition being breached was also upheld. Despite this, it appears that the situation remains and the current appeal, once again, seeks permission for an additional two pitches on the site.

Main Issues

6. This is whether the condition restricting the number of caravans at the site to one static and one tourer caravan are necessary and reasonable when having particular regard to:
 - 1) national policy, and the objectives of the development plan in respect of gypsy and traveller accommodation; and
 - 2) the effect on the character and appearance of the surrounding area.

Reasons

Policy matters

7. 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. In addition, Councils should very strictly limit new traveller site developments in the open countryside that is away from existing settlements.
8. 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.
9. 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.
10. The Inspector, in her decision letter for the 2018 appeal, referred to a Gypsy and Traveller Accommodation Assessment (GTAA) carried out in 2005, which found there was a small level of unmet need for additional gypsy and traveller sites. However, she remarks that the Council accepted that this was out-of-date and little weight could be attached to it. The Inspector goes on to indicate that the Council's intention was to produce a new GTAA to inform the future replacement local plan.

11. In the event a new GTAA was produced in 2018, which provides the basis for determining pitch requirements to be met through the new plan. It identified a need for 32 pitches between April 2017 and March 2037. This was followed up by the Council's 'Five Year Gypsy and Traveller Pitch Supply Statement' which found that, as at October 2021, there was a land supply of only 4.4 years.
12. The Council aims to meet its 32 additional pitch need over the plan period through the application of a development plan policy, H9. This shows potential areas for additional pitches and encourages maximising the density of pitch provision on existing sites, having regard to the scale of the proposal and also the effect on the character or appearance of the landscape. In this regard the policy's related Table 11 shows that both nos 1 and 3 Hartleylands have been earmarked for accommodating additional pitches. The Council considers that No 1, a larger site, has potential for 2 additional pitches with No 3, earmarked for 1 additional pitch. The plan's submission version, dated November 2021, went through its examination in 2022, with the plan Inspector issuing his initial findings following its Stage 1 and 2 hearing sessions.
13. Although the new local plan has yet to be adopted its policies are at an advanced stage and, according to the Council's letter of 27 March 2023, the Inspector's initial findings have raised no queries or concerns in regard to the Council's approach to gypsy and traveller provision. Nonetheless, that does not necessarily mean that the un-met need will be resolved as a result.
14. In the circumstances I must ascribe significant weight to draft policy H9 policy. Proviso 1 thereto encourages the density of pitch provision within sites to be maximised, subject to adequate separation distances between the mobile homes/caravans. From my site visit observations I am satisfied that the two additional mobile homes have integrated comfortably within the site.
15. On the issue of local need the previous appeal Inspector states in paragraph 50 of her decision letter:

"However, the lack of an up-to-date assessment of need and the absence of a five year supply of sites represent a clear failure of policy in relation to the provision of gypsy and traveller sites in the Borough. Although I concur with the Council that the actual level of need is likely to be low, there is, as yet, an unquantified level of unmet need in the Borough. These are all factors in support of the appeal to which weight can be attributed in the overall balance of considerations."
16. Clearly, the recognised unmet need has now been quantified and is significant. The emphasis on intensifying the use of existing sites is particularly relevant here given the inclusion of two of the Hartleylands sites amongst various sites identified.
17. I conclude that the absence of a 5 year supply of sites and an apparent unmet need for gypsy & traveller sites within the Tunbridge Wells borough area are matters to which I afford considerable weight.

Character and appearance

18. The site lies outside the 'Limits of Built Development', and is thereby within the countryside. It also falls within the High Weald Area of Outstanding Natural Beauty (AONB). Paragraph 176 of the National Planning Policy Framework advises that great weight should be given to conserving and enhancing

- landscape and scenic beauty in AONBs, which have the highest level of protection.
19. The site is accessed via an unmade roadway from Swattenden Lane, approximately 1km from the small town of Cranbrook. Walking along this roadway to the appeal land I passed a residential property set back into its plot, and also some agricultural buildings, after which the Hartleyland sites are reached. Beyond this point is open countryside.
 20. Particularly relevant is that the previous appeal turned on the Inspector's assessment as to a considered adverse effect on the area's rural character and the scenic beauty and landscape of the AONB. Over five years have elapsed since this appeal decision yet, despite the fact that the enforcement notice was upheld, its requirements remain breached.
 21. Despite its location Hartleylands, previously a single piece of land and, given its history, has long been something of an anomaly to its surroundings. It has been used as a gypsy site for some thirty years now, seemingly splitting into three smaller demarcated areas over ten years ago. All three sites are now well established and, as I observed, no 3 is orderly and well maintained.
 22. In terms of the assessment on landscape character I agree with the appellant that all nearby and adjacent land uses should be considered as part of the character of an area regardless as to whether they can be considered positive or not. Although the nature of the use is clearly at odds with the natural attributes of the AONB it is in keeping with the immediate land use which is three gypsy sites contained within what is effectively a compound, albeit internally divided.
 23. On the above basis the proposed intensification of one of these three sites must be seen in the context of the other nearby pitches present and, given this, it effectively lessens the impact. Whilst I understand why the previous Inspector referred to the site as occupying an exposed position in the AONB it also represents a non-conforming, anomalous use, but one which is physically contained.
 24. I am not of the view that the area's rural character has been eroded by the addition of two mobile homes and two associated tourers and, given the planning position at Hartleylands as a whole, the visual impact felt by persons using the local public rights of way (PROWs) is not realistically heightened by the intensification. Accordingly, I am satisfied that the scale of the development would not run contrary to the relevant advice in paragraphs 14 and 25 of the PPTS.
 25. The current local plan (LP) was adopted in 2006 and policy H4 thereto which refers to the criteria for the establishment of gypsy sites is consistent with the previous restrictive approach, whereas draft policy H9 serves to, as far as is possible, tackle the identified unmet need. Further, this accords with paragraph 26 of the PPTS which advises as to the effective use of previously developed land in this respect.
 26. I am also satisfied that, given the proposal's context, its containment within the confines of the appeal site, and the actual situation on the ground, the increased density is not in material conflict with the objectives of the LP's environmental based policies LBD1, EN1 and EN25 nor policies 4, 5 and 14 of

the Council's Core Strategy, all of which together seek to protect the countryside, its landscape and the AONB. Neither is the development of such significant magnitude to impact on the objectives of the Council's Landscape Character Assessment Supplementary Planning Document.

27. As a result I conclude that the relaxation of the condition restricting the number of caravans on the site, whilst inconsistent with the obvious aim of protecting the natural environment, does not result in material harm to the extent that the proposal is unacceptable in planning terms.

Planning Balance

28. The Council refused planning permission only due to the considered effect on the AONB and the surrounding landscape. It did not raise objections as to the accessibility of the site and, given the short distance to Cranbrook and also the realistic expectation that there is local reliance on the private motor vehicle, I agree that the only point of contention is the character issue.
29. Since the 2018 appeal decision there has been a significant material change in circumstances. A new GTAA has been produced which quantified a clear unmet local need for gypsy and traveller accommodation and this, in turn, has provided the evidence base for the replacement local plan that includes policy H9, a specific policy for gypsy and traveller sites, which recommends intensifying the use of existing sites with additional pitches. Moreover, with nos 1 and 3 Hartleylands now being earmarked to contribute to this approach things have appreciably moved on from the extent of the previous considerations involved.
30. Given my findings, and that the appeal site is sufficiently sized to comfortably accommodate the stationing of three mobile homes/static caravans and three tourers, along with support through relevant advice within the PPTS and policy H9 of the replacement local plan which, although still draft, is at an advanced stage, I consider that this is an acceptable form of development. Indeed, I feel that little would be achieved by refusing planning permission.
31. In other words, any adverse impacts are markedly outweighed by the benefits, and the condition at issue, as worded, is no longer necessary or reasonable.

Conclusion and Conditions

32. For the above reasons, and having had regard to all matters raised, the appeal is allowed and planning permission granted. On the attached Schedule I have included the other conditions imposed on the earlier planning permission ref 12/03241/FUL so far as they are still subsisting and capable of taking effect.

Timothy C King

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall be carried out in accordance with drawing nos. 19_1027_002 and 19_1027_003.
- 2) 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 as defined in Planning Policy for Traveller Sites, August 2015 (or any subsequent definition that supersedes that document).
- 3) No more than six caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 (of which no more than three shall be static caravans or mobile homes) shall be stationed on the site at any one time.
- 4) No commercial vehicles over 3.5 tonnes shall be stationed, parked or stored on this site.
- 5) No commercial activities shall take place on the land, including the storage of materials.