



Appeal Decision

Hearing Held on 12 July 2023

Site visits made on 15th November 2022 and 12 July 2023

by David Murray BA (Hons) DMS MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 July 2023

Appeal Ref: APP/E2205/W/20/3246190

Chequer Tree Paddock, Colliers Hill, Mersham, Ashford, Kent, TN25 7HT.

- 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 Perkins against the decision of Ashford Borough Council.
 - The application Ref. 19/01004/AS, dated 10 July 2019, was refused by notice dated 18 October 2019.
 - The development proposed is the change of use of land to private gypsy and traveller caravan site consisting of a single pitch containing 1 No. mobile home, 1 No. touring caravan and associated works.
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Decision

1. The appeal is allowed and planning permission is granted for the change of use of the land to private gypsy and traveller caravan site consisting of a single pitch containing 1 No. mobile home, 1 No. touring caravan and associated works, at Chequer Tree Paddock, Colliers Hill, Mersham, Ashford, Kent, TN25 7HT, in accordance with the terms of the application, Ref. 19/09079/FUL, dated 2 September 2019, and the plans submitted with it, subject to the conditions set out in the attached Schedule.

Procedural matters

2. The appeal was scheduled to be heard at a hearing on the 15th November 2022 but this had to be cancelled at short notice because the appellant's landscape witness became ill. A hearing scheduled for the 22nd March 2023 had to be cancelled because of industrial action.
3. The planning application and appeal should have been made in the appellant's married name of Perkins and not Mrs Perkin's maiden name of Beaney and I have amended the above bullet point accordingly.
4. The correct address of the site is off Colliers Hill rather than Flood Street and I have used this in the above heading.

Main Issues

5. The main issues are:
 - The accord of the proposal with the development strategy;
 - The effect on the character and appearance of the area;

- The effect on the Stodmarsh Lakes Special Protection Area (SPS);
- Whether previously developed land;
- The need for and supply of gypsy and traveller sites; and
- The appellants' personal circumstances and the best interests of children.

Reasons

Background

6. The appeal site comprises a small area of hardstanding which lies in the southern corner of a larger grassed paddock. The hardstanding has access to the highway and there is also another building within the site previously approved as a stable (see below) and a touring caravan. There are field hedges around the north-west, north-east and south-east boundaries of the paddock area together with mature oak trees in these hedgerows. Public right of way (public footpath) AE400 runs alongside the hedge on the north-eastern boundary of the site and joins other footpaths including one leading to the crest of Collier's Hill to the north.
7. The retrospective proposal (see below) is to use the land as a gypsy/ traveller pitch and site a large mobile home on the northern area of the hardstanding and use the stable building as a day room with space to park a touring caravan in between.
8. In the planning history there are relevant appeal decisions related to this site. Most recently appeals against enforcement notices and a planning application¹ for a private gypsy and traveller site were dismissed in March 2016 (now referred to as the 2016 appeal). The Inspector found that the aspects in favour of the development were outweighed by the significant material harm to the locality. Nevertheless, the Inspector found that the appellants' personal circumstances, and especially the best interests of the children, justified the requirements of the enforcement notice being varied to allow for a two year period for compliance so as to enable the appellants to find a more appropriate location for a permanent site. The use as a caravan site should therefore have ceased by the 24 March 2018. The Council said that it is waiting on the result of this appeal before considering further action resulting from the 'live' enforcement notice.
9. Dr Murdoch advised that the stable building is being used as a home by part of the appellants' wider family and an application for a Certificate of Lawful Development for the use of the building as a dwelling was submitted to the Council in November 2022. This remains undetermined by the Council and is a separate matter to this appeal. However, he said that the current proposal should now be determined without reference to the building being used as a day room ancillary to the use as a residential caravan site.

Policy context

10. The Ashford Local Plan (LP) was adopted in February 2019. Relevant policies will be considered with each main issue. A separate Development Plan Document (DPD) to identify sites for gypsies and travellers was started in 2018

¹ APP/E2205/C/14/2224316 & 2224317; & APP/E2205/A/14/2220601

with an 'Options Consultation' carried out in early 2020. However, the Council says that the 'nitrate neutrality' issue concerning the Stodmarsh Lakes, (see issue below) has delayed further progress in identifying appropriate sites. The Council has now decided that the new policy provision for gypsies and travellers should be incorporated in the forthcoming wider Local Plan Review. The timescale for this envisages a Submission document being put to Examination in late 2025 with potential adoption in the summer of 2026.

Accord with the development strategy

11. The main relevant policy in the LP is HOU16 concerning Traveller Accommodation. Other policies as set out in the decision notice are of a more general nature. In respect of HOU16 the Council accepts that parts a) to g) of the policy are satisfied by the proposal or are not relevant. For h) and i) the proposal contains a landscape strategy and the effect on the landscape taking account of the landscape Character Area will be considered in a following main issue. Finally in respect of j) there is no concern over the scale of the proposal or whether it would dominate the settled community. Therefore, the crux of the policy considerations is whether the proposal would cause significant visual harm to an area and its landscape. Dr Murdoch emphasises that this is a different policy test compared to that considered by the previous inspector on the 2016 appeal.
12. In terms of Policy SP1 on Strategic Objectives, part b) is relevant as this, *inter alia*, seeks to conserve and enhance undesignated landscapes; while part a) is relevant as it lends support for development which makes best use of brownfield land. The Council accepts that Policies SP6 on promoting high quality design and ENV3a are only relevant in respect of the effect on the character of the countryside landscape.
13. I will conclude on the accord with the development plan after the main issues have been assessed.

The effect on the character and appearance of the area

14. Although the hearing took place in mid-summer when the trees and shrubs in the landscape were in full leaf, I had also visited the site in mid-winter prior to the then scheduled hearing being cancelled.
15. At the part of the hearing held on site we looked at the context of the appeal site and the proposal from the public footpath which goes over the brow of Colliers Hill as referenced as viewpoints 1 and 2 in Mr Crandon's statement. From these points the context of the site within the Aldington Ridge Landscape Character Area was clear. This has a mixture of wide open arable fields together with small woodland copses and isolated houses and farmsteads.
16. From Viewpoint 1 the topography of the land is such that the sweep of the hill restricts views of the appeal site from this location. From viewpoint 2 the mobile home and touring van already on the appeal site are glimpsed in the landscape though the existing landscape of trees and hedges that enclose the north-eastern and north-western boundaries of the appeal site. The structures /caravans are also seen at a distance in the context of the other clusters of individual houses and buildings, for example at 1 & 2 Chequer Tree and Chequer Tree Farm. From this elevated position Mr Crandon rated the visual impact as having a 'moderate adverse effect' whereas I assess it as 'slight to

moderate'. There is a similar assessment from viewpoint 3 where I agree that there is a slight adverse effect.

17. Views from the public footpath inside the north-eastern boundary of the site would be more open within the landscaped enclave of the overall site including the paddock areas. I agree that the visual harm here should be regarded as having a 'substantial to moderate' adverse effect but the extent to which this takes place is relatively limited and contained in landscape character terms. Moreover, I am satisfied that the landscaping strategy put forward, with a new indigenous hedge alongside the footpath and other individual trees, would greatly reduce the visual effect within a few years from being planted. From the public realm along the highway of Colliers Hill in Viewpoints 5 and 6 the site is well screened at the moment, save for the very limited opening formed by the access, and such effective screening was also present at midwinter.
18. Overall I agree with Mr Crandon's conclusions that at worst the proposal would have a slight to moderate adverse visual effect and that this would be reduced to less than moderate harm overall with the mitigation envisaged. I am satisfied that the proposal would not cause significant visual harm to the landscape character of the area. The proposal therefore does not conflict with the test set out in part j) of LP Policy HOU16 and the related elements in Policies ENV3a, SP1 and SP6. This is a material difference to the context of the 2016 appeal and the then applicable development plan where the Inspector had to assess whether the proposal 'materially harmed the character and appearance of the surrounding area'.

The Effect on Stodmarsh Lakes SPA

19. Standing advice was issued by Natural England in March 2020 that the Stodmarsh Lakes, located east of Canterbury and designated as a Special Protection Area, were at risk from increased levels of nitrogen and phosphorus which could adversely affect the integrity of the habitat of the lakes. Accordingly, proposals involving overnight accommodation within the River Stour catchment area which could give rise to an increased level of nutrient should be subject to screening under the Habitat Regulations and be required to demonstrate 'nutrient neutrality'.
20. The Council is in the process of preparing a Borough Mitigation Strategy which will provide strategic nutrient mitigation for development within the Borough. As currently envisaged the proposals could involve the creation of new wetlands for off-site mitigation, which development could contribute to on a *pro rata* basis, or by specific 'on site' mitigation. Dr Murdoch said that in principle the appellants are prepared to make the relevant contribution if the need arises. However, it appears to me that at the moment the Council's Mitigation Strategy is not yet in a position where there is sufficient certainty over what a contribution may be or when and how it would be spend in mitigation. A condition to secure this mitigation would therefore not pass the tests set out in the NPPF or national planning practice guidance.
21. Alternatively, Dr Murdoch submits that given the length of time that the appellants family have resided on the site that means that they will not add to the problem of the increase in nutrient within the River Stour catchment area. I recognise that the residential caravan use has continued on site in contravention of the requirements of the enforcement notice for it to cease in March 2018. However, the policy background to this has materially changed

with the adoption of the LP in Feb. 2019. Moreover, the present application and this appeal were lodged before the March 2020 baseline as applying from the time of the specific guidance in the letter from Natural England. These factors limit the weight that should be placed on the cessation of the residential use.

22. In simple practical terms the current proposal for a residential caravan site use would not add to the levels of nitrogen and phosphorus stemming from the site as the residential use has taken place for at least 6 years before the March 2020 baseline. As such it is clear to me that, separate to the issue of the outstanding LDC, if I was minded to allow this appeal there would be no additional adverse effect on the designated SPA habitat. Therefore, there is no need for me to undertake an Appropriate Assessment.

Whether previously developed land

23. The definition of 'previously developed land' (PDL) is set out in the Glossary to the National Planning Policy Framework (the Framework). The Council accepts that the part of the site containing the hard standing around the stable block falls within the definition of PDL but not the paddock or field to the rear (north) of the existing mobile home and I agree. Making the best use of suitable brownfield opportunities in sustainable locations as a focus for new development is a strategic objective of the LP as set out in part a) of Policy SP1 and this is a factor in favour of the proposal.

The need for and five year supply of gypsy and traveller sites

24. The 2018 Gypsy and Traveller Accommodation Assessment (GTAA) concluded that there was a cultural need for 82 pitches and a 'PPTS definition' need for 54 pitches in the period to 2030. However, the assessment went on to suggest that the need could be largely or completely addressed without new allocations through other solutions including the turnover of local authority site pitches and the expansion/intensification of existing sites.
25. Notwithstanding this the Council accepts that at the time of the decision on the application it could not demonstrate an adequate supply of new sites as required by Policy B of the Planning policy for traveller sites (PPTS). This remains the case now as the Council says that as of June 2023 there was an outstanding need for 23 pitches for gypsies and travellers that meet the definition in the PPTS. Moreover, given the Court of Appeal decision in the case of *Lisa Smith*, this level of un-met need is likely to rise when account is taken of cultural need rather than one derived from the definition in the Annex to the PPTS which has been found to be unlawful.
26. The prospects of the Council's new local plan dealing with even the present level of unmet need was discussed at the hearing. Mr Bailey suggested that given the various stages in the statutory process it was unlikely the such a plan would be adopted before the summer of 2026. There is therefore little prospect of the unmet need being met through the planning system in the near future and I give this aspect substantial weight.

The availability of alternative sites

27. The Council had acknowledged that the proposal does not conflict with part a) of LP Policy HOU 16 which indicates that new sites may be considered if the proposal cannot be accommodated on an existing available site. At the hearing Mrs Payne advised that the Council now had two pitches available at the public

site in Chilmington and one of these could accommodate the appellants' needs. Dr Murdoch was concerned that such evidence had been introduced very late in the day without letting the appellant know of this vacancy and it had not been shown that the vacant pitches were suitable, affordable and available. Moreover, Mrs Perkins said that there were likely to be practical problems of them living on a public traveller site because of conflicts over ethnicity which she described at the hearing.

28. In terms of other private sites Mrs Perkins had previously submitted 9 letters from the owners of other local gypsy and traveller sites and these letters confirmed that there were no sites available for rent or sale. This evidence had been collected in 2019 when the application had been submitted but she said she telephoned the same parties recently and had had the same replies.
29. On the evidence put to me I find that it has not been reasonably established that there are suitable alternative sites for the appellants to turn to at the moment.

Personal circumstances and the best interests of children.

30. The appellant's personal circumstances and the best interests of the children on site were discussed at the hearing however given my conclusions on the main issues above I find that it is not necessary to take these into account in the planning balance.

Planning balance

31. On the main issues I have found that the proposed use as a single residential caravan site would not cause significant visual harm to the prevailing landscape character of the area, neither when seen from the wide open fields of Colliers Hill or the more localised impact on the public realm along Colliers Hill road or the public footpath which crosses the site. The limited visual impact from this path can also be mitigated by the landscaping scheme put forward in the application. On this basis the proposal does not conflict with the critical part j) of Policy HOU16. This is a substantial policy difference from the test that was considered by the previous inspector.
32. Given that the other criteria set out in this policy are satisfied or they are not relevant I find that there is no policy conflict with the main policy regulating the acceptability of a new gypsy and traveller sites. The proposal would also make use of previously developed land which is encouraged as a strategic objective in policy.
33. I conclude that the proposal accords with the development plan when this is read as a whole.
34. In terms of the effect on the Stodmarsh Lakes SPA I have found on the specific circumstances of this case that the proposed use of the site for residential occupation will not lead to any additional increase in nutrient to this habitat compared to that occurring before March 2020 and so there would be no direct adverse effect on the integrity of this habitat.
35. Finally, it is clear that the Council cannot demonstrate an adequate supply of new gypsy and traveller sites at the moment and this supply is unlikely to be improved through the plan making process for some time. I also conclude that

while there is said to be a vacancy at the moment on a Council site this has not been shown to be suitable and available to the appellants at the moment.

36. Overall, I find that there are no other considerations which outweigh the accord with the development plan and therefore planning permission should be granted on a permanent basis.

Conditions

37. The Statement of Common Ground recommends 8 conditions which I will consider under the same numbering.
38. As the proposal has been put forward and considered in respect of local and national policies for gypsy and traveller development it is necessary that the occupation of the site is restricted to such people but I will amend the standard condition (No.1) put forward in the light of the Court of Appeal decision on the case of *Lisa Smith*. It is also reasonable to stipulate the number of caravans that the permission relates to (No. 2) to define the permission and in the interests of protecting the countryside landscape. For similar reasons conditions No's 4 and 5 are necessary to ensure that the site is properly landscaped to minimise its visual impact although I will amend it to 6 months to provide a more reasonable period for implementation. I will also modify No.5 as it is impractical and unenforceable to require the height of trees and hedges to be kept at a height not less than 2.5m high.
39. In order to prevent pollution and flooding I will impose condition No. 3 to ensure the proper disposal of foul drainage from the site and require this scheme to be retained thereafter. Finally in order to maintain the character and appearance of the site and its countryside setting I will impose conditions 6, 7 and 8 to limit the scale of vehicles that may be kept on site, and restrict commercial activities and limit external floodlighting.

Conclusion

40. For the reasons give above I conclude that the appeal should be allowed.

David Murray

INSPECTOR

Schedule of conditions

- 1) The site shall not be occupied by any persons other than gypsies and travellers, defined as persons of a nomadic habit of life whatever their race or origin, including such persons who on grounds only of their own or their family's or dependants' educational or health needs or old age have ceased to travel temporarily or permanently, but excluding members of an organised group of travelling showpeople or circus people travelling together as such.
- 2) No more than 2 caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 (of which no more than 1 shall be a static caravan or mobile home) shall be stationed on the site at any time.
- 3) Within 3 months of the date of this decision, details of the works for the disposal of sewage on the site to serve the development hereby permitted shall be submitted to and approved in writing by the Local Planning Authority. The works shall thereafter be carried out in accordance with the approved details and shall be retained thereafter for so long as the permitted use remains.
- 4) Within 6 months of the date of this decision, the landscaping scheme shown on approved drawing TDA 1998.02 Proposed Site Layout and Detailed Landscape Proposals shall be implemented in full. Any trees or other plants which within a period of five years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of a similar size and species.
- 5) All existing hedges, hedgerows and trees shall be retained except where works are required to provide adequate visibility splays. All hedges, hedgerows and trees on and immediately adjoining the site shall be protected from damage for the duration of works on the site. Any parts of hedges or hedgerows removed without the Local Planning Authority's prior written consent or which die or become, in the opinion of the Local Planning Authority, seriously diseased or otherwise damaged within 5 years of the date of this decision shall be replaced as soon as is reasonably practicable and, in any case, by not later than the end of the first available planting season.
- 6) No vehicle over 3.5 tonnes shall be stationed, parked or stored on this site.
- 7) No commercial activities shall take place on the land, including the storage of materials.
- 8) No external floodlighting shall be installed on the site.

-End-

APPEARANCES

FOR THE APPELLANT:

Dr A Murdoch, MRTPI	Planning Consultant
Mr R Crandon BA (Hons) Dip LA	Landscape Architect
Mr and Mrs Perkins	Appellants

FOR THE LOCAL PLANNING AUTHORITY:

Mrs L Payne	Planning Officer, Ashford Borough Council.
Mr Bailey	Deputy Team Leader - Planning Policy Ashford Borough Council.

Documents submitted at or after the Hearing

1. Report to Council's Cabinet re Strategic Nutrient Mitigation Strategy dated 30 March 2023.
2. Statement of Common Ground signed by the main parties dated 17 July 2023.