



Appeal Decision

Hearing held on 10 October 2023

Site visit made on 10 October 2023

by G Pannell BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 November 2023

Appeal Ref: APP/U2235/W/23/3321285

Land on South East side of Emmet Hill Lane, Laddingford, Kent, ME18 6BG

- 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 Lee against the decision of Maidstone Borough Council.
 - The application Ref 22/503831/FULL, dated 4 August 2022, was refused by notice dated 31 October 2022.
 - The development proposed is change of use of land for stationing of six static caravans and six touring caravans for Gypsy/Traveller use, with associated parking and hard and soft landscaping.
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Decision

1. The appeal is allowed and planning permission is granted for Change of use of land for stationing of six static caravans and six touring caravans for Gypsy/Traveller use, with associated parking and hard and soft landscaping at Land on South East side of Emmet Hill Lane, Laddingford, Kent, ME18 6BG in accordance with the terms of the application, Ref 22/503831, dated 4 August 2022, and the plans submitted with it, subject to the conditions set out in the attached schedule.

Preliminary Matters

2. The description of development in the heading above has been taken from the Council's decision notice. This was agreed with the appellant during the consideration of the application and I have therefore used this in my formal decision.

Main Issue

3. The main issue in this appeal is the effect of the proposed development on the character and appearance of the area.

Reasons

4. The appeal site is formed from a larger paddock and is located adjacent to an existing gypsy and traveller site, which comprises a number of outbuildings and stables. The site is well screened from Emmet Hill Lane as a result of existing landscaping and the boundaries of the larger paddock also benefit from established landscaping.

5. The Maidstone Landscape Capacity Study: Sensitivity Assessment – January 2015 (MLCAS) sets out that the key characteristics of the Laddingford Low Weald character area is of expansive arable land with linear settlements with clusters of development at road junctions. The appellant's have provided as part of the appeal a landscape and visual impact assessment (LVIA) which describes the landscape character at and around the site as demonstrating the key characteristics of the MLCAS.
6. Policy DM15 of the Maidstone Borough Local Plan 2017 (LP) sets out that planning permission for unallocated gypsy and traveller sites will be granted subject to a number of criteria. Those relevant to this main issue are that the development would not result in significant harm to the landscape and rural character of the site, having regard to local landscape character, cumulative effect and existing landscape features.
7. The area has appreciable qualities in terms of its rural character with the broader site contributing to the coherence of the rural landscape, with the existing paddocks influencing the wider pastoral character. These are important contributing factors to the character of the area.
8. Whilst caravans are not an alien feature in rural locations in the form of tourism or rural workers accommodation and are evident on the neighbouring site, the proposal would introduce a greater number of pitches into the area. It would also lead to the creation of a formal surfaced access with associated parking and turning and changes which would result in the intensification of the site as part of its residential occupation. In particular the subdivision of the larger site with a staggered boundary would be an alien feature which would not reflect the organic boundaries which currently exist within the site. This would also be visually from the introduction of internal and external lighting which would be noticeable within this landscape and intrude into the countryside.
9. The site, despite the presence of landscaping around its boundaries, is visible from Emmet Hill Lane and from these localised viewpoints the development would result in a change from the rural setting of the site, albeit viewed in the context of the neighbouring site which also contains a number of buildings and structures.
10. I therefore conclude the development would lead to modest harm to the character and appearance of the appeal site and its surroundings, but would not be at the significant level of harm set out in policy DM15 of the LP.
11. The proposal would conflict with policy DM1 (ii) of the LP which seeks to ensure development responds positively to the local character of the area. It would also fail to comply with policy DM30 which provides design principles for development in the Countryside.
12. The proposal would also result in a minor conflict with policy SP17, which sets out that development proposals in the countryside will not be permitted unless they accord with other policies in this plan and not result in harm to the character and appearance of the area. The proposal would be in accordance with policy DM15, and therefore is permitted within the Countryside. However, as noted above would conflict with other policies within the plan protecting the character and appearance of the area.

13. However, the conflict with policies SP17, DM1 and DM30 is limited when considered in the context of policy DM15, which permits sites for gypsies and travellers where, in particular, the development does not have a significant adverse impact on the character of the landscape.
14. The Council have also referred to policy SS1 of the LP, which sets out the Maidstone Borough Spatial Strategy, however as the LP also has a criteria based policy for gypsy and traveller sites I have not found any overarching conflict with the Council's spatial strategy.

Other Considerations

The general need and supply of pitches

15. The PPTS requires local authorities to set pitch targets and to identify and update annually a supply of specific deliverable sites sufficient to provide five years' worth of sites against this target. In 2012 the Council undertook a Gypsy Traveller Accommodation Assessment (GTAA) which generated a 5-year pitch need of 187 pitches. The evidence which the GTAA was based upon is now woefully out of date and therefore can not be relied upon as robust in terms of identifying the scale of unmet need in the district.
16. The Council have been in the process of producing a new Local Plan and produced an interim GTAA in September 2023 to support this, with the main modifications consultation on the emerging Local Plan having commenced on 29 September 2023. This sets out a total pitch need figure of 529 pitches.
17. The Council have subsequently provided an up dated position setting out the five year requirement 2023-2028 of 205 pitches with a current supply of 53.5 pitches. This is predominately from a reliance on extant allocations from the 2017 Local Plan, which have yet to be delivered. The Council have therefore confirmed that they have a 5 year supply of only 1.2 years.
18. The Council intends to identify new pitches through a separate Gypsy and Traveller and Travelling Showpeople DPD, rather than through the emerging Local Plan. The Council have already undertaken two calls for sites, one in March 2022 and one in March 2023. It anticipates that the DPD would be adopted in October 2025.
19. This means that unmet need can only be met through windfall sites coming forward or through the extant allocations within the LP with no possibility of securing a further supply of plan led sites until at least 2025.
20. Under the Public Sector Equality Duty (PSED) set out in s149 of the Equality Act 2010, I need to consider how the modest increase in the supply of sites arising from the development could positively contribute to the advancement of equality and good relations, with s149 placing an onus on public authorities to avoid discrimination and being proactive in promoting equality. The equality implications arising from the development are, as such, an important factor in favour of the proposal. As such I consider that need for Gypsy and Traveller sites carries considerable weight.
21. Therefore, having regard to the scale of the under supply, I attach considerable weight to this consideration, whilst acknowledging that the Council has a criteria based policy under which the unmet need can be considered.

Planning Balance

22. The Council is currently unable to meet the identified accommodation needs of gypsies and travellers. Addressing this to a modest degree by permitting six pitches is therefore a contribution to the undersupply and attracts weight accordingly.
23. I have given moderate weight to the harm I have identified to the character and appearance of the area and limited weight to the conflict with the development plan, but this does not outweigh the benefits that I have outlined above.
24. In light of the above the development is in accordance with the development plan as a whole. Of the material considerations, the limited harm to the character of the area is outweighed by the general need for gypsy and traveller sites and the uncertainty about any future provision given the current status of the DPD.

Conditions

25. The Council has suggested conditions which I have considered against the advice in the National Planning Policy Framework and Planning Practice Guidance. As well as the standard implementation condition, I have imposed a condition to ensure that the proposal is carried out in accordance with the approved plans to provide certainty. However, I have left scope for the boundary of the site to be amended from the staggered post and rail fencing shown on the proposed block plan, as there should be sufficient space within the site for an alternative arrangement to be secured. This is in order to enable a more organic boundary to be provided, including softening with landscaping, which would mitigate to some degree the harm I have identified to the character and appearance of the area.
26. The Council have suggested that, if planning permission is to be granted, it should be subject to a condition limiting occupation of the site to Gypsies and Travellers as defined in Annex A of the PPTS. However, the Court of Appeal in *Smith* held that the exclusion of Travellers who have ceased to travel permanently is discriminatory and has no legitimate aim.
27. There is no foretelling as to whether any occupiers might be forced to cease travelling permanently. Imposing the suggested condition would be liable to result in unlawful discrimination, with members of the community being unable to live on this site. I shall therefore grant planning permission subject to a condition which restricts occupation to Gypsies and Travellers, defined so as to not exclude those who have ceased travelling permanently.
28. To limit the visual impact the number of caravans and the size of vehicles to be kept at the site are to be restricted. For similar reasons details of landscaping and details of any external lighting are also required to be submitted, agreed and implemented.
29. In the interests of living conditions, a condition has been imposed to restrict commercial activities on the site.

30. I have also found it necessary to restrict the appellant's permitted development rights for the erection of outbuildings, gates, walls and fences. As the introduction of these structures could lead to a sporadic form of development detrimental to the wider character and appearance of the area.

Conclusion

31. I therefore conclude that harm I have identified to the character and appearance of the area is outweighed by other material considerations including the general need for gypsy and traveller sites and the uncertainty about any future provision. Therefore, the development accords with the Development Plan, Framework and the PPTS.

32. For the above reasons, and having had regard to all other matters raised, I conclude that the appeal should be allowed.

G Pannell

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Simon McKay BSc MA MRTPI of SJM Planning Ltd
Richard Morrish of Richard Morrish Associates Ltd

FOR THE LOCAL PLANNING AUTHORITY:

Kate Altieri Senior Planning Officer

Schedule of 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: 2022-1053v1-Location; 2022 1053v1-Mobile; 2022-1053v1-ExistBlock; 2022-1053v1-PropBlock except in respect of the staggered boundary shown on plan 2022-1053v1-PropBlock.
- 3) 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.
- 4) There shall be no more than 6 pitches on the site and on each of the 6 pitches approved no more than 2 caravans, shall be stationed at any time, of which no more than 1 caravan shall be a static caravan.

- 5) No vehicle over 3.5 tonnes shall be stationed, parked or stored on this site.
- 6) No commercial activities shall take place on the land, including the storage of materials, vehicles or any livery use.
- 7) No development shall commence until a revised block plan has been submitted to and approved in writing by the local planning authority. These details shall include the realignment of the proposed staggered boundary with the adjacent paddock, boundary treatment and landscaping, including an implementation programme. The development shall be carried out in accordance with the approved details. Any realignment must be within the red line shown on drawing number 2022-1053v1-Location.
- 8) No development shall commence until there shall have been submitted to and approved in writing by the local planning authority a scheme of landscaping for the entire site. The scheme shall include indications of all existing trees and hedgerows on the land, identify those to be retained and set out measures for their protection throughout the course of development.
- 9) All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner; and any trees or plants which within a period of 5 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 similar size and species.
- 10) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any other order revoking and re-enacting that order with or without modifications), no sheds or amenity/utility buildings, or other buildings or structures, walls, fences or other means of enclosure other than those shown on the approved plans or those approved under condition 7 above, shall be erected on the site unless details of their size, materials and location shall have previously been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 11) Details of any external lighting shall be submitted to and approved in writing by the local planning authority before the use hereby permitted takes place. Development shall be carried out in accordance with the approved details.
- 12) Prior to the first occupation of any caravan hereby approved, a scheme for the enhancement of biodiversity on the site, to include the installation of a minimum of one bat tube on each mobile home, shall be submitted to and approved in writing by the local planning authority. The development shall be implemented in accordance with the approved details prior to the first occupation of any caravan and all features shall be maintained as such thereafter.

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