



Appeal Decision

Hearing held on 13 December 2023

Site visit made on 13 December 2023

by David Murray BA (Hons) DMS MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19th December 2023

Appeal Ref: APP/E2205/W/23/3331516

Bridgewood Farm, Watery Lane, Westwell, Ashford, Kent, TN25 4JJ

- 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 Dean Goodearl against the decision of Ashford Borough Council.
 - The application Ref PA/2022/2068, dated 22 July 2022, was refused by notice dated 19 April 2023.
 - The development proposed is the change of use of the land for the stationing of 3 mobile homes for Gypsy / Traveller occupation. Occupation ancillary to the existing site permitted under application 12/00923/AS.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appeal site lies in an area formerly designated as the Kent Downs Area of Outstanding Natural Beauty (AONB). This has now been re-designated as the Kent Downs National Landscape (NL) however the applicable legislation and policy remain the same.
3. Before the hearing the Council accepted that the appellant's drainage proposal meant that the second reason for refusal could be withdrawn as the issue of the effect on groundwater quality could be resolved by condition.

Main Issues

4. The main issues are:
 - The accord with the development strategy on the location of development;
 - The effect on the character and appearance of the area and the Kent Downs NL;
 - The effect on the Stodmarsh Nature Conservation Habitat;
 - The need and supply of gypsy/traveller sites and availability of alternative sites; and
 - The personal circumstances of the appellant and best interests of children.

Reasons

Background

5. The appeal site includes Bridgewood Farm and scrub land to the rear which lie in an area of countryside with the M20 motorway to the north and the Ashford to Maidstone railway line to the south. Moreover, Bridgewood farm has a lawful and permanent gypsy and traveller pitch occupied by the appellant and his family. The proposal is to develop a further three pitches for occupation by family members.

Policy context

6. The development plan includes the Ashford Borough Local Plan (LP) adopted in 2019. In the examination process the appeal site was considered by the Examining Inspector because of a Council proposal to allocate the appeal site for a further three pitches. The Inspector concluded that while the existing site was well screened with negligible impact on the Kent Downs (AONB) there was a greater need to retain the remaining open areas bounded by the M20 and the railway line. He said it may be possible to limit the visual effects (by landscaping) but these measures themselves would be likely to appear artificial.
7. More fundamentally he said that there was no justification for allocating pitches for gypsies and travellers in an area with the highest level of protection in relation to landscape and scenic beauty when other options might be possible through the emerging development plan. The allocation of the extended appeal site for three pitches was therefore removed from the submitted LP by Modification.
8. The Council started preparing a Gypsy and Traveller DPD and this had progressed to a 'call for sites'. However, because of complications over resolving the 'nitrate neutrality' issue, both nationally and within the Borough, the Council has decided to pause the progression of this policy document. It is therefore likely that the need for and supply of gypsy and traveller sites will be part of a Local Plan Review which the Council suggest is programmed for adoption in the summer of 2026.

Effect on the Kent Downs NL (AONB) landscape

9. The main relevant LP policy is HOU16 for traveller accommodation and this contains 10 criteria which must be met for a proposal to be acceptable outside of allocated sites. The Council agrees that while seven of the criteria are met, parts (f), (i) and (j) are not and they relate to the impact on the Kent Downs NL (AONB) landscape.
10. In terms of the landscape character of the area I have taken account of the detailed and comprehensive analysis set out in the Landscape and Visual Appraisal¹ (LVA) prepared on behalf of the appellant.
11. At the site visit I considered the proposal in the landscape from around the site itself and from Watery Lane and from the crest of the Down's escarpment around viewpoint V4 (Pilgrims Way) as shown on Fig. 3-1 of the LVA.

¹ As prepared by Richard Morrish Associates July 2023

12. Dealing with the latter viewpoint first, from this elevated position I concluded that the proposed pitches would have a negligible effect on the special landscape of the Kent Downs. Virtually all of the impact of the proposed caravans and related activity would be screened by the topography of the land and the degree of separation in long distance views. Moreover, close to the appeal site the M20 is on a slightly elevated embankment and the shrubs which grow there effectively screen the views from the escarpment at the moment even at this time of year when the vegetation was generally without leaves.
13. Viewed from Watery Lane, there would be a short glimpse of the proposed caravans though the gap formed by the access to the side of the existing pitch but the extent to which the caravans would be seen from this part of the public realm would be limited.
14. In terms of the wider impact of the site I agree that the present 'Principal Zone of Visual Influence' as described in the LVA is generally as depicted in Figure 3-1. This area is away from the public realm but the open nature of the land contributes positively to the landscape of the NL sandwiched between the M20 and the railway line. I agree with the Inspector in the 2014 decision² who said that this area of open land still retains a rural character. Although there are a few alien features like abandoned vehicles and temporary 'heras' fencing the open rural land is important visually on the edge of the downlands.
15. From around this zone the proposed residential caravans would be prominent in the landscape and would have a significant but local harmful visual effect. It is possible that over time the site could be landscaped with additional screen planting, however, no appropriate scheme has been submitted. The general format of planting illustrated on the proposed Block Plan does not give me confidence that landscaping would inevitably result in proper mitigation without itself appearing as an alien and artificial feature in the landscape as concluded by the Examining Inspector.
16. Overall on this issue I find that the proposed residential caravans would cause significant visual harm to the landscape of the Kent Downs NL (AONB) and would not be consistent with its special character. The proposal therefore conflicts with parts (f) and (j) of Policy HOU16. Neither would it conserve, enhance or restore the character of the landscape and there would be conflict with Policy ENV 3(b) of the LP.

The effect on the Stodmarsh Nature Conservation Habitat

17. 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'.
18. The Council had started to prepare a Borough Mitigation Strategy to provide strategic nutrient mitigation for development within the Borough. However this has been paused because of difficulties over securing appropriate land and in

² APP/E2205/A/13/2190874.

the financing of the mitigation. The Council is waiting for further proposals and guidance from government and the main ecological and environmental parties to resolve the issue.

19. In this case the appellant proposes a cess pit/septic tank for the disposal of foul drainage and this would need to be emptied on a regular basis. Mr McKay said that the effluent could in theory be taken away for disposal outside of the River Stour catchment area. However, there is no legal mechanism before me to secure this in perpetuity and I have doubt that an appropriate condition could be imposed to that effect as it would be difficult to monitor and enforce. A condition would therefore not pass the tests set out in the Framework or national planning practice guidance.
20. As the application stands, I find that it has not been demonstrated that the additional occupation involved in the three new residential caravan units would not have a significant adverse effect on the integrity of the habitat of the Stodmarsh Lakes, either on its own or in combination with other plans or projects.

Need, supply and availability of gypsy and traveller sites

21. The Planning Policy for Traveller sites (PPTS) indicates that Councils should be able to demonstrate a five-year supply of deliverable sites assessed against a locally set target. The most recent Gypsy and Traveller Accommodation Assessment (GTAA) carried out in 2018/2019 indicates that there was a 'cultural' need for some 74 pitches and a 'PPTS' compliant need for about 49 pitches. The Council accepts that it could not demonstrate a five-year supply of new pitches at the moment based on this identified need. Even with the permissions granted and the limited allocations in the Local Plan, the outstanding need was about 47 'cultural' pitches and 22 'PPTS compliant'. Moreover, it was also accepted by the parties that as the PPTS definition of a gypsy or traveller, as used in the GTAA, had been found to be discriminatory and unlawful by the Court of Appeal in the case of *Lisa Smith*, this level of need was now out of date and the real level of need was better reflected in the 47 pitch shortfall.
22. This is a substantial under-provision to which substantial weight must be given. Moreover it is unlikely to be addressed in the plan-led system until 2026 with the adoption of the LP Review as described in paragraph 8 above and there is a policy vacuum in the meantime. This leaves the criteria-based policy HOU16 as the main mechanism for the provision of new sites for gypsies and travellers.
23. In terms of alternative sites, Mr Apperley for the Council understood that there may be three pitches available now at the Council's public site at Chilmington but two are potentially under offer from other gypsies and travellers and further details of the other site's suitability was not known. Neither was it known if any of these pitches would be compatible with the appellant's ethnicity. I am therefore not able to place much weight on this alternative provision. No other alternative pitches were known to be available.
24. Overall on this issue I conclude that there is a substantial unmet need for gypsy and traveller sites in the Borough at the moment as well as a medium term policy vacuum for new sites. Nor is it clear that there are alternative sites for the appellant and his family to turn to.

Personal circumstances and children

25. At the hearing Mr McKay set out the ages of the children who live at Bridgewood Farm as the family of the appellant and his wife. Six are of school age and he understands that they are taught at local schools. The older ones are becoming adults and they want to start their own independent living but continue to share some facilities with their parents and stay in an extended kinship group for care and support in a traditional way. The fixed address would give access to services and facilities. Mr McKay agreed that these children and potential new households were not under pressure to leave the present site and were not faced imminently with a life on the roadside but there was little alternative scope for accommodation available to them and they wanted to avoid being over-crowded on the present pitch.

Planning balance

26. At the start of the planning balance I have borne in mind the three main aims of the Public Sector Equality Duty, as set out in the Equality Act 2010, and placed no other aspect above the best interests of any child.
27. On the main issues I have found the proposed three pitch residential caravan site would cause significant visual harm to the special landscape of the Kent Downs NL and would not be consistent with its unique character. Neither would the proposal conserve, enhance or restore the character of the landscape. The proposal therefore conflicts with the relevant provisions of the development plan as contained in Policies HOU16 and ENV3. Great weight has to be given to conserving and enhancing the scenic beauty of the NL (AONB) as set out in paragraph 176 of the Framework. Moreover, additional overnight accommodation is proposed but it has not been demonstrated that the proposal would not have a significant adverse effect on the habitat of the Stodmarsh Lakes by resulting in additional levels of nitrogen and phosphorus.
28. To be balanced with this is my finding that there is a considerable unmet need for gypsy and traveller sites in the Borough at the moment and the formal plan system will not positively rectify this in the short to medium term. The lack of an adequate five-year supply of deliverable sites conflicts with the requirements of the PPTS. There also does not appear to be alternative sites for the appellant's children to turn to in the immediate future.
29. However, these factors in favour do not outweigh the clear conflict with the development plan as significant harm would be caused to a nationally recognised sensitive landscape on a permanent basis as well as contributing to the decline of an established special habitat.
30. I have also considered whether a temporary permission is justified but the PPTS makes clear in paragraph 27 that unmet need should not prevail even on a temporary basis where a proposal involves land affecting an AONB or habitat site.
31. I conclude that the conflict with the development plan is not outweighed by any other considerations and therefore the appeal should not be allowed.

Human Rights

32. I recognise that a refusal of permission may be an interference with the appellant's human rights, particularly under Article 8 of the First Protocol to the

European Convention on Human Rights, as set out in the Human Rights Act 1998, which is the right for respect for private and family life. His older children may be denied the opportunity to live as a family group in accordance with cultural traditions.

33. However, these rights are qualified ones and must be balanced with the public benefit of protecting a nationally recognised landscape and ecological habitat, to which the government attaches great importance.
34. My overall conclusion in the proportionality balance is that the policy objectives and habitat protection cannot be achieved by means which interfere less with the individual's rights. Therefore, dismissing the appeal is a necessary and proportionate response to the policy objective of the protection of this sensitive landscape and ecological habitat.

Conclusion

35. For the reasons given above I conclude that the appeal should be dismissed.

David Murray

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr S McKay BSc MA MRTPI, Director SJM Planning.

FOR THE LOCAL PLANNING AUTHORITY:

Mr M Apperley BSc MA – Deputy Team Leader - Planning Applications,
Ashford Borough Council.

Mr Bailey Deputy Team Leader - Plan Making
Ashford Borough Council.

INTERESTED PARTIES:

Mrs C Drury – Chair, Westwell Parish Council.

Mr C Bainbridge – Westwell Parish Council.

Documents submitted at the Hearing

1. Statement from Westwell Parish Council