



Appeal Decision

Site visit made on 17 January 2024

by David Smith BA(Hons) DMS MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23rd January 2024

Appeal Ref: APP/X2220/W/23/3319129

Sherleys Farm, Reach Road, St Margarets-at-Cliffe, CT15 6HY

- 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 J McCarthy against the decision of Dover District Council.
 - The application Ref 22/01011, dated 2 August 2022, was refused by notice dated 9 February 2023.
 - The development proposed is change of use from agriculture to traveller site with 3 pitches.
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Decision

1. The appeal is allowed and planning permission is granted for change of use from agriculture to traveller site with 3 pitches at Sherleys Farm, Reach Road, St Margarets-at-Cliffe, CT15 6HY in accordance with the terms of the application, Ref 22/01011, dated 2 August 2022, subject to the conditions in the attached schedule.

Preliminary Matter

2. In November 2023 all designated Areas of Outstanding Natural Beauty became National Landscapes and so will be referred to as such in this decision.

Main Issues

3. These are:
 - The effect of the proposed use on the character and appearance of the surrounding area, which is within the Kent Downs National Landscape;
 - Whether the proposed pitches would be accessible to local services and facilities; and
 - Whether adequate provision would be made for foul water drainage.

Reasons

4. The appeal site is part of a former smallholding. It comprises the northern section of the appellant's land and the concrete roadway that serves it.
5. The site was once used by the military but according to the appellant there has been a residential unit on the wider land since 1978. A lawful development certificate has been given for retention of a building in use as a dwelling. The sign at the front of the decking area refers to it as 'The Egg Shed'. There are also four farm outbuildings. On the appeal site itself there was a touring caravan, a mobile home and portable building at the time of my visit. In

addition, when not travelling, the appellant is currently living in another mobile home on the appeal site.

6. It is expected that each of the three pitches would comprise a mobile home in the position shown on the block plan, a touring caravan, a light van and a car. The intended occupiers are the appellant, his brother and his brother-in-law and their respective partners. The appellant's brother has two children of primary school age. All these households require a permanent base and comply with the definition of Gypsy and Traveller in the Planning Policy for Travellers Sites (PPTS).

Character and appearance

7. The National Planning Policy Framework establishes that great weight should be given to conserving and enhancing landscape and scenic beauty in what are now termed National Landscapes. These areas have the highest status of protection. Policy DM16 of the Dover Core Strategy of 2010 seeks to avoid harm to the character of the landscape and Policy DM15 protects the character of the countryside. The Kent Downs Management Plan is a material consideration and its principles include ensuring that any changes to land use conserve and enhance the character and qualities of the Kent Downs rather than detracting from them.
8. Nevertheless, Core Strategy Policy DM7, which is concerned with provision for Gypsies and Travellers, does not indicate that sites should only be located outside of National Landscapes. Neither does the PPTS preclude caravan sites within such designated areas. There is therefore no implicit or automatic objection to the siting of caravans within the Kent Downs National Landscape.
9. The site lies within the South Foreland sub-area of the White Cliffs Coast Character Area as identified in the Landscape Character Assessment for the Kent Downs. Within it, some of the key characteristics are identified as a gently undulating coastal plateau above the cliffs, relatively few trees creating an open and exposed landscape, limited settlement and a dominant land use of arable farming. These traits are all found in the vicinity of the appeal site. The landscape management recommendations include protecting open horizons and the sense of expansiveness and the relative lack of development. In general, the landscape is one that is sensitive to change.
10. However, the appeal site and associated land is already distinct from the surrounding landscape. This is because of the existing structures and drive that are partially visible and the clump of both evergreen and deciduous trees that largely surround the appeal site. The land therefore comprises an isolated enclave surrounded by flattish, open fields within the overall panorama. It contributes little to the key qualities of this part of the National Landscape.
11. The appeal site is visible from the road across farmland and from a public right of way to the north. However, because of the strong existing screening and the scope for supplementary planting, the visual impact of the proposed caravans, vehicles, associated traffic and other physical paraphernalia would be insignificant. Furthermore, any glimpses of the manifestations of the proposed use would be in the context of the existing buildings rather than in stark contrast to the landscape. The site already has a domestic presence and the proposed residential use would not accentuate this in a visually harmful way.

12. In general terms landscaping should not be used to screen or hide development but rather used as a means to integrate it into its setting. That would be the case here as the proposed use would take advantage of the existing features of the site in order to minimise the impact. Undertaking further planting within the appeal site would add to this. Indeed, Policy DM7 indicates that sites should be screened from wider view or capable of this through additional measures.
13. The proposal would not fundamentally change or detract from the landscape character of the National Landscape. This is because the existing site does not display any of the important attributes that have been identified. It is currently at odds with the prevailing landscape and introducing three residential pitches would not exacerbate its anomalous nature. Furthermore, the proposal is small scale and low level and the limited amount of extra activity and domestication would not spoil the prevailing open, sparsely developed character of the area.
14. As such, the proposed use would not harm the character or appearance of the surrounding area within the Kent Downs National Landscape. It would accord with relevant policies concerned with the character of the landscape and the countryside. Neither would the proposal compromise the policies or objectives in the Management Plan.

Local services and facilities

15. Policy DM7 contains no requirement for Gypsy and Traveller sites to be within settlements. The PPTS also indicates that sites will be located in rural settings although development in open countryside that is away from existing settlements should be very strictly controlled. The appeal site is about 1.5km from St Margarets-at-Cliffe and so this limitation does not apply. In addition, none of the PPTS criteria aimed at ensuring that traveller sites are sustainable refer to minimising car-borne travel or proximity to towns or villages.
16. Nevertheless, the Framework aims to promote sustainable transport whilst recognising that opportunities to maximise such solutions will vary between urban and rural areas. Its reference to a "genuine choice" of transport modes is in the context of significant development and the proposal does not fall into this category.
17. In this case, whilst St Margarets and its bus service is not that far away, the journey on foot would appear to involve walking along the road where there is no pavement. This would be a disincentive to many. Dover is around 2km away and the appellant claims that this could be reached by a traffic-free, cliff-top walk. Even if this is so, both destinations are beyond the distance that most people would be willing to walk to on a regular basis. Cycling to St Margarets would be a more reasonable option but this has its own limitations, especially if purchased goods need to be carried.
18. The location of the appeal site is therefore not especially conducive to walking or cycling as alternative modes of transport to the car. As a consequence, it is therefore likely that the majority of trips would be made by private vehicle. However, journeys to access normal day-to-day services and facilities could potentially be quite short as the site is not remote from the nearest settlements. It is also unrealistic to expect occupiers of rural sites to rely on walking, cycling or public transport.

19. Therefore, given the proximity to local services and facilities the site would be accessible to them and so would comply with this criterion within Policy DM7.

Drainage

20. Foul drainage would be to a package treatment plant. The appeal site is within a groundwater source protection zone and Policy DM17 of the Core Strategy expects adequate safeguards to be provided against possible contamination. The Environment Agency does not object to the proposal in principle but wishes to have further details of the layout and design. The appellant's percolation tests show that the proposed system could operate satisfactorily and there is nothing to indicate that effluent could not be dealt with. Therefore, the matter could be addressed by condition. In that event, adequate provision would be made for foul water drainage and there would be no conflict with Policy DM17.
21. Furthermore, a potential benefit of the proposal is that foul drainage from the existing dwelling could be diverted to the new plant and thereby obviate reliance on an existing septic tank which could be taken out of commission. There is no evidence to support an objection in relation to surface water drainage and details of this could also be required by condition.

Other Considerations

22. The appellant's brother and brother-in-law are currently sharing sites with family and friends around Croydon and Winchester. The proposal would avoid them having to 'double-up' in this way or to move onto the roadside if these arrangements came to an end. No particular personal circumstances have been advanced but accepting the proposed use here would bring about many of the general benefits implied by paragraph 13 of the PPTS.
23. The Council maintains that it can demonstrate an up-to-date supply of deliverable sites well in excess of five years. This does not mean that other sites that come forward should be vetoed. The appellant questions whether turnover on vacant pitches amounts to additional availability. Furthermore, whether the 9 pitches given planning permission are available to anyone other than members of the existing host families. In the circumstances of this appeal, it is not necessary for the supply position to be settled. However, the proposal would contribute towards the general need for sites and the broad aim of the PPTS to increase the number of traveller sites.
24. The Draft Local Plan is being examined. Policies H3 and H4 are concerned with meeting the needs of Gypsies and Travellers and windfall accommodation. The policies identify three sites for intensification and set a series of criteria for the assessment of individual proposals. Whilst hearings have been held to discuss them and potential Main Modifications, the likely final form of these policies is not clear at this stage. In particular, whether all of the proposed criteria in Policy H4 will be found sound. Therefore, only limited weight can be given to the alleged conflict with that emerging policy.
25. The Council accepts that Policies DM1 and DM11 are out of kilter with the Framework. In any event, as the proposed use is justified by Policy DM7 there would be no conflict with Policy DM1 which otherwise limits development outside settlement boundaries. The proposal would not be a significant generator of travel demand and the conformity with Policy DM7 means that it would accord with Policy DM11 as well.

26. Because of the location, it may be difficult for future occupiers to integrate easily with the local community. The site does not perform well when judged against this aspect of achieving sustainable development but this consideration does not amount to an overriding objection. Neither does the potential for the site to be affected by sea mist and wind.

Other Matters

27. Further objections have been raised by the Parish Council and others in the light of an earlier refusal of planning permission. However, there is no evidence that traffic from three residential pitches would have an unacceptable impact on highway safety. Furthermore, the scale of the site would not dominate or have any adverse effect on the nearest settled community or village infrastructure. There is no information to show that there is already a sufficient number of gypsy sites in the vicinity. No evidence has been provided to suggest how tourism might be negatively affected.

Conditions

28. Occupation should be limited to Gypsies and Travellers given the specific policy basis for accepting the use. The definition in the PPTS was revised in December 2023 and referring to this provides a sounder basis for a condition and allows account to be taken of any future changes to the definition.
29. To limit the visual impact, the number and location of caravans and the parking areas and the size of vehicles should be restricted. Given the rural location it is also necessary to remove permitted development rights for means of enclosure. Details of further landscaping should be agreed to secure a satisfactory appearance. If any planting fails within five years it should be replaced. This should be adequate time for landscaping to establish and a ten-year period would be overly onerous. To safeguard the groundwater source protection zone details of the package treatment plant should be secured.
30. Given that no other properties are in close proximity, there is no need to preclude commercial activities on amenity grounds. Any material change of use of the land would require planning permission in any event. There is also no reason to suppose that a residential use would lead to the burying of waste or other materials. Other legislation exists to deal with this should it occur.

Conclusion

31. The proposed use would comply with the development plan. There are no material considerations that indicate the proposal should be determined other than in accordance with it. Therefore, for the reasons given, the appeal should succeed. As a consequence, there would be no interference with the appellant's human rights and, in exercising the public sector equality duty, the needs of the appellant would be met in so far as they are different to those without a relevant protected characteristic.

David Smith

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The site shall not be occupied by any persons other than Gypsies and Travellers as defined in Annex 1: *Glossary* of the Planning Policy for Traveller Sites (or its equivalent in replacement national policy).
- 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, shall be stationed on the site at any time.
- 4) The static caravans hereby permitted, the parking areas and package treatment plant shall be sited in accordance with the approved block plan.
- 5) Before the use of the land hereby permitted commences, details of a landscaping scheme for the site, including any hard surfacing and boundary treatment, and a timetable for their provision shall be submitted to and approved in writing by the local planning authority. The approved details shall be implemented in full in accordance with the submitted timetable. The approved boundary treatment shall be retained as such thereafter.
- 6) Any trees or other plants approved as part of the landscaping scheme pursuant to Condition 5) which, within a period of five years from planting 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.
- 7) Before the use of the land hereby permitted commences, details of the means to dispose of surface water and details of the package treatment plant and the means to discharge foul water from the site shall be submitted to and approved in writing by the local planning authority. Upon first occupation of the site, the approved details shall be fully implemented and retained as such thereafter.
- 8) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any Order revoking or re-enacting that Order with or without modification), no gates, walls, fences or other means of enclosure, other than those approved pursuant to Condition 5), shall be erected within the site.
- 9) No more than one commercial vehicle per pitch shall be stationed, parked or stored on the site at any time. These shall only be for the use of the occupiers of the caravans hereby permitted and no vehicle shall exceed 3.5 tonnes in weight.