



Appeal Decisions

Hearing Held on 24 October 2023

Site visit made on 24 October 2023

by H A Orr MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 January 2024

Appeal A Ref: APP/H2265/C/22/3302477

Land north of Walnut Cottage, Bullen Lane, East Peckham, Tonbridge, Kent TN12 5LX

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Tony Lee against an enforcement notice issued by Tonbridge & Malling Borough Council.
 - The enforcement notice, numbered 20/00253/WORKM, was issued on 16 June 2022.
 - The breach of planning control as alleged in the notice is the unauthorised change in use from agricultural land to land used as a residential caravan site. Construction of shed buildings.
 - The requirements of the notice are:
 - A) To cease the residential occupation of the site and remove from the site all caravans; both touring and static.
 - B) To remove all shed buildings from the site.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a) and (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
-

Appeal B Ref: APP/H2265/W/22/3291395

Land north of Walnut Cottage, Bullen Lane, East Peckham, Tonbridge, Kent TN12 5LX

- 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 Tony Lee against the decision of Tonbridge & Malling Borough Council.
 - The application Ref TM/21/01345/FL, dated 10/05/2021, was refused by notice dated 10 September 2021.
 - The development proposed is a change of use of land to residential for one Romani family. The site to contain one static caravan, one touring caravan, parking, related hardstanding and infrastructure.
-

This decision is issued in accordance with section 56 (2) of the Planning and Compulsory Purchase Act 2004 as amended and supersedes that issued on 11 December 2023.

Decisions

Appeal A

1. It is directed that the enforcement notice is corrected by: the substitution of the original notice plan, by the one attached to this decision; and the deletion of the allegation in the paragraph headed 'The breach of planning control alleged' and its substitution with the following words, 'without planning permission the material change of use of the land from agricultural land to land used as a residential caravan site and the construction of three associated shed buildings, (as shown marked in red on the attached plan).'
2. Subject to these corrections, Appeal A is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the material change in use of land to land used as a residential caravan site and construction of three shed buildings (as shown in red on the attached plan), at Land north of Walnut Cottage, Bullen Lane, East Peckham, Tonbridge, Kent TN12 5LX as shown on the substituted plan attached to the notice and subject to the conditions set out on the attached schedule for appeal A.

Appeal B

3. The appeal is allowed, and planning permission is granted for the use of land for a change of use of land to residential for one Romani family. The site to contain one static caravan, one touring caravan, parking, related hardstanding and infrastructure, at Land north of Walnut Cottage, Bullen Lane, East Peckham, Tonbridge, Kent TN12 5LX, in accordance with the terms of application, Ref TM/21/01345/FL, dated 10/05/2021 and subject to the conditions set out on the attached schedule for appeal B.

Background and preliminary matters

4. The allegation in the notice is set out in the heading above. It refers to both the operational development comprising a number of sheds and the change of use of the land to the residential stationing of a static caravan. In contrast the planning application makes no direct reference to the timber sheds. Nonetheless, I shall consider the appeals together in my decision.
5. Following the identification of errors in the appeal form, it was clarified at the outset of the Hearing, that the name of the appellants are as set out above, and not as shown on the s78 Appeal Form and other documentation.
6. At the Hearing it was clear that the Council consider that a material change of use has occurred and that the associated operational development has been carried out to facilitate the residential use. They also confirmed that the plan attached to the notice has been incorrectly drafted, in respect of the boundary adjacent to the restaurant car park. It is also apparent that, as drafted, the allegation fails to specify either the location, or number of sheds that their notice was intended to target. It was clear however, that the appellant understands the allegation and what he is required to do to comply with the notice.

7. Nonetheless, I have a duty to put the notice in order. It was agreed that a revised plan could be substituted for the original notice plan, to reflect the correct site boundary and the number and position of the sheds. Additionally, to my mind, the word 'unauthorised' in the allegation adds nothing of substance and should be replaced with the word 'material' to reflect the materiality of the alleged breach. Furthermore, the words '(as shown in red on the attached plan)' should be added after the words 'shed buildings' in the allegation. The notice would then reflect the plans that accompanied the planning application. For the sake of clarity, I shall replace the whole allegation with the following words: 'without planning permission the material change of use of the land from agricultural land to land used as a residential caravan site and the construction of three associated shed buildings, (as shown marked in red on the attached plan)'. I am satisfied that I can make the above corrections without causing injustice to the parties.
8. The definition of Gypsies and Travellers is set out in Annex 1 of the Planning Policy for Traveller Sites 2015, as amended in December 2023 (the PPTS). At the Hearing the Council confirmed that they were no longer disputing that the occupiers of the site meet that definition. Having regard to the evidence, I have no reason to come to a different view.
9. The signed Statement of Common Ground (SoCG) was submitted at the beginning of the Hearing. This confirmed that following additional information, the Council wishes to withdraw their reason for objecting to the development in respect of bio-diversity. I have no reason to come to a different view and shall have regard to the SoCG in my decision.

Policy

10. The Development Plan comprises the Managing Development and the Environment Development Plan Document (2010) (the MDE), and the Tonbridge and Malling Borough Council Local Development Framework Core Strategy (2007) (CS). The Council's emerging plan was withdrawn in 2021 over concerns about the duty to co-operate. It is envisaged that the new plan will go out for consultation in April 2024, with adoption following in 2026. It is therefore at an early stage and its policies have little weight.
11. Therefore, it is the policies of the adopted planning policy documents which prevail, alongside Government's planning policies set out in The National Planning Policy Framework (the Framework) and any relevant Planning Practice Guidance (PPG), which are of particular relevance to this appeal. It is for the decision-maker to determine the weight to be attributed to any conflict of those policies with National Policy.
12. Policy CP3 identifies the extent of the Green Belt and says that National Green Belt policy will be applied in the Green Belt, as such it carries full weight. Policy CP24 is a more generalised policy that seeks to ensure that development coming forward is of good quality and respects the site and its surroundings. This broadly reflects the thrust of the Framework, which seeks, amongst other things, good design. As such, Policy CP24 should carry significant weight.
13. Policy CP20 of the CS is a criteria-based policy, that specifically deals with the needs of gypsy and travellers and is therefore relevant to the determination of this appeal. It sets out that whilst future sites will be provided through land allocations, any windfall sites proposed through the planning application

process, would be assessed against the criteria set out. Policy CP20 is consistent in many respects with the Framework, which is to be read in conjunction with the PPTS, and that requires an evidence-based approach to the provision of sites. Therefore, I consider that Policy CP20 should carry full weight.

Main Issues for ground (a) and s78 appeal

14. It is common ground that the appeal site lies within the Metropolitan Green Belt. The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. Paragraph 137 of the revised Framework, makes clear that openness and permanence are the essential characteristics of the Green Belt.
15. In accordance with the Framework, the material change of use, as alleged in the notice, represents a form of development that should not be regarded as inappropriate development in the Green Belt, provided that it would preserve openness and would not conflict with the reasons for including land within it. The introduction of a mobile home harms the openness of the Green Belt and thus constitutes inappropriate development, in accordance with the PPTS.
16. On this basis I consider that the main issues are:
 - The effect of the operational development on the openness of the Green Belt and the purposes of including land within it;
 - The effect of the whole development on the character and appearance of the area and the Bullen Corner Conservation Area (BCCA); and
 - Whether the harm to the Green Belt and any other harm, is clearly outweighed by other considerations, so as to amount to the very special circumstances necessary to justify the grant of planning permission.

Reasons

Openness

17. With regard to the operational development comprising the hard surfacing and shed buildings, the Framework confirms that the construction of new buildings should be considered as inappropriate development. There is no suggestion that these have been carried out for any purpose other than to facilitate the residential use of the mobile home. Therefore, they do not benefit from any of the exceptions to inappropriateness.
18. Inappropriate development is by definition harmful to the Green Belt and should not be approved except in very special circumstances. Very special circumstances will not exist unless other considerations exist that would clearly outweigh the harm by reason of inappropriateness and any other harm. The harm by reason of inappropriateness must be afforded substantial weight.
19. The site benefits from considerable screening from the existing hedge that bounds the site to the north, east and west. I acknowledge that the level of screening is likely to vary due to seasonal changes. Nonetheless, from my observations there are only fleeting views of the development from those using Bullen Lane and Chidley Cross Road to the southeast.

20. Access to the site is from Bullen Lane, through the former pub carpark, which is now a restaurant, located to the rear of Bullen Cottage. It lies close to the junction with Hatches Lane. The plans that accompanied the s78 application (Appeal B) show that the caravans and other buildings are generally clustered in the north-east corner of the site. This means that the internal vehicular access will have to traverse the site, to reach the mobile home and parking area. Part of the hard surfacing is yet to be completed, but the remainder of the appeal site is laid to grass with a number of fruit trees, thus retaining some of its former open rural character.
21. Overall, in my judgement the moderate level of hard surfacing, two caravans, sheds and associated residential paraphernalia has introduced development into an area where there was previously none. Consequently, I find that it results in some loss of openness and the development is in conflict with Policy CP3 of the CS, which despite being out of date, seeks to maintain the extent of the Green Belt in accordance with national policy.

Character and appearance

22. The prevailing character of the area is semi-rural, with a pocket of residential development generally to the south of the site, and fields to the north and west. The BCCA was established some 30 years ago and focusses on the hamlet and the contained nature of the historic development on Westwood Road. There are a number of Listed Buildings, with others that are not listed, that nevertheless contribute towards the character of the designated area.
23. Whilst the site is not within the BCCA, it is located immediately adjacent to it and therefore is capable of affecting its setting. Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that in the exercise of planning powers in conservation areas, "special attention shall be paid to the desirability of preserving or enhancing the character and appearance of that area".
24. The thrust of the Council's case is that the Bullen Corner Conservation Area Appraisal Document sets out that in the Conservation Area, existing boundary treatments are predominantly hedging and red brick walls. It states that new boundaries should use the prevailing materials and designs, particularly 1m high hedges in front of properties, or 2m high field and side hedge boundaries. They submit that the wooden fencing around the site is visible from the BCCA, detracting from the character and appearance of the area.
25. From my observations, the location of the site to the rear of Bullen Cottage and the restaurant means that it is both physically and visually constrained. I acknowledge that prior to the existing development, the site was generally open and undeveloped, albeit overgrown. There are undoubtedly some views of the site from the car park of the restaurant, Bullen Lane and Chidley Cross Road, although the site is separated from the latter by a dwelling and triangle of overgrown land. The number of shed buildings further add to the urbanisation of the site.
26. The possibility of views from the upper floors of neighbouring properties were raised in the representations. However, I was unable to view the site from these properties to assess any impact. To my mind, the site must be viewed in the context of the existing restaurant and car park which are themselves very utilitarian in nature. Although the existing hedging provides generally good

screening, limiting views of the site from the BCCA and surrounding area, there are some areas of hedge that could be strengthened further. I have nothing to suggest that this could not be achieved by a suitably worded condition.

27. Overall, I find that the introduction of the mobile home, hardstanding and shed buildings have an urbanising effect on the character and appearance of the BCCA and the wider area. Accordingly, in my judgement it causes moderate harm to the character and appearance of the area and the BCCA. The development is therefore contrary to Policies CP3 and CP24 of the CS. These policies seek to ensure that new development protects and respects the character of the site, built environment and its surroundings.

Other considerations

Personal circumstances

28. The appellant confirmed that he had owned part of a site in Greenway Forstal. This had planning permission for a single pitch, but the remainder of the site, was owned and occupied by another family. The appellant explained candidly about the sensitive nature of the circumstances that led them to move from that site. After a year on the road, they purchased and moved onto the appeal site. He explained about the detrimental effect that sharing their previous site, had on the family and in particular their youngest daughter.
29. From the evidence the appeal site is occupied by the appellant, his wife and two adult daughters. Both the appellant and his wife attended the Hearing and expanded on the witness statement provided by the appellant. They explained about the health issues relating to their younger daughter. It is clear from this that she requires considerable ongoing assistance and support from her parents. One of the timber buildings to the rear of the mobile home provides her with a safe calm space when required. In support, the appellant provided a letter from Kent and Medway NHS and Social Care Partnership, dated 28 September 2023. The Council does not dispute the circumstances advanced.
30. For the above reasons, it is clear that the appeal site with its single pitch and a settled base, would allow the family to have better access to Doctor's surgeries and a single pitch occupied just by family members would benefit the appellant's youngest daughter. In the particular circumstances of this appeal, I give these factors significant weight.

The need for sites for gypsies and travellers

31. Policy E, paragraph 16 of the PPTS states: 'Subject to the best interests of the child, personal circumstances and unmet need are unlikely to clearly outweigh harm to the Green Belt and any other harm so as to establish very special circumstances'. It further provides guidance for considering matters relating to the need and supply of Gypsy and Traveller sites, through robust assessment of local need being carried out.
32. At the Hearing the Council provided a copy of the appeal decision APP/H2265/W/23/3316969, as this sets out their position on need in July 2023. They confirmed that the position remains unaltered, with a total of 41 pitches required. This represents a significant shortfall and the Council accepted that the actual need may be greater than the 2.1 pitches per annum pro-rata.

33. The emerging local plan has been subject to significant delay. The Council expressed the hope that it will be ready for adoption in 2026, although I note that this date has slipped again since the above appeal decision. Draft policy LP38, if adopted will seek to confirm existing sites and look for opportunities to extend those already granted planning permission. The Council have carried out a call for sites in June 2023, with a view for identifying those opportunities. They were unable to confirm the number of sites that have come forward, although it is likely that not all site owners, including the appellant, were aware of this.
34. They also confirmed that they are unable to provide any suitable, alternative and affordable sites for this family to move on to, should the appeal be dismissed. There is a waiting list of some 51 on the Kent County Council site at Coldharbour, so an alternative would not become available for the foreseeable future.
35. From the evidence, it is clear that the Council have an ongoing and significant unmet need, with no mechanism in place to reduce this. The lack of provision and alternative sites weigh in favour of the development, although the weight I give to this is tempered by the sites Green Belt location.
36. Turning to Policy CP20 of the LP, the parties agree that, despite its age it nonetheless provides a useful tool to assess the suitability of sites and its criteria are similar to that of emerging Policy LP38. It is accepted that there is a clear identified need. The appeal site is not in an area prone to flooding and I have no evidence to suggest that the development would result in poor living conditions for either those living on the site, or nearby residents. I have nothing to suggest that it would dominate the local settled community and no objection has been raised by the Highway Authority in terms of highway safety, or on the operation of the highway network.

Planning Balance

37. The development is inappropriate development and the harm by reason of inappropriateness in the Green Belt must be afforded substantial weight. Added to this I have identified additional harm to openness from the associated operational development and the character and appearance of the area.
38. Set against this harm, are the personal circumstances of this family and the benefits that a settled base would have, allowing them better access to medical care. I have also identified a number of other considerations that weigh in favour of the development, these include the contribution that one additional pitch would make to the Borough's overall supply, the advantages of keeping the family together, the lack of alternative sites, alongside other social and economic benefits, which all weigh in favour of the development. It is of note that two neighbouring residents attended the Hearing and spoke in favour of the development.
39. However, even when taken together, unmet need and the personal circumstances of the appellant and his family do not outweigh the substantial weight attributed to the harm to the Green Belt and other harm, such as to justify the grant of a permanent planning permission.
40. It follows that, it is still necessary to consider whether a temporary grant of planning permission would be appropriate. PPG makes clear that a temporary

condition is only likely to be appropriate in certain circumstances, including where a trial run is needed to assess the effect of the development on an area, or it is expected that the planning circumstances will have changed in a particular way by the end of the temporary period.

41. There remains some uncertainty about the final content and timing of the delayed emerging local plan. As adoption is not anticipated before 2026 at the earliest, exceptionally a temporary planning permission for 5 years is considered appropriate in this instance. This would allow time for the Council to assess the extent of any unmet need, ensure that appropriate measures are in place and determine any planning applications coming forward from the process. It would also give time for the family to make suitable alternative arrangements if required.
42. On balance, I consider that the substantial unmet need and particular personal circumstances set out above, justifies the grant of a temporary planning permission for the development, subject to the conditions set out in my decision. I consider that a period of five years is appropriate and proportionate, without resulting in permanent harm to the Green Belt.

Conditions and other matters

43. I have considered the list of conditions suggested by the Council, in the light of the advice in PPG. These were accepted in principle, although some amendments were discussed at the Hearing.
44. As the development is in part retrospective, a condition that limits the lifespan of the planning permission is not required. I have specified the approved plans to provide certainty. As I am granting temporary planning permission for the developments, it is necessary to impose time limiting conditions. Similarly, as permission has been granted, in part, due to the personal circumstances of the appellant and his family, a personal condition restricting occupation is also required.
45. A condition limiting occupation to gypsies and travellers is required as my decision in part, relies on unmet need. In the interests of protecting the living conditions of local residents, a condition to control the size of vehicles, on-site storage and commercial uses are required. Due to the longevity of the temporary permission, I consider that a landscaping condition to provide additional screening to the boundary hedge is necessary. Conditions to control external lighting and the number of caravans are required in the interests of protecting the semi-rural character and appearance of the area.
46. I have carefully considered other matters that were raised in the representations from interested parties. These included the effect of the development on property prices, the removal of trees on the site during periods when birds may be nesting. These are matters that fall outside the scope of this appeal. I have had regard to the remaining representations, although none of these have led me to another conclusion.

Conclusion

Appeal A

- 47.** For the reasons given above, I conclude that Appeal A succeeds on ground (a). I shall grant planning permission for the use as described in the notice as corrected. The appeal on ground (g) does not fall to be considered.

Appeal B

48. I have considered all of the matters before me, but overall conclude that planning permission should be allowed for a temporary period of 5 years and subject to the attached schedule of conditions.

Hilary Orr

INSPECTOR

Appearances

FOR THE APPELLANT:

Mrs Alison Heine BSc MSc	Agent
Mr Tony Lee	Appellant
Mrs Betsy Lee	Appellant's wife

FOR THE LOCAL PLANNING AUTHORITY:

Bob McQuillan, BA, MRTPI	Robinson Escott Planning
--------------------------	--------------------------

INTERESTED PERSONS:

Andrew Macdonald	Local resident
Jenny Macdonald	Local resident

Schedule of Conditions for Appeal A

1. The occupation of the site hereby permitted shall be carried on only by the following: Mr Tony Lee and/or, Ms Betsy Lee and/or their daughters Ms Betsy Lee and Ms Alysha Lee and shall be for a limited period being the period of 5 years from the date of this decision, or the period during which the premises are occupied by them, whichever is the sooner.
2. When the premises cease to be occupied those named in condition 2. above, or at the end of 5 years, whichever shall first occur, the use hereby permitted shall cease and all caravans, buildings, structures, materials, residential paraphernalia and equipment brought on to the land, or works undertaken to it in connection with the use, shall be removed and the land restored to its previous condition.
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 one pitch on the site and no more than two caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 as amended (of which no more than one shall be a static caravan) shall be stationed on the site at any time.
5. No commercial activities shall take place on the land, including the storage of materials and no vehicle over 3.5 tonnes shall be stationed, parked or stored on this site.
6. Within 3 months from the date of this decision, details of any external lighting to be installed shall be submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
7. Within 3 months from the date of this decision, a detailed landscaping scheme to include additional hedge planting to the site boundaries, together with the timescale for implementation shall be submitted to the Local Planning Authority in writing. All landscaping works, planting, seeding or turfing comprised in the approved details of landscaping shall be carried out as approved and in accordance with the implementation timetable. 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.

Schedule of Conditions for Appeal B

1. The development hereby permitted shall be carried out in accordance with the following approved plans: Drawing No LP-02-2021 annotated Location Plan and Drawing No. BP-01-2021 annotated Block Plan.
2. The occupation of the site hereby permitted shall be carried on only by the following: Mr Tony Lee and/or, Ms Betsy Lee and/or their daughters Ms Betsy Lee and Ms Alysha Lee and shall be for a limited period being the period of 5 years from the date of this decision, or the period during which the premises are occupied by them, whichever is the sooner.
3. When the premises cease to be occupied those named in condition 2. above, or at the end of 5 years, whichever shall first occur, the use hereby permitted shall cease and all caravans, buildings, structures, materials, residential paraphernalia and equipment brought on to the land, or works undertaken to it in connection with the use, shall be removed and the land restored to its previous condition.
4. 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.
5. There shall be no more than one pitch on the site and no more than two caravans, as defined in the Caravan Sites and Control of Development Act

1960 and the Caravan Sites Act 1968 as amended (of which no more than one shall be a static caravan) shall be stationed on the site at any time.

6. No commercial activities shall take place on the land, including the storage of materials and no vehicle over 3.5 tonnes shall be stationed, parked or stored on this site.
7. Within 3 months from the date of this decision, details of any external lighting to be installed shall be submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
8. Within 3 months from the date of this decision, a detailed landscaping scheme to include additional hedge planting to the site boundaries, together with the timescale for implementation shall be submitted to the Local Planning Authority in writing. All landscaping works, planting, seeding or turfing comprised in the approved details of landscaping shall be carried out as approved and in accordance with the implementation timetable. 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.

Substitute Enforcement Plan

Land north of Walnut Cottage, Bullen Lane, East Peckham, Tonbridge, Kent TN12 5LX

