



Appeal Decision

Site visit made on 30 January 2024

by N Thomas MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 February 2024

Appeal Ref: APP/U2235/W/23/3314552

The Oaklands, Lenham Road, Headcorn, Kent TN27 9LE

- 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 James Cash against the decision of Maidstone Borough Council.
 - The application Ref 22/502585/FULL, dated 17 May 2022, was refused by notice dated 20 July 2022.
 - The development proposed is demolition of existing day room and erection of replacement day room.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The description of development includes 'demolition of existing day room' but I saw that the existing day room has been replaced by a mobile home. I have dealt with the appeal on the basis of the application as submitted.
3. The appeal is accompanied by the drawings that were listed in the Council's decision notice. Further drawings were also provided by the appellant indicating a larger appeal site boundary taking in the land to the rear. Mobile homes were visible on the land to the rear at the time of my site visit. I have determined the appeal based on the smaller appeal site as shown on the drawings listed in the decision notice.
4. An appeal¹ against an enforcement notice alleging the use of the land for, amongst other things, the stationing and residential occupation of caravans was allowed and the enforcement notice was quashed. The permission was subject to a condition requiring details of a Site Management Plan. The details were approved in 2011². A further planning permission³ was granted in August 2019 for one additional mobile home and one additional tourer.
5. A subsequent planning permission was granted⁴ for an additional mobile home and 1 additional tourer. It was subject to several conditions, including condition 4 which required a Site Development Scheme. The three mobile homes on the additional land at the rear of the site were to be removed. The existing utility building on the appeal site was to be retained, along with two mobile homes

¹ Ref APP/U2235/C/08/2090071

² Ref MA/11/1122

³ Ref 18/506270

⁴ Ref 20/502133/FULL according to the LPA or Ref 21/503223/FULL according to the appellant

and a touring caravan. It may not be the case that the permission has fallen away, as suggested by the Council.

6. Although not explicitly stated, the evidence indicates that the occupiers of the site are Gypsies or Travellers and I have dealt with the appeal on that basis. It is therefore likely that the appellant and his family have the protected characteristic of race under s149(7) of the Equality Act 2010. I have a duty to consider the three aims of the Public Sector Equality Duty (PSED) as part of my decision. If I dismiss the appeal this is likely to have negative consequences for the family, in particular in terms of the aim to advance equality of opportunity.

Main Issue

7. Having regard to the reasons for refusal, the main issues are as follows:
 - The effect of the development on the character and appearance of the site and surrounding area, including the Landscape of Local Value.
 - The effect of the development on Ancient Woodland.

Character and appearance

8. The site is in a rural area, fronting onto Lenham Road. It is adjacent to a Gypsy and Traveller site to the north-east, but is otherwise surrounded by open countryside, with scattered development in the wider area. It is within the Headcorn Pasturelands character area in the Low Weald⁵, which is identified as having a distinctive landscape character and is a landscape of local value in Policy SP17 of the Maidstone Local Plan 2017 (MLP). The Maidstone Landscape Capacity Study: Sensitivity Assessment January 2015 (SA) describes it as forming part of the low-lying landscape with sparse development of scattered farms and small settlements, with hedgerows and mature standard oak trees. The traditional field pattern is still apparent. These features combine to give the area a strong sense of place, but this has been diluted by more recent development in the countryside. I have no reason to disagree with the SA's assessment that the area has a high degree of landscape sensitivity.
9. The site itself is hard surfaced and enclosed by fencing. The existing mobile home and caravan are screened from most outside views by the fencing, but as a whole the site appears as a developed area that is at odds with the prevailing rural character and distinctive landscape. There is a public footpath to the north-east which allows some views towards the rear of the site, but these are restricted by the adjacent development and small area of woodland.
10. The plans show that day room facilities were previously provided by a timber building that resembled a block of stables. The replacement building would be significantly larger and higher, with the appearance of a bungalow. Due to its increased height and footprint, as well as its domestic appearance and materials, it would introduce a substantial permanent building into the countryside and would have an urbanising effect on the site. It would have a relatively steeply pitched roof with a significant ridge height. As a result, it would be visually intrusive and consolidate recent development on and adjacent to the site, which would undermine the distinctive character of the landscape.

⁵ Maidstone Landscape Character Assessment March 2012 amended July 2013

11. The appellant has listed other day rooms that have been approved in the Borough. None of them are as large as the appeal proposal, which has a gross floor area of approximately 110 square metres, and most of them are considerably smaller. I have seen no evidence that the other day rooms recently permitted in the Borough have similar effects on the character and appearance of the area due to their scale and design, therefore they do not indicate that the appeal should be allowed.
12. I therefore find that the development would be harmful to the character and appearance of the site and surrounding area, including the Landscape of Local Value. It would thus be in conflict with MLP Policies SS1, SP17, DM1 and DM30, insofar as they seek to restrict development in the countryside and to ensure that development conserves or enhances the landscape. It would also conflict with the National Planning Policy Framework (NPPF) and the guidance in the SA.
13. Although not referred to in the reasons for refusal, the appellant has drawn my attention to MLP Policy DM15, which states that planning permission will be granted for Gypsy and Traveller accommodation if certain criteria are met. The development would result in significant harm to the landscape and rural character of the area, when taken with existing development. The policy does not therefore indicate that the appeal should be allowed.

Ancient Woodland

14. A small strip of the north-western part of the site is within land that is identified by the Council as Ancient Woodland. The replacement day room would be within the 15 metre buffer zone. Ancient Woodland is defined in the NPPF as an area that has been wooded continuously since at least 1600AD. It includes ancient semi-natural woodland and plantations on woodland sites. Ancient Woodland is irreplaceable habitat as it would be technically very difficult or take a very long time to restore, recreate or replace it once destroyed. I have seen no firm evidence to demonstrate that the land has been erroneously identified as Ancient Woodland due to previous mineral extraction, as suggested by the appellant. On the contrary, the Council has provided an aerial photograph indicating that the area was previously wooded.
15. The earlier developments on the site have resulted in the loss of trees within the Ancient Woodland, as well as development, including hard surfacing, within the buffer zone. However, condition 4 of the latest planning permission referred to above required, amongst other things, a Site Development Scheme to include alteration to the extent of the hardstanding, and new tree and hedgerow planting. It would have mitigated to some extent the damage that has occurred to the Ancient Woodland and its buffer, bearing in mind that the habitat is irreplaceable.
16. The proposed day room would be roughly on the siting of the previous day room and although it would be slightly further away from the edge of the Ancient Woodland, it would have a larger footprint and would thereby result in a greater incursion into the Ancient Woodland buffer. I do not therefore agree with the appellant's assertion that the replacement building would have less impact than the original day room.
17. I therefore find that the development would be harmful to the Ancient Woodland, and would be in conflict with MLP Policy DM3, which seeks, amongst

other things, to protect Ancient Woodland from direct and indirect effects. It would also be in conflict with the NPPF, and its advice that development resulting in the loss or deterioration of irreplaceable habitats should be refused, unless there are wholly exceptional reasons and a suitable compensation strategy exists.

Other considerations

18. The day room would provide facilities for everyday living, such as kitchen, toilet and washing facilities, dining and relaxation space, to supplement the facilities provided in the mobile home/caravan. Typically, Gypsies and Travellers seek to provide facilities for washing and cooking in a separate building. The appellant has 7 children, which includes teenagers. The family has a need for suitable open plan space and two washrooms and the day room is considered by the appellant to be commensurate with the family that would be using it. The facilities provided would be reasonable but the overall external dimensions would be excessive. The appellant refers to a day room permitted at Orchard Farm⁶ with a floor area of 98 square metres, but I note that this was to be shared by five plots. The appeal proposal would only serve one plot. It is not clear to me that the overall scale of the proposed day room is justified by the appellant.
19. Designing Gypsy and Traveller Sites – Good Practice Guide 2008 was withdrawn in 2015 following the publication of the Planning Policy for Traveller Sites. In any event, the extracts provided by the appellant do not justify a building of the scale or design that has been proposed. Nor has it been shown that the size or design of the building is required to meet the site licence.
20. No specific personal circumstances have been highlighted which might weigh in favour of the proposal. Dismissing the appeal would mean that the day room as proposed would not be provided which would adversely affect the amount and quality of the living accommodation available to the occupiers. This would be a consequence of sufficient gravity as to engage the operation of Article 8 of the European Convention on Human Rights. The right to respect for home and private life are qualified rights, whereby interference may be justified in the public interest, but the concept of proportionality is crucial.

Planning balance and conclusion

21. Section 38(6) of the Planning and Compulsory Purchase Act 2004 states that if regard is to be had to the development plan the determination must be made in accordance with the plan unless material considerations indicate otherwise. I have found that there is conflict with the development plan with regard to the effects on the character and appearance of the site and surrounding area, and the Ancient Woodland. The harm that I have identified and the resulting conflict with the development plan as a whole is not outweighed by other considerations.
22. The human rights interference associated with my findings is in accordance with the law and is necessary to protect environmental interests which is a legitimate objective. The public interest cannot be achieved by means that cause less interference with human rights. As such, dismissing the appeal is a

⁶ Ref 17/503647/FULL

proportionate response in these circumstances which would not unacceptably violate the family's rights under Article 8.

23. In relation to the PSED, due regard has been paid to minimising the disadvantages suffered by the occupiers of the site, insofar as they are different to those without a relevant protected characteristic. Although the appeal is to be dismissed, these considerations have been at the forefront of the decision-making process. The outcome is a proportionate one.

24. For the reasons given above, the appeal is dismissed.

N Thomas

INSPECTOR