



Appeal Decision

Hearing held on 20 February 2024

Site visit made on 20 February 2024

by Thomas Shields MA DipURP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 13 May 2024

Appeal Ref: APP/U2235/C/23/3323647

Land east of Water Lane, Headcorn, Kent, TN27 9JL

- 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 Act").
 - The appeal is made by Mr Jack Selby against an enforcement notice issued by the Maidstone Borough Council.
 - The enforcement notice was issued on 16 May 2023.
 - The breach of planning control as alleged in the notice is without planning permission, the material change of use of Land to a mixed use including the stationing of two mobile homes and touring caravans for residential use, the raising of land levels involving the creation of hardstanding areas and the installation of cesspits.
 - The requirements of the notice are:
 - (i) Cease the use of the Land for residential purposes.
 - (ii) Excavate and remove septic tanks from the Land.
 - (iii) Remove all mobile homes, caravans and residential paraphernalia from the Land.
 - (iv) Remove all hard surfacing and materials used to raise the land levels from the Land indicated by the hatched area within the red outlined plan and return the Land to its condition/levels before the hardstanding was created.
 - (v) Remove all materials, rubbish and debris as a result of compliance with steps (ii), (iii) and (iv) above from the Land.
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (g) of the Act.
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Decision

1. It is directed that the enforcement notice be corrected by:
 - in Section 3, after the word "*Land*" deleting the remainder of the paragraph and substituting instead the words: "*to use for the siting of caravans for residential occupation, the raising of land levels involving the creation of hardstanding areas and the installation of septic tanks*";
 - in Section 5(i), delete all the words after the word "*Land*", and substitute the following words: "*for the siting of caravans for residential occupation*";
 - in Section 5(iii), delete the words: "*mobile homes,*"; and
 - deleting the plan attached to the notice and replacing it with the plan attached at Appendix A to this Decision.
2. Subject to these corrections the appeal is allowed and the enforcement notice is quashed. Planning permission is granted on the application deemed to have

been made under section 177(5) of the Act for the development already carried out, namely the material change of use of the land to use for the siting of caravans for residential occupation, the raising of land levels involving the creation of hardstanding areas and the installation of septic tanks, at land at east of Water Lane, Headcorn, Kent, subject to the conditions imposed in the Schedule attached to this Decision.

Procedural Matters

3. The notice allegation does not refer to more than one use, hence the reference to "mixed" uses is incorrect. Outside of the developed residential area, indicated by the hatched area on the enforcement notice plan, the remaining open field area is agricultural and also I was informed for keeping horses, although only one horse at the time of the Hearing. Based on the information before me the low level equestrian use, both within and outside of the hatched area is unlikely to amount to development¹, but in any event it does not form part of the breach of planning control from which the deemed application for planning permission (for residential use) flows. I have therefore corrected the notice by deleting the "mixed" reference, and by deleting the plan attached to the notice and substituting it for an alternative plan to define the smaller residential area of development subject of the notice, and for which planning permission is sought.
4. It was also agreed that references in the notice to both "mobile homes" and "touring caravans" could be amalgamated simply to refer to "caravans", and that "cess pits" should be described as "septic tanks".
5. I am satisfied these corrections can be made without injustice to any party and have therefore done so using powers available to me under s176(1) of the Act.
6. It was also agreed that the raised decking area abutting the rear elevation of one of the caravans² should also be considered as part of the ground (a)/deemed application for planning permission. I have therefore taken it into account in reaching my Decision.
7. At the Hearing I heard of the progress and forthcoming adoption of the Council's emerging Local Plan Review (LPR). The LPR has since been adopted (20 March 2024) as part of the Development Plan and as a consequence Policies SP17, DM1, DM15 and DM30 of the Maidstone Borough Local Plan (2017) are now replaced (with minor alterations to wording) respectively with Policies LPRSP9, LPRSP15, LPRHOU8, and LPRQD4. I therefore attach full weight to these policies.
8. There is no dispute between the parties that the appellant and his extended family meet the definition of 'gypsies and travellers', as set out in the PPTS³, and based on the information before me I have no reason to disagree. As such, the Framework⁴ and PPTS are relevant material considerations in addition to the Council's Development Plan policies against which the development should be assessed.

¹ Defined at section 55 of the Act

² Caravan marked as "static caravan" on updated layout plan submitted at the Hearing (DOC 2)

³ Planning Policy for Traveller Sites (2015) updated in 2023

⁴ National Planning Policy Framework (2023)

Appeal on ground (a)/deemed planning application

9. The main issues are:

- (i) the effect of the development on the character and appearance of the area;
- (ii) whether the site is a suitable location for the development having regard to flood risk;
- (iii) in the event of non-compliance with the Development Plan, whether there are any material considerations in favour of the development that outweigh such conflict.

Reasons

Planning policy

10. The appeal site is not an allocated site and thus falls to be tested against criteria (a) to (f) within Policy LPRHOU8, which is the most relevant Development Plan policy specifically with regard to the provision of gypsy and traveller accommodation.
11. Except in relation to criteria (c) and (e) the Council accepts there is no other conflict with Policy LPRHOU8. These require (c): that the development would not result in significant harm to the landscape and rural character of the area, and (e): that sites are not located in an area at risk from flooding (zones 3a and 3b) based on the latest information from the Environment Agency or a specific Flood Risk Assessment which has been agreed by the Environment Agency.

Issue (i) - Effect on Character and appearance of the area

12. Policy LPRHOU8 does not exclude locations in the countryside or outside of settlement boundaries. This reflects the provisions of PPTS⁵ which acknowledges that sites may be suitable in rural areas and in the countryside.
13. The application site is located in the countryside to the east of Water Lane, approximately 1km west of Headcorn. Land levels within the site have been raised to facilitate the development of 3 pitches, comprising 3 static and 3 touring caravans. Some internal post and rail fencing and planting has been undertaken, along with the creation of some hardstanding areas and a small timber shed.
14. To the north and west of the site is agricultural land. Reflective of the features described in the Council's Landscape Character Assessment for the area, the site is within a low lying field area with significant trees and vegetation forming the boundary with Water Lane to the west, and separated from surrounding countryside to the north and east by the meandering river Beult.
15. In my view the perception of change to the landscape character is very limited due to external views of the development being greatly constrained by boundary trees and vegetation. Overall I consider the site is not prominent in its surroundings.
16. Additionally, a site development scheme could be secured by planning condition to require that the layout of the site in terms of positions of caravans, and

⁵ PPTS paragraphs 14 and paragraph 25

details for hardstanding areas, external lighting, fencing and planting is clearly defined and submitted for approval by the Council. This would minimise and mitigate the impact on the character and appearance of the area to an acceptable level.

17. Subject to such a condition I am satisfied that the development would not result in significant harm to the landscape and rural character of the area and would thereby comply with the requirements of Policy LPRHOU8(c) and Policies LPRQD4, LPRSP9 and LPRSP15.

Issue (ii) - Flood risk

18. The appeal site lies within Flood Zone 3 as defined in the Environment Agency's (EA) flood maps where highly vulnerable development, such as caravans for permanent residential occupation, would not normally be permitted as set out in Policy LPRHOU8(e) and the Framework. As such, there is a clear conflict with local and national policy with regard to flood risk which weighs against allowing the development subject of the appeal.
19. The Framework requires a sequential test (ST) to be undertaken before planning permission is granted in order to demonstrate that there are no other reasonably available sites at lower risk of flooding in the area, which means they would have to be in Flood Zones 2 or 1. In this regard PPTS states that to be considered developable, traveller sites should be in a suitable location and that there should be a reasonable prospect that they are available now.
20. The unchallenged findings of the appellant's site specific Flood Risk Assessment (FRA) demonstrate that the site has a 1 in 100 year probability of a flood event from river flooding. The Council also acknowledged they were unable to identify any sites in their area within Flood Zones 1 or 2 that would be currently available to the appellant, either with or without planning permission. Taking account of these circumstances I agree with the Council's pragmatic view that the ST has been met.
21. In terms of the technical guidance in the PPG⁶ the Exception Test is not normally applicable to 'highly vulnerable' development proposals such as in this case. Nonetheless, Framework paragraph 173 indicates that development can be allowed in areas at risk of flooding where it can be demonstrated, amongst other matters, that within the site the most vulnerable development is located in areas of lowest flood risk, the development is appropriately flood resistant and resilient, any residual risk can be safely managed, and safe access and escape routes are included where appropriate, as part of an agreed emergency plan.
22. The appellant's FRA identifies that subject to a moderate raising of the floor level height of the static caravans, and including anchoring mechanisms, the occupiers of the site would be safe in the event of a flood. It also includes details of provisions that could be included in a flood warning and evacuation plan. Touring caravans could also be tethered. Overall, I am satisfied that all of these provisions can be secured through the imposition of a suitably worded planning condition such that the development can be made safe for its lifetime.

⁶ Planning Practice Guidance – Flood Risk - Table 2: Reference ID: 7-079-20220825

Planning Balance

23. As I set out above there is some conflict with local and national planning policy in respect of the location of the development in an area at risk of flooding. However, I am satisfied that the development can be made safe for its lifetime for occupiers such that the actual harm would be minimal.
24. Benefits of the proposed development include the provision of a gypsy and traveller site in an area where there is a significant unmet need for such sites. The provision of 3 pitches would be a considerable benefit in circumstances where it has proved difficult to find suitable locations. Furthermore, sustainability objectives of the Framework and PPTS include the provision of homes for everyone in appropriate locations in order to achieve balanced and integrated communities. As such the development constitutes a wider sustainable benefit to the community as a whole.
25. For these reasons I find that the benefits of the proposed development, subject to planning conditions, outweigh the harm resulting from the conflict with the Development Plan in respect of flood risk, and hence that full planning permission should be granted.
26. I have found the development to be acceptable for all gypsies and travellers. Consequently, there is no need for me to take account of the personal circumstances and benefits for this particular gypsy family.

Conditions

27. A number of conditions that might be appropriate to impose in the event of the appeal succeeding were discussed at the Hearing.
28. Given that the use of the site is exceptionally justified for occupation by any gypsies and travellers as defined by PPTS, and that it would become part of the supply of such sites in meeting an identified need, it is necessary to impose a condition (1) restricting occupation of the site to such defined persons.
29. Given the location, small scale and layout of the site it is necessary to impose a condition (2) restricting the number of caravans to no more than 6 of which only 3 would be static type, and to specify the layout and different uses and areas of the site. A condition (3) to prohibit commercial activities on the land is also required.
30. A condition (4) is necessary to secure the development of the site in accordance with details to first be approved by the Council for the position of caravans and areas of hardstanding, fencing, existing and proposed landscaping and boundary treatment, external lighting and means of foul water drainage of the site, and flood resilience measures including anchoring/flotation measures, finished floor levels of the static caravans, and an evacuation plan. This condition will ensure that the development can be enforced against if the required details are not submitted for approval within the period given by the condition, or if the details are not approved by the local planning authority or the Secretary of State on appeal, or if the details are approved but not implemented in accordance with an approved timetable.
31. Conditions (5) and (7) are required in order to control any additional structures or lighting other than as approved under condition (4).

32. A condition (6) is required to ensure the longevity of approved landscaping.
33. The statutory provisions for biodiversity net gain (BNG) are not yet commenced for successful enforcement appeals. In this regard the PPG⁷ states that it would be inappropriate for decision makers to continue to give weight to aspects of existing local policies related to BNG which are inconsistent with the statutory framework for BNG. I have not therefore imposed such a condition.

Conclusion

34. For all the above reasons I conclude that the appeal should succeed on ground (a) and I will grant planning permission in accordance with the application deemed to have been made under section 177(5) of the Act. The appeal on ground (g) does not therefore need to be considered.

Thomas Shields

INSPECTOR

⁷ Planning Practice Guidance Reference ID 74-020-20240214

Schedule of Conditions

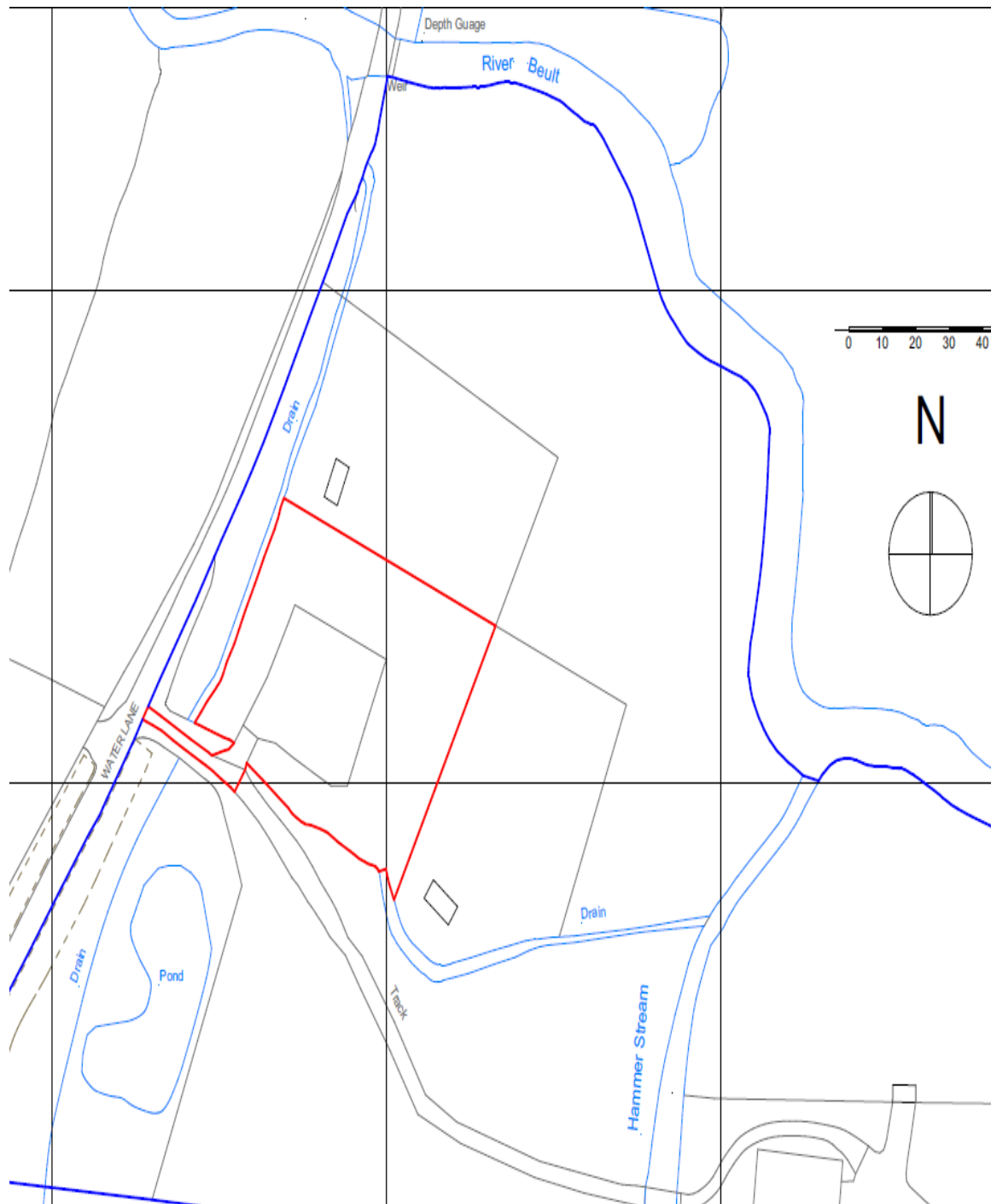
- 1) The site shall not be occupied by any persons other than gypsies and travellers as defined in Annex 1: Glossary of Planning Policy for Traveller Sites (or its equivalent in replacement national policy).
- 2) No more than 6 caravans (as defined by the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968) shall be stationed on the site at any time, of which only up to 3 shall be of a static type caravan.
- 3) No commercial activities shall take place on the land including the storage of materials, and no vehicle over 3.5 tonnes shall be parked or stationed on the site.
- 4) The use hereby permitted shall cease and all caravans, structures, hardstanding, fences, septic tanks, equipment and materials brought onto the land for the purposes of such use shall be removed within 6 months of the date of failure to meet any one of the requirements set out in i) to iv) below:
 - i) Within 3 months of the date of this decision a site development scheme (SDS), including a detailed layout plan, shall have been submitted for the written approval of the local planning authority for:
 - (a) the position of the caravans and areas of hardstanding, fencing, existing and proposed landscaping and boundary treatment, external lighting and means of foul water drainage of the site;
 - (b) details of proposed flood resilience measures, including anchoring/flotation measures, finished floor levels of the static caravans, and an evacuation plan;
 - (c) a timetable for implementation of the SDS.
 - ii) If within 11 months of the date of this decision the local planning authority refuse to approve the scheme or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
 - iii) If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.
 - iv) The approved scheme shall have been carried out and completed in accordance with the approved timetable. Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter be retained.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

- 5) Notwithstanding the provisions of Schedule 2 Part 4 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no temporary buildings or structures shall be stationed on the land other than those expressly authorised by this permission.
- 6) All planting, seeding and turfing specified in the approved landscape details required by condition 4 shall be completed by the end of the first planting season (October to February) following approval. Any planting, seeding or turfing which fails to establish or which, within five years from planting, are removed, die or become so seriously damaged or diseased that their long-term amenity value has been adversely affected, shall be replaced in the next planting season with the same species and size as approved.
- 7) Other than as approved by condition 4 there shall be no additional external lighting on the site at any time without the prior written approval of the local planning authority.

End of Conditions

APPENDIX A - Replacement plan



APPEARANCES

FOR THE APPELLANT:

Simon McKay BSc MA MRTPI	Director, SJM Planning Ltd
Jack Selby	Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Sue King	Planning Enforcement Team Leader, Maidstone Borough Council
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INTERESTED PARTIES:

Councillor Martin Round	Headcorn Ward Councillor
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DOCUMENTS SUBMITTED DURING THE HEARING

DOC 1	Flood Risk Assessment dated 19.02.2024
DOC 2	Topographical survey
DOC 3	Details of personal circumstances of site occupiers
DOC 4	Update on need and supply of gypsy and traveller pitches