



Appeal Decision

Hearing Held on 27 March 2024

Site visit made on 27 March 2024

by Mr W Johnson BA (Hons) DipTP DipUDR MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 May 2024

Appeal Ref: APP/M2770/W/22/3302329

Land north of Grandshore Farm, Grandshore Lane, Frittenden, Cranbrook, Kent, TN17 2BZ

- 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 Shane Peckham against the decision of Tunbridge Wells Borough Council.
 - The application Ref 21/02959/FULL.
 - The development proposed is for the siting of mobile home, touring caravan, utility dayroom and septic tank installation.
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Decision

1. The appeal is allowed, and planning permission is granted for use of land for the siting of a mobile home, a touring caravan, a utility dayroom and a septic tank installation at Land north of Grandshore Farm, Grandshore Lane, Frittenden, Cranbrook, Kent, TN17 2BZ in accordance with the terms of the application, Ref 18/04875/FUL, subject to the conditions in the attached schedule.

Preliminary Matters

2. The description of the development in the banner heading above is taken from the application form. However, in my decision, I have included 'use of land' following discussions at the event, since this more accurately describes the proposal. I have also taken the address from the application form for accuracy.
3. The Statement of Common Ground (SoCG) confirms that there is no longer any dispute surrounding whether the site is located in a sustainable location. Consequently, this element referenced in refusal reason no.1 on the Council's decision notice has been addressed.
4. The Revised National Planning Policy Framework (the Framework) and the updated Planning Policy for Traveller Sites (PPTS) were both published on 19 December 2023, after the appeal was lodged. During the appeal process an opportunity was given to submit comments on the implications of the Framework and the PPTS, both in writing and verbally at the event. Consequently, I will not prejudice any party by having regard to the Framework and the PPTS in reaching my decision.
5. Reference towards the Council's emerging local plan has been made in the parties submissions and at the event. However, given its stage, I attach limited weight to its policies.

6. The site plan accompanying the planning application originally comprised all of the land in the appellant's ownership. However, during the appeal, the size of the site, as per the site edge red was reduced to that which is to be developed and the remaining land excluded from the scheme and outlined in blue to denote that it is within the ownership of the appellant. As the size of the site has been reduced and the rest of the scheme is unaltered, I will not prejudice any interested party by accepting this amendment. Additionally, this amendment supports the position of the parties that the scheme does not trigger the contributions requested by Kent County Council during the planning application. Consequently, I have dealt with the appeal on the basis of the reduced site area as shown in drawing no.2021-259 003B.
7. During the accompanied site visit it was established that the treatment plant is shown in the incorrect location on the submitted drawings, as it was found to be located behind area where the proposed mobile home is to be sited. For the purpose of this appeal, this oversight is not detrimental to its determination and can be adequately addressed through the suggested foul sewage treatment condition.

Application for costs

8. At the Hearing an application for costs was made by Mr Shane Peckham against Tunbridge Wells Borough Council. This application will be the subject of a separate Decision.

Main Issues

9. The main issues of this appeal are:
 - The effect of the proposal on the character and appearance of the appeal site and surrounding area;
 - The effect of the proposal on biodiversity and protected species; and,
 - Whether the harm arising from the proposal would be outweighed by other considerations.

Reasons

Character and appearance

10. The appeal site is located off the southern side of Grandshore Lane and comprises an irregular shape plot. Whilst the site has hardcore present and a mobile home, it is agreed by the parties that this development is unlawful. Therefore, I have determined this appeal as if it was undeveloped. The remainder of the land in the control of the appellant comprises grassed areas, with the exception of the pond, where boundaries are marked by trees and hedging. To the north of the site, on the opposite side of Grandshore Lane, and to the west and south of the site, is designated ancient woodland. The site currently has an access onto Grandshore Lane.
11. Policy LBD1 of the Tunbridge Wells Borough Local Plan 2006 (LP) seeks to restrict development outside of defined settlements, amongst other things. LP Policies EN1 and EN25 seek to ensure that development does not have a significant adverse impact on any features of nature conservation importance, and that development in the countryside should have minimal impact upon the landscape character of the locality and should not result in unsympathetic

change to the character of a rural lane, respectively.

12. LP Policy H4 seeks to set out circumstances where a Gypsy/Traveller site would be acceptable, subject to 5no. criteria. It has already been established that the site is not located in an unsustainable location. Whilst the site is located in the countryside and within Local Character Area 7 (Sissinghurst Wooded Farmland) of the Tunbridge Wells Borough Landscape Character Assessment (LCA), it is not within a valued landscape in Framework terms nor subject to any other national designations. Policies 4, 5 and 14 of the Tunbridge Wells Borough Core Strategy 2010 (CS) seek to ensure the proposal would have no more than a minimal impact on the landscape and rural character of the locality, local distinctive sense of place and character is conserved and enhanced and that development is of a sustainable design, that respects the context of the site.
13. Paragraph 25 of the PPTS remains unaltered from the 2015 version, as it still requires *'Local planning authorities should very strictly limit new traveller site development in open countryside that is away from existing settlements or outside areas allocated in the development plan. Local planning authorities should ensure that sites in rural areas respect the scale of, and do not dominate, the nearest settled community, and avoid placing an undue pressure on the local infrastructure'*.
14. The overall size of the site/pitch, including the associated domestic paraphernalia and activities that would occur as a consequence of the scheme, would impact upon the rural character of the area by introducing development. However, the scale of the scheme is not excessive, as it is for one pitch. Additionally, the shape of the site would ensure that the distance of the main pitch area is located a notable distance from Grandshore Lane, and the existing mature vegetation in conjunction with further landscaping, secured by condition, would strengthen the localised visual impact of the scheme.
15. Whilst the proposal involves the development of undeveloped land (when excluding the unlawful development on site), the site-specific circumstances, with particular regard to the existing development that is in the vicinity of the site, forms a material consideration of significant weight. Additionally, the proposal is very similar to other development in the immediate area. Consequently, the form of development including its layout, scale and appearance would follow the prevailing character and appearance of the immediate area. Through the submission of details for boundary treatments as part of a wider landscaping scheme condition and the existing physical features, I am satisfied that the scheme can be physically contained.
16. Both parties have referenced appeal decisions¹ in their respective submissions. Whilst both decisions relate to the same neighbouring site, there are significant differences in the referenced decisions, particularly the number of pitches for the 2011 case and the 2024 case, which are two and one respectively. Additionally, the 2011 case was decided on 3 March 2011, whilst the 2024 case was decided more recently on 5 February 2024. I consider both decisions to represent material considerations but find that the 2024 case attracts more weight as it is more recent and of a similar scale to the appeal scheme.
17. For the reasons given above, I conclude that the proposal would not significantly harm the character and appearance of the appeal site or

¹ APP/M2270/A/10/2132023 (the 2011 case) and APP/M2270/W/23/3332797 (the 2024 case)

surrounding area. Therefore, the proposal complies with LP Policies LBD1, EN1, EN25, H4; CS Policies 4, 5 and 14, which collectively seek to secure minimal impact on the maintenance of the rural character of the locality, not be visually intrusive and would be well-screened, and conserve and enhance the Borough's rural landscapes, amongst other things. The scheme would also accord with the requirements of the PPTS, the LCA and the Rural Lanes Supplementary Planning Document.

Biodiversity

18. Submitted with the appeal is a Preliminary Ecological Appraisal² (PEA), Ecological Impact Assessment³ (EcIA) and Biodiversity Unit Calculations (BUC) report with 2020 Baseline⁴. The positions of the parties on these documents are outlined in the SoCG. The SoCG indicates concerns from the Council towards the extent of the survey area and the inclusion of the area of unlawful development in the baseline. However, the Council confirmed verbally at the event that they accept the findings of the PEA and are satisfied with its recommendations.
19. In any event, the parties agree that the scheme will cause some harm and the Council have accepted the findings of the revised calculation which show a loss of 0.41 Biodiversity Habitat Units (100%) and a loss 0.18 Hedgerow Units (100%) in the BUC. This is agreed in the SoCG. Consequently, without mitigation the scheme would be contrary to CS Policy 4(3), as there would be a net loss in biodiversity. However, whilst noting some differences, the SoCG and through discussions at the event, the Council agrees that any adverse effects will not be significant, and mitigation could be secured by condition. This would accord with the objectives of LP Policy EN1(5) and allow the scheme to achieve no net loss in biodiversity.
20. The Council also acknowledge the Great Crested Newt license obtained by the appellant from Natural England, but queried whether the pond would be affected by outfall from a sewage treatment plant. Nonetheless, following discussions at the event a suggested condition was presented requesting details to be first submitted to and approved in writing by the Local Planning Authority. This matter is further strengthened due to the location of any treatment plant to be sited further away than initially indicated. The potential for such a condition to be imposed would ensure the satisfactory condition of the pond and remove any risks of pollution.
21. Whilst concerns have been raised at the omission of ancient woodland in the EcIA, in the absence of substantive evidence to the contrary, it has been considered in the scope of assessment and the development would be sited in excess of the minimum 15 metre (m) contained within the Natural England and Forestry Commission 'standing advice'. Whilst the development would be approximately 20m away from the ancient woodland, this buffer comprises a pond, which would itself prevent any further encroachment to the south. Additionally, other effects referenced, such as lighting and loss of foraging habitat for bats, could be controlled and mitigated through a suitably worded condition.

² Preliminary Ecological Appraisal by KB Ecology dated 30 June 2022

³ Ecological Impact Assessment by KB Ecology dated 26 January 2024 KB Ecology

⁴ Biodiversity Unit Calculations with 2020 Baseline - Development Area Only by KB Ecology dated 11 March 2024

22. The Appellant is of the view that, based on the 2024 case, there is no adopted development plan policy that requires Biodiversity Net Gain (BNG), where there appears to be differing views on this subject, particularly surrounding the amount of BNG considered appropriate. In the SoCG it is agreed that there is no statutory requirement for BNG in this case. I agree with this position as the scheme constitutes a minor application, as it was submitted before 2 April 2024. Therefore, the mandatory requirement to provide 10% BNG under Schedule 7A of the Town and Country Planning Act 1990 (as inserted by Schedule 14 of the Environment Act 2021) does not apply in this instance.
23. Whilst the appellant has referred to the 2024 case in support of their position on this matter, particularly surrounding the comments in the decision by the Inspector not to impose a condition for biodiversity net gain on the basis of '*no policy requirement being demonstrated and therefore, not being necessary to make the development acceptable*'. I note that biodiversity was not a main issue on the 2024 case or an area of dispute between the parties. This differs from the scheme before me, where the evidence indicates a loss in biodiversity as a result of the scheme. In other evidence the Council have referenced a decision⁵ to support its position, but this differs to the appeal scheme as it is for a residential development, much greater in scale. Nonetheless, this decision and the others referenced illustrate that every proposal has to be considered on its own particular merits.
24. Whilst accepting that the development plan policies, particularly CS Policy C4(3) only seeks to achieve 'no net loss', the Framework does set out to conserve and protect the natural environment with a requirement to provide/secure net gains in biodiversity⁶. In this scenario no figures are expressed, so there is a degree of interpretation to what would be technically acceptable. In this instance that would be anything above 'no net loss'.
25. For the reasons given above, I conclude that the proposal would not be harmful towards biodiversity, as any harm would not be significant and otherwise unacceptable development could be made acceptable through the imposition of planning conditions. Therefore, the proposal complies with LP Policies EN1, EN13; CS Policies 4 and 5, which seek to ensure no significant adverse effect on any features of nature conservation importance, damage any ancient woodland, protection of biodiversity and geodiversity and sustainable design, amongst other things. The scheme would also accord with the requirements of the Framework.

Other considerations

26. It is agreed that the occupants of the site would meet the definition for Gypsy and Travellers listed at Annex 1 of the PPTS. At the present time, the proposed occupiers are living apart, with the appellant's wife and children living in overcrowded accommodation. The personal circumstances of the proposed occupants of the site, who meet with the definition in the PPTS, especially where children are also present attracts substantial weight in support of the scheme.
27. The appellant also considers there to be a marked difference and a much greater need for pitches, due to a failure in the methodology of the Gypsy

⁵ APP/M2270/V/21/3273015

⁶ Paragraphs 180 d); 185 d) and 186 d)

Traveller Accommodation Assessment and to its being out of date due to its age, as it was published in 2018. Concerns have also been raised that it does not consider those that have ceased to travel permanently. In addition to general need, the availability (or lack) of alternative accommodation for the current occupiers is a relevant consideration, as indicated by the PPTS. However, given my findings above, I do not need to consider these matters further.

Conditions

28. I have considered what planning conditions would be appropriate in light of the discussions at the Hearing, making amendments and minor corrections, where necessary, to ensure clarity and compliance with the tests contained within Paragraph 56 of the Framework and the Planning Practice Guidance. In addition to conditions relating to the time limit for implementation, for reasons of certainty a condition requiring the development to be undertaken in accordance with approved plans/documents is necessary.
29. To define the permission, conditions are required to restrict occupation to those who are Gypsies and Travellers and it is also necessary to control the number of caravans on the pitch. Conditions relating to larger commercial activities and vehicles; the use of the land adjoining the site; hard and soft landscaping scheme and boundary treatments are reasonable and necessary to safeguard the rural character and appearance of the site and surrounding area.
30. A condition relating to external lighting is also reasonable and necessary in respect of character and appearance, and also biodiversity. The submission of a management plan, a scheme of avoidance, mitigation and enhancement and potable and foul water are all reasonable and necessary in respect of biodiversity.

Conclusion

31. Given my findings above, the proposal accords with the development plan when taken as a whole, and there are no other material considerations that indicate otherwise. The scheme also complies with the requirements of the PPTS and the Framework. I therefore conclude that the proposed development is suitable for the site.
32. For the reasons given above, I conclude that the appeal should be allowed.

W Johnson

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Angus Murdoch	Agent/Murdoch Planning Ltd
Shane Peckham	Appellant
Katia Bresso CEnv MCIEEM	K B Ecology Ltd
Tony Searle	Previous agent

FOR THE LOCAL PLANNING AUTHORITY:

Thomas Vint	Principle Planning Officer
David Scully	Landscape and Biodiversity Officer
Richard Hazelgrove	Development Management Team Leader

HEARING DOCUMENTS

The following documents were submitted and accepted at the Hearing:

ON BEHALF OF THE APPELLANT:

- Drawing: Proposed Block Plan – 2021-259 003B

ON BEHALF OF THE LOCAL PLANNING AUTHORITY:

- Suggested condition in relation to foul sewage treatment, potable water and waste disposal.

SCHEDULE OF CONDITIONS

- 1) The development to which this permission relates must be begun not later than the expiration of three years from the date of this permission.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 2021-259 – 001 - Site Location Plan; 2021-259 – 002 - Existing Block Plan; 2021-259 – 004 - Proposed Utility Block; 2021-259 - 003revB - Proposed Block Plan and Design and Access Statement.
- 3) 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 2023 (or its equivalent in replacement national policy).
- 4) No more than two caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 (of which no more than one shall be a static caravan or mobile home) shall be stationed on the site at any time. The touring caravan on site which is not a static caravan or mobile home shall not be separately occupied.

- 5) No commercial activities shall take place on the land, including the storage of materials. No commercial vehicle over 3.5 tonnes shall be stationed, parked or stored on this site.
- 6) No structures, vehicles or caravans shall be sited, parked or stored beyond the approved hardstanding as shown on drawing 2021-259 - 003revB.
- 7) Within three months of the decision notice a hard and soft landscape scheme designed in accordance with the principles of the Council's landscape character guidance should be submitted to and approved in writing by the Local Planning Authority. The scheme shall show all existing trees, hedges and blocks of landscaping on and immediately adjacent to, the site, including highway trees and land and shall indicate whether they are to be retained or removed along with details of surfacing and boundary treatments. It shall detail measures for protection of species to be retained, provide details of on site replacement planting to mitigate any loss of amenity and biodiversity value together with the location of any habitat piles and include a planting specification, and a programme of implementation. The landscape scheme shall specifically address the need to provide additional tree and hedgerow planting at the site. The approved scheme shall be implemented in accordance with an approved programme of implementation.
- 8) Within three months of the decision notice a management plan for the entire site shall be submitted to the Local Planning Authority for approval. The plan will set out prescriptions and objectives for the management of retained and new landscape and ecological features on site to ensure a net gain in biodiversity. Thereafter the site will be maintained in accordance with the approved plan.
- 9) No external lighting shall be installed pursuant to this planning permission unless otherwise approved in writing by the Local Planning Authority.
- 10) Prior to any further development or disturbance on site a scheme of avoidance, mitigation and enhancement of biodiversity to ensure the safeguarding of protected and notable species and to achieve a net gain on the site shall be submitted to and approved in writing by the Local Planning Authority. It shall be implemented in accordance with the approved details and shall be carried out in perpetuity.
- 11) No gates, fencing or other boundary structures are to be erected other than those shown on the plan hereby approved unless.
- 12) Details of the proposed method of foul sewage treatment, along with details regarding the provision of potable water and waste disposal shall be submitted to and approved in writing by the Local Planning Authority prior to the first occupation of the scheme. These details shall include the size of the individual cess pits and/or septic tanks and/or other treatment systems. Information provided should also specify exact locations on site plus any pertinent information as to where each system will discharge to, as further treatment of the discharge will be required if a septic discharges to a ditch or watercourse as opposed to sub-soil irrigation. The approved details shall be implemented and maintained in perpetuity.

****End of Schedule****