



Appeal Decision

Hearing Held on 16 July 2024

Site visit made on 16 July 2024

by Philip Major BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2 August 2024

Appeal Ref: APP/U2235/W/24/3339812

Westfield Yard, Old Lidsing Road, Lidsing, Kent ME7 3NH

- 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 Gary Treeby against the decision of Maidstone Borough Council.
 - The application Ref: 23/500799/FULL, dated 15 February 2023, was refused by notice dated 30 August 2023.
 - The development proposed is the use of land for the stationing of caravans for residential purposes.
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Preliminary Matters

1. The description of development above is taken from the planning application form. This was added to when the Council issued its decision, to make clear that the proposal includes the siting of one mobile home and one touring caravan, together with a storage building, hardstanding and other ancillary development. The development has already been completed. I was informed at the hearing that the hardstanding on site and fencing to the boundaries were in existence when the Appellant purchased the land.
2. Some discussion took place in relation to the previous use of the land. This stemmed from the planning permission granted in October 1993 and I have no substantive evidence of any intervening use. Within the submissions made in relation to the associated costs application (which is dealt with below and in a different decision) reference is made to that planning permission being time limited. The Council therefore allege that the use of the land for the storage of caravans has lapsed. However, even allowing for a time limited permission as suggested there are further considerations. Most notably the apparent time limit expired in October 1998. As noted I have not been made aware of any intervening use, and the Council itself refers to caravan storage in later decisions. On the balance of probabilities, therefore, I am satisfied that the lawful use of the site prior to the appeal before me was indeed for the storage of caravans. In any case I have dealt with this appeal on the basis of its own circumstances whilst being aware of any potential fallback position.
3. Some matters have been agreed between the Appellant and the Council. These include that the Council cannot demonstrate a 5 year supply of Gypsy and Traveller sites and that the shortfall in supply is very substantial. Having read the relevant papers on these matters I concur with those findings. This is a significant material consideration in favour of the proposal. There is no

dispute in relation to the Gypsy status of current site occupants and I have no reason to disagree.

4. Since the appeal was submitted the Council has adopted its recent review of the Local Plan. Policies referred to in the decision notice have been superseded and to some degree changed. It is agreed that the most important policies for determining this case are LPRSP9 and LPRHOU8. Other policies are also relevant and I refer to them as necessary.

Application for costs

5. An application for costs was made by Mr Gary Treeby against Maidstone Borough Council. This application is the subject of a separate decision.

Decision

6. The appeal is allowed and planning permission is granted for the use of land for the stationing of caravans for residential purposes at Westfield Yard, Old Lidsing Road, Lidsing, Kent ME7 3NH in accordance with the terms of the application, Ref: 23/500799/FULL, dated 15 February 2023, subject to the conditions set out in the Annex to this decision.

Main Issues

7. The main issues in the appeal are:
 - (a) The effect of the proposed development on the character and appearance of the locality, bearing in mind its proximity to the Kent Downs National Landscape (NL);
 - (b) Whether the development is appropriately located in relation to its proximity to local services and facilities.

Reasons

Character and Appearance

8. One of the main planks of the Council's concerns in this case is the impact of the development on the setting of the Kent Downs National Landscape. The boundary of the NL lies a short distance to the south-east of the appeal site, but crucially lies on the opposite side of the M2 motorway. As pointed out by the Appellant there is no visibility of the appeal site from the NL, and no visibility of the NL from the appeal site. Put simply there is no visual 'on the ground' relationship between the site and the NL.
9. There has been no suggestion that the Appellant's citing of the Kent Downs AONB (now NL) Management Plan is inaccurate. That document clearly indicates that the setting of the NL is "*broadly speaking the land outside the designated area which is visible from the AONB and from which the AONB can be seen*". There is no sense when standing at the site, or near to it, that there is any close relationship with the NL. The two areas of land on each side of the M2 are, in this location, seen as separate and distinct parts of the wider landscape. The development is not seen from the NL and the NL plays no part in the appreciation of the landscape around the appeal site. The reverse scenario also applies. Hence I agree with the Appellant that the development cannot realistically be identified as being in the setting of the NL and therefore it has no impact on the NL or its setting.

10. However, it is acknowledged that the site is outside of any identified settlement and for policy purposes lies within the countryside. Land to the north-east is open and laid to grass, but to the north-west is a commercial site characterised by substantial buildings, vehicle parking (perhaps storage and/or repair) and extensive hard surfacing. That land is enclosed by an industrial type of fencing. To the south of the appeal site are a few dwellings, and beyond them some commercial enterprises including a timber yard and car repair business. These enterprises have associated buildings, hard surfacing and fencing.
11. Taken in the round the immediate locality is characterised by its mix of uses which results in little impression of the area being countryside. The appeal site is central to this area and there is no dispute that it is correctly identified as being previously developed land. In my judgement the development has very little impact on the character and appearance of the locality, either in the immediate surroundings or the wider landscape. It blends with the mix of uses which surround it and does not represent a discordant feature. It is a modest development which is largely eclipsed by surrounding uses of greater scale.
12. The Council has concerns specifically in relation to the close boarded fencing around the site, but this does not seem to me to introduce material harm. It is made of a natural material which is likely to reduce in visual impact as it weathers, and it is more appropriate to the surroundings than much of the industrial fencing nearby. This element of the development is acceptable and can be softened further by landscaping required by condition.
13. To conclude on this issue I am satisfied that the impact of the development on the character and appearance of the locality is not materially harmful. There would be no impact on the nearby NL or its setting. In addition there would be no compromise of the objectives set out in the Maidstone Landscape Character Assessment which seeks to restore and improve the landscape in this character area¹. There is therefore no conflict with Local Plan Review Policy LPRSP9, which seeks to avoid significant harm to rural character and appearance, and to ensure that there is no significant adverse impact on the setting of the Kent Downs NL. Even if the site was not likely or capable of being returned to its former use as a caravan storage facility it would make no difference to my judgement that this proposal is acceptable in landscape terms in its own right.

Location

14. Lidsing is a small hamlet located roughly midway between the settlement at Lords Wood and the village of Bredhurst. Hempstead is a little farther away to the north-east. Each of those settlements has some facilities. Bredhurst is about 1.6km from the site, and theoretically within walking distance. The Appellant informs me that it is possible to walk to the primary school in Bredhurst (where his children attend or are registered) but I have doubts about the feasibility of that. The lanes to Bredhurst are narrow and, judging by my site visits before, during and after the hearing, not conducive to walking given the lack of continuous footways and the amount of traffic. Walking to Bredhurst, though possible, does not seem to me to be a realistic option.
15. Similar observations apply to the routes to Lords Wood and Hempstead, especially as the byway to Lords Wood appears to be an unattractive option as it is unlit and appears to be subject to some fly tipping or general disposal of litter and rubbish (at least at the time of my visit). Lords Wood (sometimes also referred to as Lordswood) has a range of facilities including medical centre

and shops. Hempstead Valley has a large shopping centre some 2.5km away by road.

16. Against that background I acknowledge the fact that Planning Policy for Traveller Sites (PPTS) seeks to strictly limit new traveller sites which are away from existing settlements. There is no definition of 'away' and it is commonly accepted that such sites may well be located in the countryside. This is accepted by the Council in its Officer report. There are many instances of sites being permitted which are beyond the distances cited in this case.
17. Despite my scepticism about the potential for walking (or indeed cycling) to local facilities, I do not consider that the distances by road to day to day facilities is such that it should rule out this development. I accept that most journeys would be made by private vehicle, but these would be relatively short. The Council's Officer report which has been provided to me acknowledges that the site is not particularly remote. Taken overall it is my judgement that the development should not be assessed as being so far from day to day facilities that it would fall foul of the objectives of PPTS in this respect.
18. Local Plan Review Policy LPRHOU8 seeks to ensure that new traveller sites are able to provide access to local services, preferably on foot, by cycle or by public transport. But the short distances involved in this case seem to me to be acceptable for private vehicle use such that the preference for other modes of transport in the policy should not be of overriding weight. A preference is not a requirement but an aspiration. Given that the development accords with other criteria set out in the policy it is my judgement that there is no conflict with the policy objectives.

Other Matters

19. A number of other policies have been brought to my attention, which deal with matters such as the natural environment and external lighting. So far as these are relevant, conditions can be imposed on any grant of planning permission so that these matters can be addressed as necessary. One final policy brought to my attention is LPRENV3, which addresses caravan storage in the countryside. This is a permissive policy so long as the storage is outside the Kent Downs NL or its setting. As the Council believes that the site should be assessed on the basis that it is within the setting of the NL it would clearly run counter to this policy if the use of the site for the storage of caravans was to resume. In essence the development now on site therefore offers a benefit insofar as it would remove any putative caravan storage.

Human Rights, Public Sector Equality Duty and Best Interests of the Child

20. I was told at the hearing that the Appellant would have no alternative accommodation should this appeal fail. He would have to resort to a roadside existence, with the difficulties that would entail. Article 8 of the European Convention on Human Rights is clearly engaged and dismissal of the appeal would be likely to lead to the loss of the Appellant's home. Refusal of the proposal would interfere with the Article 8 rights of the site occupants. In this case such interference would not be proportionate.
21. Dismissal of the appeal would also impact significantly on the best interests of the Appellant's children who currently attend, or will in due course attend, the local school. It is established law that in cases such as this no other

consideration should attract greater weight than the best interests of the child. That is not to say that where children are present planning permission will always be granted, but it is a material consideration of substantial weight.

22. I have also had regard to the Public Sector Equality Duty (PSED). The Appellant and prospective occupants share protected characteristics, and I have taken into account the need to avoid discrimination, advance equality of opportunity and foster good relations. In this case there would be no conflict with the PSED.

Conclusions

23. In addition to the lack of current provision for Gypsy and Traveller sites, on the 2 main issues in this case I find that the impact on the character and appearance of the locality would not lead to unacceptable harm, and that the location of the development is acceptable. Substantial weight attaches to the best interests of the Appellant's children, whilst I also consider that there is no conflict with the most important policies of the development plan. As a result this is a case where planning permission should be granted.
24. I have therefore considered whether it would be necessary to restrict permission to the Appellant and his dependants, or to time limit the permission.
25. My conclusions above lead me to the view that the site is acceptable as a 'generic' Gypsy and Traveller site, and that it could therefore be occupied by others who fulfil the definition of Gypsy and Traveller. A personal permission is not required. The Council has embarked on a procedure to identify future locations for such development, but in view of the acceptability of this site it is not necessary to impose a time limit on occupation here.

Conditions

26. As noted above some matters can be dealt with by condition in order to address various items. A comprehensive draft list of conditions was discussed at the hearing.
27. First, it is reasonable and necessary to impose a condition specifying the plans which relate to the development.
28. Secondly conditions are necessary to restrict the occupation of the site to Gypsies and Travellers; and in addition the number of permitted caravans should be controlled by condition in order to protect the character of the area.
29. Conditions are also necessary and reasonable which control external storage, business use and type of vehicle to be parked on the land, in order to protect the appearance of the area.
30. I agree that a condition requiring landscaping to be provided in accordance with a scheme to be submitted is necessary so that the site is assimilated into the locality in the best possible manner. For the same reason a condition requiring approval of any external lighting would be reasonable and necessary. I also agree that the provision of bat and bird boxes on site would be reasonable in order to improve biodiversity.
31. It is not necessary to impose the suggested condition restricting permitted development rights for temporary buildings or structures since those rights

apply to buildings and structures required for operations carried out on the land, and at the end of such operations the structures have to be removed in any event. I also do not consider it necessary to require caravans to be removed if the site ceases to be used for residential purposes in view of the nature of the surroundings and the previous use.

32. I was informed at the hearing that the site is connected to drainage in the form of a septic tank. These matters are controlled by other regulations and it is therefore unnecessary to impose a condition requiring details of drainage to be provided. The hardstanding at the site is predominantly clearly permeable (being a gravel finish) and a condition requiring such is therefore unnecessary, but retention of permeability is necessary to ensure no risk of flooding ensues.
33. Where imposing conditions I have simplified them where necessary so that they are precise and enforceable.

Final conclusion

34. For the reasons given above I conclude that the appeal should be allowed subject to the conditions set out below.

Philip Major

INSPECTOR

Annex – Conditions

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans:
 - 001 Rev P01 (Site location plan)
 - 002 Rev P02 (Existing block plan)
 - 003 Rev P03 (Proposed block plan)
 - 22_1232_006 P02 (Proposed close boarded fence)
 - 22_1232_007 P02 (Proposed close boarded gate)
 - 22_1232_008 P02 (Proposed bin storage)
- 2) The site shall not be occupied by any persons other than Gypsies and Travellers defined as persons of a 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.
- 3) No more than 2 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 1 shall be a static caravan) shall be stationed on the site at any time.

- 4) No vehicle over 3.5 tonnes shall be stationed, parked or stored on this site.
 - 5) No commercial activities shall take place on the land, including the storage of materials.
 - 6) Within 6 months of the date of this permission a scheme of landscaping shall be submitted to the local planning authority for its approval in writing. The scheme shall be implemented in accordance with an agreed schedule and shall be retained thereafter.
 - 7) Details of any external lighting at the site shall be submitted to and approved in writing by the local planning authority within 6 months of the date of this permission. The lighting shall be installed in accordance with the approved details and thereafter retained.
 - 8) Within 6 months of the date of this permission a minimum of 1 bat tube and 1 bird box shall be installed at the site in accordance with details to be submitted to and approved in writing by the local planning authority. These items shall thereafter be retained.
 - 9) All existing hardstanding areas at the site shall be retained as permeable construction.
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APPEARANCES

FOR THE APPELLANT:

Mr G Whitehouse
Mr G Treeby

Green Planning Studio
The Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Mr F Amekor

Maidstone Borough Council

DOCUMENT SUBMITTED AT THE HEARING

- 1 Updated position statement on Gypsy and Traveller need, submitted by the Council