

Appeal Decisions

Hearing held on 20 August 2024

Site visit made on 19 August 2024

by Nick Fagan BSc (Hons), DipTP, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 September 2024

Appeal A Ref: APP/H2265/C/22/3291790

Land adjacent to Maidstone Road, Hadlow, Kent TN11 0JD

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Ms Dominique Jones against an enforcement notice issued by Tonbridge and Malling Borough Council.
 - The notice was issued on 4 January 2022.
 - The breach of planning control as alleged in the notice is without planning permission:
 - Unauthorised change in use from agricultural land to land used as residential caravan site
 - The stationing of mobile washroom and toilet facilities
 - Construction of hard surfaces and the creation of a new means of access onto Common Road
 - Erection of fences and gates
 - The requirements of the notice are to:
 - Cease the unauthorised residential caravan use on the land and remove from the land all caravans and vehicles used for residential occupation
 - Remove from the land all mobile washrooms and toilet facilities
 - Break up and remove to an authorised place of disposal all hard surfaces and to restore the land to its former condition before development was undertaken by the levelling and seeding of the land with grass seed. Permanently close the unauthorised access from the site onto Common Road and plant along its length native hedging
 - Remove to an authorised place of disposal all fences and gates
 - The period for compliance with the requirement is: 3 calendar 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.
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Appeal B Ref: APP/H2265/W/22/3291814

Land adjacent to Maidstone Road, Hadlow, Kent TN11 0JD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
- The appeal is made by Ms Dominique Jones against the decision of Tonbridge and Malling Borough Council.
- The application, Ref TM/21/02156/FL, was refused on 4 January 2022.
- The development proposed is change of use of land for the stationing of caravan for residential purposes, together with hardstanding and utility/dayroom ancillary to that use.

Decisions

Appeal A

1. It is directed that the requirements of the enforcement notice are corrected as follows:
 - by the deletion of the words 'by the levelling and seeding of the land with grass seed' from the end of the first sentence of the third bullet-pointed requirement; and
 - by the moving of the second sentence of the third bullet-pointed requirement into a new requirement 4 ('To permanently close the unauthorised access from the site on to Common Road and plant along its length native hedging'), so that there would now be a total of five bullet pointed requirements.
2. Subject to these corrections, Appeal A is **allowed** insofar as it relates to 'Plot 4' and the access to it from Common Road only (as per Plan P_100A as referred to in Condition 1 of the Schedule below) 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 change of use of land for the stationing of caravans for residential purposes, together with hardstanding and utility/dayroom ancillary to that use, the creation of a new means of access onto Common Road and the erection of fences and gates, subject to the conditions in the Schedule below.
3. Otherwise, the appeal is **dismissed**, and the enforcement notice is upheld as corrected insofar as it relates to all the other land shown on the plan attached to the notice – i.e. all the other 'plots' except 'Plot 4', and planning permission is refused for any such development deemed to have been made under s177(5) of the Act as amended.

Appeal B

4. The appeal is **allowed** and planning permission is granted for change of use of land for the stationing of caravan for residential purposes, together with hardstanding and utility/dayroom ancillary to that use, the creation of a new means of access onto Common Road and the erection of fences and gates at Land adjacent to Maidstone Road, Hadlow, Kent TN11 0JD in accordance with the terms of the application, Ref TM/21/02156/FL, subject to the conditions in the Schedule below.

Preliminary Matters

5. I had arranged to conduct an accompanied site visit with both main parties present at 4pm on the day before the Hearing. Unfortunately, due to bad traffic on the M25 and several local road closures in the area, I only arrived on site at 5.30pm.
6. Whilst there, I was shown round the site by the appellant and her partner. I was also able to see the divided 'plots' on the land the subject of the notice and took the opportunity to look at the nature of the boundaries to both Maidstone Road and Common Road. I looked inside the caravans and sheds on the appellant's site. I was also able to reconnoitre the local facilities in

Hadlow (shops, bus stops, primary school and nursery, doctor's surgery, dentists, church, pub), the distance on foot to these facilities from the site, and the nature of the other gypsy and traveller sites (Alan's Hectare and the adjacent site to the west of it) at Cemetery Lane near its junction with Maidstone Road.

7. I made clear at the Hearing that, if the Council wished, I would happily return to the site with both main parties, in order for the Council to draw anything to my attention which they wanted me to see (and felt I hadn't already seen). The Council's representative confirmed at the end of the Hearing that this was unnecessary since they considered I had seen all I needed to make my decisions.

The Notice

8. A query was raised in terms of whether it was necessary to re-level the land and re-seed it with grass seed. The appellant knows what the land was like when she first occupied it and in any case the land the subject of the notice is approximately flat. Consequently, I see no need for the third requirement to state what it currently does, and so this part of the first sentence is excised.
9. I agree that the requirement related to the new access would be better as a separate requirement, and consequently the notice is corrected accordingly.

Main Issues – Ground (a) of Appeal A and Appeal B

10. The site is in the metropolitan Green Belt and it is agreed that the proposal would be inappropriate development. It is agreed that the proposal has some impact on openness and constitutes a modest encroachment into the countryside, since it lies outside any settlement.
11. It is also agreed that the appellant and her partner and children meet the definition of gypsies and travellers in Annex 1 of the Planning Policy for Traveller Sites (the PPTS, latest version published 19 December 2023); there is an unmet need for gypsy and traveller pitches within Tonbridge and Malling's area; and that the Council cannot demonstrate a five-year supply of gypsy and traveller sites.
12. Consequently, I consider the main issues to be:
 - The effect of the development on the openness of the Green Belt;
 - Its effect on the character and appearance of the area;
 - The extent of unmet need for gypsy and traveller sites;
 - Whether the harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations, including the appellant's personal circumstances, so as to amount to the very special circumstances (VSCs) necessary to justify the development in the Green Belt.

Reasons

Openness

13. The land the subject of the notice is a roughly triangular shaped flat piece of rural land of 2.45 acres (about a hectare), which lies on the corner of Maidstone Road (the A26) and Common Road, about ½km north of the village of Hadlow and outside its settlement boundary as defined in the Tonbridge and Malling Core Strategy (the CS), adopted in 2007. This land has been subdivided into 7 separate 'plots' with a hard surfaced access track to them running down the middle of the site from a new gated access onto Common Road created in 2021, although no planning permission exists for the use of any of these 'plots'.
14. The appellant, her partner Dave Vincent and four children, own and live on 'Plot 4', an area of 0.3241 acre (not including the access track from Common Road). Most of the site is hard surfaced with loose hard core, although the northeast of the plot is a lawn on which was sited a rotary washing line. On the plot there is a static caravan in its northwest corner, in the position shown on Proposed Site Plan P-201 B submitted with the planning application. There is also, next to it immediately to its east, a day room which includes a room that looks like a beauty salon. Running along the western edge of the plot, adjacent to the access track, is sited a touring caravan next to which are two timber garden-type sheds housing domestic items and Mr Vincent's work tools respectively. All the above structures are moveable; none of them are permanent buildings. There were also two vehicles parked on the site during my visit, one of which was clearly Mr Vincent's work van.
15. These structures and the vehicles clearly impact on the openness of the Green Belt, both spatially and visually. The visual impact arises when standing on the land attacked by the notice as well as when standing on Plot 4, but also when the gates to the land are open, from the current gap in the Common Road boundary hedge where the previous access gate was, and to a lesser extent in glimpses between the dense hedge foliage on Maidstone Road. I am conscious that these latter views would be likely more prominent in the winter, when the thick boundary hedge would be missing its leaves.
16. But, even in winter, the thickness of the hedges would to a large extent at least partially screen the caravans and other structures and vehicles on the site, as well as the vehicles and items stored on neighbouring 'Plot 5' to the southwest. In conclusion, yes, there would be some impact on openness both in spatial and visual terms, but the appellant's site is a reasonable size and not dominated by structures or vehicles and the impact is therefore fairly modest. Nonetheless, paragraph 153 of the National Planning Policy Framework (NPPF) states that substantial weight should be given to any harm to the Green Belt, and that is the weight I shall consequently give to the proposal's loss of openness. Because of this there is also conflict with CS Policy CP3, which states that national Green Belt policy will be applied here.

Character and Appearance

17. The hard surfaced nature of the access track and most of Plot 4 (and indeed Plot 5) clearly changes the character and appearance of the site from a piece of agricultural land – presumably originally a single field – to a developed site.

As such it could not be said that the proposal recognises the intrinsic character and beauty of the countryside, contrary to NPPF paragraph 180 b).

18. CS Policy CP20 section 2 states that accommodation for gypsies and travellers will be permitted if all of criteria (a) to (f) are met. In relation to character and appearance criteria (b) to (d) are relevant. Criterion (b) requires gypsy and traveller sites not to prejudice residential or rural amenity as a result of visual intrusion, excessive noise, traffic generation or activity at unsocial hours. There would be some relatively limited visual intrusion only, as explained above. Criterion (c) requires the site to respect the scale of and not dominate the nearest settled community. The development complies with this because it respects the scale of and does not dominate Hadlow. Criterion (d) requires the site to be adequately accessed by vehicles towing caravans and to have safe pedestrian and cycle access. The new access fulfils these requirements and so complies with this criterion.
19. Despite this failure to comply with criterion (b) of CP20, the appellant and her partner explained at the Hearing that they had also recently purchased adjoining 'Plot 2' to the north of their plot (which the Council did not dispute), in order that they could strengthen the boundary to Common Road by, if necessary, infilling with native hedge planting the gap left by the former access to the land at this point. Although it would take a few years for such planting to grow into a mature hedge to screen the site from the road, I consider such new planting would constitute an acceptable screen sufficient in time to meet the requirements of CP20 (b).
20. CS Policy CP6 states that development will not be permitted within the countryside or on the edge of a settlement where it might unduly harm the setting or character of a settlement when viewed from the countryside. However, for the above reasons, the proposed development does not unduly harm the setting or character of Hadlow.
21. Policy CP14 restricts countryside locations to certain types of development including that for which a rural location is essential, none of which include traveller sites. However, there is no preclusion in PPTS from traveller sites being in rural areas and, realistically, given the price of land in built-up areas, they often are. So, I attach limited weight to such conflict with CP14.
22. Policy CP24 requires development to respect the site and its surroundings. I have said above that it does not recognise the intrinsic character and beauty of the countryside but, for the reasons set out, it would not unduly harm the overall character or appearance of the area.

Unmet Need and Related Matters

23. The CS, at CP1.5 states that appropriate provision should be made for gypsies and travellers if a need exists, although paragraph 6.3.38 of the CS refers to a sub-regional Gypsy and Traveller Accommodation Assessment (GTAA) undertaken in 2006. That was then to be fed into the then South East Plan that was to have eventually allocated plot requirements to each Kent District, and the possible preparation of a DPD for Tonbridge and Malling. But that did not occur and the 2006 GTAA is obviously well out-of-date now. There is no policy in the CS that allocates any gypsy and traveller sites. However, Policy CP1.5 states that provision should be made if a need exists.

24. The latest GTAA for the District is the 2022 GTAA by arc⁴. This identifies, in Table ES1 on page 7, an overall need (i.e. that meets the updated PPTS definition of gypsies and travellers that accommodates the *Lisa Smith* judgement) for 41 additional gypsy and traveller pitches across the borough over the period 2021/22 to 2039/40, 33 of which are required in the 6-year period 2021/22 to 2026/27.
25. The GTAA concludes that there is potential permanent pitch supply through the regularisation of unauthorised existing sites – apparently including this one – (21 pitches), and through the intensification (more pitches on the same area of land) or expansion (through increasing the size of existing sites) (23-27 pitches in total). A new Local Plan was due for adoption in 2019 but was withdrawn in 2021. Progression of another new Local Plan, which has not yet reached its Regulation 18 stage, was paused on 15 July because of the new Government's intentions to make significant changes to national planning policy. Consequently, the 2022 GTAA's above suggested way of delivering pitches to meet the identified need has not progressed beyond a consulted-on 'call for sites', and it may yet be some time (years) before such a plan leads to new planning permissions for gypsy and traveller pitches in the Borough.
26. In summary, the unmet need for pitches is large and there are no plans to meet it anytime soon, since I do not even have a Regulation 18 new Local Plan before me. 33 new pitches are required by 2026/27 but there are no plans to provide any. There is therefore no five-year supply of traveller pitches or sites (5YHLS). Given that there were no allocations of pitches in the 2007 CS and no DPD was ever brought forward to allocate any, I can only second the comment made by the Inspector last year in the Alan's Hectare appeal decision¹ that the Council has for decades failed to meet need or address unmet need with site allocations. Consequently, I agree with him that there has been policy failure in this regard.

Other Considerations

27. As set out above, there is a considerable amount of unmet need for gypsy and traveller pitches, there is no 5YHLS, and there has been policy failure by the Council. PPTS paragraph 27 states that if a local planning authority cannot demonstrate an up-to-date 5YHLS of deliverable sites, this should be a significant material consideration in any subsequent planning decision when considering applications for the grant of temporary permission, but some sites – including Green Belt sites – are excepted from this.
28. 72% of Tonbridge and Malling lies in the Green Belt. This suggests that a proportion of any future site allocations would have to be on Green Belt land. This proposal is for a permanent, not a temporary permission. But I see no reason why unmet need and the lack of a 5YHLS should not be a material consideration in this case also, just as the Alan's Hectare Inspector decided.
29. This site is about ½km further from the village's main facilities than the Alan's Hectare site. But 1km (to the village centre) is a short distance to walk and there is a paved footway on which to do so. There are bus stops very close to it on the main road in both directions. It is clearly in an accessible location – within walking distance – close to essential services, including the

¹ APP/H2265/W/23/3316969

nursery and pre-school in the centre of Hadlow attended by two of the appellant's children.

30. PPTS paragraph 24, in addition to the local level of provision and need for sites, also identifies the availability (or lack) of alternative accommodation for the applicant and their personal circumstances as key issues to be considered. The Council has not identified any suitable, affordable alternative sites for the appellant and her family to resort to.
31. She has four children. Although her eldest child is home-schooled, her other three children are all under the age of five, two of whom attend the local nursery and pre-school, which is a feeder for Hadlow Primary School, which she wants her youngest children to attend when they are old enough. I therefore judge that the proposed development would be in the best interests of the appellant's children.
32. PPTS paragraph 13 states that traveller sites should be sustainable, economically, socially and environmentally, which includes in criterion c) that children can attend school on a regular basis. This site undoubtedly facilitates that. It also in my opinion, for the above reasons, complies with criterion a) promotes peaceful and integrated co-existence between the site and the local community and b) promotes access to appropriate health services, as well as d) provides a settled base that reduces both the need for long-distance travelling and possible environmental damage caused by unauthorised encampment.

The Green Belt Planning Balance

33. PPTS paragraph 16 states that inappropriate development is harmful to the Green Belt and should not be approved, except in VSCs. It goes on to say that, 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 VSCs. But that does not mean that they never can.
34. I consider that the other considerations listed above are of sufficient weight and magnitude when combined that they amount to VSCs, bearing in mind that caselaw has held that other considerations are not required to be unique or very special in themselves. They clearly outweigh the harm to the Green Belt by reason of inappropriateness, loss of openness and the modest impact on the character and appearance of the countryside contrary to CS Policy CP3, CP14 and aspects of CP20 and CP24.
35. However, the appellant and her family only reside on Plot 4. There is no reason not to uphold the notice in respect of the rest of the land attacked by the notice. Otherwise, if I was to quash the notice, planning permission would be granted to use the whole of the site as a gypsy and traveller caravan site, for which no specific other considerations have been put forward sufficient to establish VSCs. For these reasons, only Plot 4 occupied by the appellant and her family is granted permission as a residential caravan site and the notice is upheld in respect of the other 'plots' of land.

Conditions

36. S72(1) (a) of the Act allows conditions to be imposed not just on the red line site the subject of a planning application but on any land under the control of an applicant. There is no dispute here that the applicant/appellant owns, and therefore controls Plot 2, the land that borders the gap in the hedgerow at Common Road. She can therefore carry out the remedial planting as mentioned above, the subject of the requirement in i) d. of Condition 7 in the Schedule below. That is the reason why I am allowing Appeal B relating to the planning application.
37. Equally, the appellant is capable of fulfilling the requirements of no commercial vehicles or activity on Plot 4 or on her adjoining land expressed in Conditions 4, 5 and 6 below, all of which are necessary to protect the character and appearance of the local area.
38. Condition 1 listing the approved drawings is necessary to avoid any doubt as to what has been approved. Although the day room and touring caravan (and sheds) are not in the exact positions shown on the Proposed Site Plan, they are acceptable in principle and in acceptable locations as described above and so there is no reason not to list these approved plans.
39. Condition 2 is necessary because permission would not have been granted unless the occupiers of the site were gypsies or travellers, given its conflict with adopted development plan policy. Condition 3 is necessary in order to protect the openness of the Green Belt and character and appearance of the site's countryside location.
40. An adapted retrospective site development scheme, Condition 7, is necessary to ensure that the use ceases and associated operational development is removed if the details listed, particularly a planting/landscaping scheme, fails to be submitted or implemented for the reasons described above.

Conclusion

41. For the reasons given above, I conclude that Appeal A partially succeeds on ground (a), but only in relation to Plot 4 and the access road, and not the rest of the land attacked by the notice. I shall grant planning permission for the use and operations as described in the notice as corrected in relation to Plot 4 and its access only. Otherwise, the notice is upheld, and the appeal dismissed.
42. In these circumstances the appeal on ground (g) does not fall to be considered.
43. For the reasons given above Appeal B is allowed.

Nick Fagan

INSPECTOR

Schedule of Conditions for Appeals A & B

- 1) Except as may be required by the conditions below, the development hereby permitted shall be carried out in accordance with the following approved drawings, all labelled 2128:
 - P_100A Site Location Plan
 - P_200 1:500 Site Location Plan
 - P_201B Proposed Site Plan
 - P_202 Proposed Day Room Plans & Elevations
 - P_203 Proposed Mobile Home Plans & Elevations
- 2) The site shall not be occupied by persons other than Gypsies and Travellers as defined in Annex 1 of Planning Policy for Traveller Sites (PPTS), published 19 December 2023 (or any adopted revision to that document or other adopted succeeding national policy related to gypsies and travellers).
- 3) No more than 1 mobile home for residential use with associated 1 touring caravan shall be stationed on the site at any time. All caravans stationed on the site shall comply with the definition of caravans as set out in Section 29 of the Caravan Sites and Control of Development Act 1960 and Section 13 of the Caravan Sites Act 1968, both as amended.
- 4) No vehicles over 3.5 tonnes shall be stationed, parked or stored on the site or any adjacent land owned by the appellant.
- 5) No commercial activity or storage of materials shall take place on the site, or any adjacent land owned by the appellant.
- 6) Notwithstanding the provisions of the Town & Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking, re-enacting or amending that Order) no gates, walls or fences or other means of enclosure including bunding, shall be erected or placed within/to the boundaries of the site or on any adjoining land owned by the appellant, beyond those which already exist at present.
- 7) The use hereby permitted shall cease and all caravans, structures, equipment and materials brought onto the land for the purposes of such use shall be removed within 28 days 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 details of:
 - a. the means of foul and surface water drainage of the site
 - b. facilities for the storage and collection of refuse and waste
 - c. details of any external lighting
 - d. a planting/landscaping plan for both the site itself and the gap in the hedge on Common Road including a plant schedule with species, planting density and plant numbers.

ii) Within 11 months of the date of this decision the details to be submitted in i) above shall have been approved by the local planning authority (LPA) or, if the LPA refuse to approve the details, 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 details shall have been approved by the Secretary of State.

iv) The approved details shall have been carried out, completed and retained in accordance with the approved timetable arising as appropriate from i) to iii) above.

End of Conditions

APPEARANCES

FOR THE APPELLANT:

- Dr Angus Murdoch
- Dominique Jones & Dave Vincent

FOR THE LOCAL PLANNING AUTHORITY:

- Robert (Bob) McQuillan, RE Planning

INTERESTED PARTIES:

- Paul Nicholls, Graham Simpkin Planning (GSP), representing various neighbouring residents
- Nick Collins, Hadlow Parish Council
- David Lavender, neighbouring resident

End of Appearances

DOCUMENTS ACCEPTED AT THE HEARING

1. Amended Schedule of agreed conditions.
2. Draft Deed of Covenant (re Overage Obligations) between appellant and previous owners of the land.
3. Letter from GSP representing neighbours and explaining why representations were late.
4. Signed Statement of Common Ground dated 20 August 2024
5. Printout from Council website explaining why the emerging Local Plan has been paused, dated 15 July 2024.

End of Documents