

Appeal Decisions

Hearing held on 3 September 2024

Site visit made on 3 September 2024

by AJ Steen BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11th October 2024

Appeal A Ref: APP/X2220/C/23/3317037

Land on the South side of Ferne Lane, Alkham, Dover CT15 7FF

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr Aaron Beaney against an enforcement notice issued by Dover District Council.
- The notice was issued on 11 January 2023.
- The breach of planning control as alleged in the notice is without planning permission, the material change of use of the land from agricultural to a caravan site and the stationing of caravans for permanent residential occupation.
- The requirements of the notice are to:
 1. Cease the use of the land as a caravan site and the stationing of caravans for residential use.
 2. Cease the residential use of the land and remove all caravans disconnect all services and remove all associated connecting apparatus from the land identified in photographs A, B, C, D and E
 3. Return the land to its former use and condition and appearance as shown in the attached aerial photograph F.
- The period for compliance with the requirement is: 12 months.
- The appeal is proceeding on the ground set out in section 174(2)(a) 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.

Summary Decision: Appeal A is allowed, the enforcement notice is quashed, and planning permission is granted in the terms set out below in the Formal Decision.

Appeal B Ref: APP/X2220/C/23/3317038

Land on the South side of Ferne Lane, Alkham, Dover CT15 7FF

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr Aaron Beaney against an enforcement notice issued by Dover District Council.
- The notice was issued on 11 January 2023.
- The breach of planning control as alleged in the notice is without planning permission the carrying out of operational development including the laying of concrete pad foundations, hardsurfacing, hardsurface track, outbuildings,

raised decking, siting of a shipping container, septic tank, fencing and associated residential paraphernalia.

- The requirements of the notice are to:
 1. Excavate and demolish the concrete pad foundations, hardsurface track, hardsurface areas, outbuildings, raised decking, fencing identified in photographs A, B, C, D and E as indicated on the attached plan.
 2. Remove the shipping container from the land.
 3. Demolish and excavate the septic tank and all associated connecting apparatus.
 4. Remove all resultant rubble, rubbish, materials and any other associated paraphernalia arising from the above steps and being kept on the site, from the land.
 5. Return the land to its former use, condition and appearance as shown in the attached aerial photograph F.
- The period for compliance with the requirements is: 12 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a) 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.

Summary Decision: Appeal B is allowed, the enforcement notice is quashed, and planning permission is granted in the terms set out below in the Formal Decision.

Preliminary Matters

1. These enforcement notices relate to development of the same land but separate the change of use and the operational development. For clarity, I will deal with both together in my decision.
2. The emerging Dover District Local Plan is currently undergoing examination. The Council have received the Inspectors' Report and I understand that it may be adopted shortly. Consequently, in accordance with the National Planning Policy Framework (the Framework) I will give the emerging Local Plan, along with the main modifications to its policies, considerable weight in coming to my decision.
3. Areas of Outstanding Natural Beauty were renamed National Landscapes during the course of the appeals. A statutory duty under section 85 of the Countryside and Rights of Way (CROW) Act 2000 requires me to seek to further the purpose of conserving and enhancing the natural beauty of the National Landscape.
4. At the hearing, it was discussed whether all the residents and intended residents on the site fall within the definition of Gypsies and Travellers set out within Annex: 1 of the Planning Policy for Traveller Sites (PPTS). There is no dispute that two intended residents are persons of nomadic habit of life, albeit one is currently living in bricks and mortar housing and has ceased travelling.
5. Another resident is married to one of those individuals but was not brought up with a nomadic way of life. However, they have adopted a nomadic habit of life with their spouse and, on the balance of probability, I consider they also comply with the definition. The final person is a parent of that

individual. They now live on the site in one of the mobile homes. They travel with the family, for example to horse fairs and, from the evidence presented at the hearing, follow the same lifestyle as the other residents. I understand they would continue to do so, even if they were unable to stay on this site. I consider that, on the balance of probability, they also comply with the definition.

6. For the purposes of this appeal, therefore, I consider that all the intended residents of the site are Gypsies and Travellers as defined by the PPTS. Nevertheless, if I were to allow the appeal I would consider whether conditions should be attached limiting occupation to Gypsies and Travellers and/or a personal condition limited to the residents, as discussed at the hearing.

The Appeals on Ground (a) and the Deemed Planning Applications

Main issues

7. The main issues are:
 - the effect of the caravan site on the landscape and scenic beauty of the Kent Downs National Landscape;
 - whether the use is in a suitable location in terms of access to services and facilities (appeal A only); and
 - whether there are other material considerations that could outweigh any conflict with development plan policies, such as the need for Gypsy and Traveller accommodation within the District and the personal circumstances of the site occupiers.

Reasons

Kent Downs National Landscape

8. The appeal site is located on the junction of Ferne Lane and Warren Lane. Prior to the development, the site comprised part of a larger field. The boundaries with Ferne Lane and Warren Lane comprise mature hedges, with a solid gate across the entrance to the site. There is also a public footpath across the field that appears little used as both ends are overgrown.
9. The surrounding landscape is hilly, with predominantly large fields giving an open character. This field is largely flat and on a high plateau but surrounded by substantial hedges with other mobile homes to the other side of the field. As a result, there is limited visibility into the site, other than from the public footpath.
10. The hardstanding, hardsurfacing, foundations and septic tanks have limited effect on the landscape as they are at ground level. The mobile homes, raised decking, outbuildings and fencing are visible within the landscape and alter its character in this location. The use results in a domesticated appearance to the site, with associated paraphernalia around the mobile homes, that does not reflect the rural surroundings. Taking account of the other caravans and pockets of residential development in the area, and that

visibility of the site through the surrounding hedges is limited, the effects on the landscape are modest.

11. Nevertheless, I conclude that the operational development and use of land as a caravan site harms the landscape and scenic beauty of the Kent Downs National Landscape. It does not conserve and enhance the natural beauty of the National Landscape. As a result, the development is contrary to Policies DM 15 and DM 16 of the Dover District Core Strategy (CS), Policies SP3, H4 and NE2 of the emerging Local Plan and the Framework that seek to protect and enhance valued landscapes and avoid harm to the character of the landscape.
12. I note that Policy DM 7 of the CS sets criteria for determining planning applications for Gypsy and Traveller accommodation. This includes that sites should be screened from wider view. As I have concluded that this site is screened by hedges, I consider that the proposal complies with the relevant criteria of this policy.

Location in relation to services and facilities (Appeal A)

13. Access to the site is via Ferne Lane and Warren Lane that comprise narrow country lanes. Alkham is the closest settlement providing any services and facilities, at around 1km distance. It is 4km to the closest train station at Kearsney, with Dover providing more services and facilities beyond.
14. Whilst the distance to services and facilities is not particularly long, the narrow lanes mean accessibility is limited. Use of bicycles or walking is unattractive given the nature of those lanes. As a result, cars are the main form of transport to services and facilities and it is unlikely that public transport would be used by residents other than for longer journeys, for example to London.
15. Gypsy and Traveller accommodation is generally located in rural areas and separated from settlements. In that context, the distance to services and facilities is not excessive. Nevertheless, the nature of the roads providing access to the site means that there is limited accessibility to this location.
16. For these reasons, I conclude that this is not a suitable location for this use in terms of access to services and facilities. It is contrary to Policies DM 1, DM 7 and DM 11 of the CS that seek new development that may generate travel to be within settlement boundaries and Gypsy and Traveller accommodation, in particular, to be accessible to local services and facilities and by public transport. It conflicts with the PPTS that seeks to very strictly limit new Gypsy and Traveller site development in open countryside that is away from existing settlements.

Other material considerations

Personal circumstances

17. Three of the residents living on the site, or intending to live on the site, have a number of health conditions such that they require a significant amount of care. These include kidney disease, a spinal injury, high blood pressure, rheumatism arthritis, chronic obstructive pulmonary disease, anxiety and

depression, with one resident bed-bound. A resident is pregnant, with the baby due in early 2025. They are registered with local doctors and under the care of hospitals in Canterbury, Margate, Dover and London. Whilst I have limited documentary evidence to support this information, it is clear that there are significant health issues for residents that need to be taken into account.

18. The appellant and his family were based on a site in the Ewell Minnis area. I understand he had been based there for the whole of his life. Their relationship with other residents meant that they had to leave that site. Through contacts, they were able to purchase the appeal site and move their, and another, family to the appeal site. I understand the other family has moved off and there have been other changes in occupation since. As set out above, the intention is for the three caravans to be occupied by the appellant and his wife within the larger caravan and close relatives in the other two caravans.
19. Care for the existing and proposed residents would largely be provided within the family living on site. The level of care required means this would be best provided on the same site.
20. From this, I conclude that there is a personal need for the existing and proposed residents to stay in the local area and to be accommodated together. Were the occupants forced to vacate the site, it is unclear whether they would be able to find alternative accommodation or have to live on the roadside. For these reasons, I consider the personal circumstances of the residents to be a very significant material consideration.

Need for Gypsy and Traveller accommodation

21. Taking account of the Gypsy and Traveller Pitches Need and Supply Update Note July 2023, the Council have set out that they have found more sites than are required to meet their identified needs for Gypsy and Traveller accommodation. The sites identified in Policy SP3 of the emerging Local Plan would result in extensions or intensification of existing sites rather than new sites. As a result, the numerical needs for Gypsy and Traveller accommodation within the district is being met by development plan policies.
22. As referred to above, there can be tensions between residents on Gypsy and Traveller sites, such that extensions and intensification may not always meet the needs of those being accommodated. From the evidence discussed at the hearing, I understand that there are, or are likely to be, tensions between the appellant and residents of the allocated sites. On that basis, these sites are unlikely to be suitable for the intended occupants of this site.
23. In addition, both the CS and emerging Local Plan anticipate that windfall accommodation above that allocated may be allowed in certain circumstances.
24. Policy DM 7 of the CS sets criteria for determining planning applications for Gypsy and Traveller accommodation. I have concluded that the site is not accessible to local services and facilities, nor by public transport, but does not conflict with other criteria within that policy. Nevertheless, that is

sufficient to conclude that the development conflicts with that policy as a whole.

25. Policy H4 of the emerging Local Plan would provide for Gypsy and Traveller windfall accommodation and is also a criteria based policy. I have found that the proposal would conflict with criteria relating to its accessibility to services and facilities and the requirement to conserve and enhance landscape and scenic beauty within the National Landscape.
26. My attention has been drawn to Policy H3 of the emerging Local Plan. This relates to sites intended to be allocated to meet the needs of Gypsies of Travellers. As this is an unallocated site to be assessed under Policy H4 of the emerging Local Plan, I find no conflict with Policy H3.

Conditions

27. Appeal A relates to the use of land and appeal B to operational development. As a result, if I were to conclude that planning permission should be granted the need for conditions differ and must be imposed separately to the two developments.

Appeal A

28. I note that it would be possible to include a personal condition limiting occupation of the site to the people referred to above. Such a condition could require removal of related development should the occupants leave the site. A personal condition and conditions limiting the number of pitches and caravans, and their occupation, would be necessary if I were to conclude that this material consideration contributed to outweighing any conflict with the development plan. A condition limiting occupation to Gypsies and Travellers in addition to limiting occupancy to individuals would, however, be unnecessary.
29. Condition 4 would need to be imposed to ensure that hard and soft landscaping, visibility splays at the site entrance and disposal of foul sewage are submitted, approved and implemented so as to make the development acceptable in planning terms. There would be a strict timetable for compliance because permission is being granted retrospectively, and so it would not be possible to use a negatively worded condition to secure the approval and implementation of the outstanding matters before the development takes place.
30. The condition would ensure that the development can be enforced against if the landscaping, visibility splays and foul sewage details were 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 were approved but not implemented in accordance with an approved timetable.
31. A condition would be necessary to require refuse and recycling storage on the site in order to conserve and enhance the natural beauty of the National Landscape. Conditions would be necessary restricting commercial use or activity and the number of commercial vehicles parked on the site in order to conserve and enhance natural beauty and highway safety.

32. These conditions would be required to support the use of the site in providing caravans for permanent residential occupation.

Appeal B

33. Any personal condition limiting occupation of the site would need to be repeated in this permission in order to ensure the operational development were removed and to require restoration of the site to its previous condition should the occupants leave the site. A personal condition would, therefore, be necessary if I were to conclude that this material consideration contributed to outweighing any conflict with the development plan.
34. Whilst additional hard and soft landscaping would be required in association with the operational development, it would not differ from that required in relation to the use in order to conserve and enhance the natural beauty of the National Landscape. It is not necessary to duplicate these details in conditions on both planning permissions.
35. A condition would be necessary to require further details of external lighting prior to installation in order to conserve and enhance the natural beauty of the National Landscape. A condition limiting further gates, walls, fences or other means of enclosure would be necessary to conserve and enhance natural beauty. These conditions relate to operational development such that they would be appropriate to this planning permission.

Conclusions

36. I have found that there is conflict with policies of the CS. That means the development conflicts with the development plan as a whole. It also conflicts with the emerging Local Plan, the Framework and the PPTS. This is due to the development having resulted in modest harm to the landscape and scenic beauty of the National Landscape and the nature of the surrounding roads means there is limited accessibility to this location.
37. I have found the personal circumstances of the existing and proposed residents to be a very significant material consideration. Taking all matters into account, including the needs of occupiers and availability of alternative accommodation, I consider these outweigh the harm arising from the conflict with the development plan and other harms.
38. For the reasons set out above, I conclude that the development does not accord with the development plan. However, the personal circumstances in this case are material considerations of sufficient weight to indicate a decision other than in accordance with the development plan. The appeals on ground (a) therefore succeed and I will grant planning permission subject to the conditions set out for the developments described in the enforcement notices.

Formal Decisions

Appeal A

39. Appeal A is allowed, the enforcement notice is quashed 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 material change of use of the land from agricultural to a caravan site and the stationing of caravans for permanent residential occupation at Land on the South side of Ferne Lane, Alkham, Dover CT15 7FF as shown on the plan attached to the notice and subject to the conditions set out in the schedule attached to this decision.

Appeal B

40. Appeal B is allowed, the enforcement notice is quashed 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 carrying out of operational development including the laying of concrete pad foundations, hardsurfacing, hardsurface track, outbuildings, raised decking, siting of a shipping container, septic tank, fencing and associated residential paraphernalia at Land on the South side of Ferne Lane, Alkham, Dover CT15 7FF as shown on the plan attached to the notice and subject to the conditions set out in the schedule attached to this decision.

AJ Steen

INSPECTOR

SCHEDULE OF CONDITIONS

Appeal A

- 1) The site shall only be occupied by the following persons and their resident dependents:
 Aaron and Sian Beaney
 Joan Beaney
 Joan Brankley
 Within 3 months of the land ceasing to be occupied by the persons named above, the use of the land shall cease and all caravans, materials and equipment brought on to the land, or works undertaken to it in connection with the use, shall be removed and the land restored to its condition before the development took place.
- 2) There shall be no more than 3 pitches on the site. No pitch shall at any time contain more than 2 caravans (as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968), of which no more than 1 shall be a static caravan.
- 3) Only the static caravans on each pitch shall be used for primary residential accommodation on the site.
- 4) The use and other operations hereby permitted shall cease and be removed and all 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 6 months of the date of this decision a scheme for hard and soft landscaping, visibility splays at the site entrance and disposal of foul sewage shall have been submitted for the written approval of the local planning authority and the scheme shall include a timetable for its implementation.
- 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, a valid appeal shall have been made to 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 maintained.

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) Refuse and recycling storage shall be provided on the site and shall thereafter be kept available for their approved purpose at all times.
- 6) No more than one commercial vehicle per pitch shall be stationed, parked, or stored on the site at any time. These shall only be for the use of the occupiers of the caravans hereby permitted and no vehicle shall exceed 3.5 tonnes in weight.
- 7) No commercial use and/or activity shall take place on the site at any time.

Appeal B

- 1) The site shall only be occupied by the following persons and their resident dependents:
 Aaron and Sian Beaney
 Joan Beaney
 Joan Brankley
Within 3 months of the land ceasing to be occupied by the persons named above, all caravans, buildings, structures, materials and equipment brought on to the land, or works undertaken to it, shall be removed and the land restored to its condition before the development took place.
- 2) No external lighting shall be installed on the site, without details being submitted to and approved in writing by the local planning authority. Details shall include the position, height, and type of lights.
- 3) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any Order revoking or re-enacting that Order with or without modification), no gates, walls, fences or other

means of enclosure, other than those approved under Condition 1, shall be erected within the site.

APPEARANCES

FOR THE APPELLANT:

Simon McKay	SJM Planning
Aaron Beaney	Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Nicola Kingsford	Principal Planning Officer, Dover District Council
Amber Tonkin	Planning Officer, Dover District Council
Claire Dethier	Planning and Development Manager, Dover District Council
Carly Pettit	Planning Policy Team Leader, Dover District Council
Jillian Barr	Senior Planner, Local Plans Team, Dover District Council

DOCUMENTS SUBMITTED AT THE HEARING/INQUIRY:

Document 1:	Local Plan Document ED12 Gypsy and Traveller Need and Supply Update Note July 2023
Document 2:	Local Plan Document ED48 Schedule of Main Modifications (April 2024) extract of policies relevant to the appeal
Document 3:	Interim Advice Note for Local Planning Authorities in the Kent Downs March 2024